

EXTRA 159/96

Death Penalty

17 October 1996

USA (VIRGINIA) Joseph Payne

Joseph Payne is scheduled to be executed in Virginia on 7 November 1996. He was sentenced to death for the murder of David Dunford in 1985.

There are serious doubts concerning the guilt of Joseph Payne. According to an article in the *Connecticut Law Tribune* on 30 September 1996, much of the evidence used to convict Joseph Payne has since been discredited. No physical evidence linked him to the crime. The case rested on the uncorroborated eyewitness testimony of Robert Smith. Payne, Dunford and Smith were all prisoners at Virginia's Powhatan Correctional Center where the murder took place.

Since the trial, seven inmates of the prison have come forward (during the appeal process) to state that Smith committed the murder and testified against Payne after being offered inducements by the authorities. Smith described the deal to another inmate as so good that he would "*testify against his grandmother today...to get the hell out of jail*". In 1987, Smith signed a 16-page affidavit stating that he falsely testified against Payne after being pressured by prison officials. He has since recanted the affidavit. Smith was promised a 10-year reduction in his sentence in return for his testimony and has now been released from prison.

During the trial, Smith admitted that he had taken part in the conspiracy to kill Dunford and that he had received a 10-year reduction in his sentence for his testimony. Other witnesses described Smith as a cheat and a liar. Two other witnesses implicated Payne in the conspiracy to murder Dunford: the first was described by the prosecution as mentally unstable and the second testified that Payne withdrew from the conspiracy prior to the day of the murder.

A witness for the defence testified that he had seen Smith commit the murder and that Payne was having a shower at that time but the prosecution was able to discredit this witness. However, the prosecution was so unsure of obtaining a conviction against Payne that, while the jury were considering their verdict, they offered a sentence of imprisonment (to run concurrently with the sentence he was serving). The defence rejected the offer and the jury brought in a guilty verdict.

The case against Payne rested almost entirely on the credibility of Smith's testimony. The prosecution attorney is quoted in court papers as stating: "*without question had [Smith] not been willing to testify, we would not have been successful in getting a conviction*". He also stated that "*I have no [doubt] that he [Smith] perjured himself on the stand to get whatever concessions he got. I wouldn't have prosecuted him [Payne] if I hadn't been totally convinced that Joe Payne was the killer.*"

Since the trial, Payne's lawyers have presented evidence showing that Smith had received an additional five-year sentence reduction, the dismissal of a forcible sodomy charge and favourable parole consideration in return for his testimony: these additional inducements were not made known to the jury.

During the appeal process, the courts have consistently put more faith in Smith's testimony than the testimonies of the other six prisoners who stated that Payne

did not commit the murder. Five of the six did not testify at the original trial.

Prison officials appeared to be enthusiastic that the death sentence was obtained for the murder of Dunford. In a letter to another prison official, the prison's warden wrote "...it is very critical to send a signal to others that this type of action will not be tolerated...I cannot think of a better signal to send than someone being convicted of capital murder" (emphasis added).

BACKGROUND INFORMATION

The state of Virginia has previously executed prisoners whose guilt of the crimes for which they were sentenced to death was in doubt. In the case of Roger Coleman (UA 89/92 AMR 51/38/92), executed on 20 May 1992, the governor of Virginia offered him a lie-detector test on the day of the execution. Coleman failed the test, which is based on blood pressure tests as a measurement of stress. The governor later told the press "If he had passed...it could have affected what that ultimate result would have been", indicating that he may have been ready to reverse his decision not to grant clemency to Coleman. Dennis Stockton was executed in Virginia on 27 September 1995 (see EXTRA 103/95 AMR 51/120/95) despite doubts concerning his guilt. The only evidence against Stockton was the testimony of a prisoner who had been offered a reduction in his sentence for his statement in court.

As of 31 July 1996, there were 53 prisoners under sentence of death in Virginia. Since executions resumed in 1982, 32 prisoners have been put to death under the state's current death penalty laws. The last person executed in Virginia was Joseph Savino on 17 July 1996. On 1 July 1994 the law in Virginia was changed to allow prisoners sentenced to death a choice of execution by electrocution or lethal injection. Previously executions had been by electrocution only. In Virginia the authority to grant executive clemency lies with the state governor.

Two death row inmates have had their death sentences commuted in Virginia in the last five years. Joseph Giarratanno and Herbert Bassette's sentences of death were commuted by Governor Wilder in 1991 and 1992 respectively, because of doubts concerning their guilt.

RECOMMENDED ACTION: Please make appeals by telephone, telegrams, fax, express or airmail letters in English or your own language:

- expressing deep concern that the state of Virginia is actively seeking to execute Joseph Payne on 7 November 1996 in the face of serious doubts about his guilt;
- urging Governor Allen to grant clemency to Joseph Payne;
- expressing deep concern that Joseph Allen has been convicted primarily on the strength of the testimony of a witness who stood to benefit from testifying for the prosecution and who may have been attempting to conceal his own guilt for the crime;
- expressing sympathy for the victims of violent crime and their relatives;
- emphasising that execution is a wholly inappropriate penalty in a case such as this, and that executive clemency is the traditional safeguard against a possible miscarriage of justice where the judicial process has been exhausted.

APPEALS TO:

The Honorable George Allen

Governor of Virginia
State Capital
Richmond, VA 23219, USA
Telephone: + 1 804 371 2642 or 786 2211
Fax: +1 804 371 6351
Telegrams: Governor Allen, Richmond, Virginia
Salutation: Dear Governor

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and to diplomatic representatives of the USA accredited to your country.

PLEASE SEND APPEALS IMMEDIATELY.