

EXTERNAL (for general distribution)

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EXTRA 78/95

Death Penalty

27 June 1995

USA (Florida)**Bernard BOLENDER**

Bernard Bolender, white, is scheduled to be executed in Florida on 12 July 1995. He was sentenced to death in April 1980 for his role in the drug-related murders of John Merino, Scott Bennett, Rudolfo Ayan and Nicomendes Hernandez.

The jury at Bernard Bolender's trial unanimously recommended a life sentence - according to his attorneys, because of doubts about his guilt. However, the trial judge overrode the jury's recommendation, and imposed a sentence of death. Bolender's attorneys have described the judge who sentenced him as "a notorious hanging judge", who has imposed a number of death sentences where a jury has recommended a sentence of life imprisonment.

One accomplice, who testified against Bolender at trial and received a life sentence, was released after serving seven years in prison. The other accomplice was initially sent to a mental hospital, after being found insane by two state-appointed psychiatrists. He was later found to have faked his mental illness in order to escape punishment, and was resentenced in 1990 to 35 years' imprisonment, with credit for time already served. According to his attorneys, his alleged mental illness precluded him from testifying for Bolender at trial, and if he had been allowed to testify, he would have said that Bolender was not at the scene of the crime, but arrived afterwards. Two other witnesses have also reportedly testified that Bolender was with them at the time of the crime. One of these was the Colombian wife of one of the victims, who testified in broken English, and according to Bolender's attorneys, had difficulty making herself understood during cross-examination by the prosecution, as she had been denied a translator.

A polygraph (lie-detector) test administered to one of the co-defendants lasting 9 hours, was found to be inconclusive by a state expert. At the time of the trial, Bolender's attorney was reportedly only allowed to see a summary of the polygraph. Bolender's present attorneys have tried to obtain the full polygraph, but without success.

BACKGROUND INFORMATION

Florida is one of only four US states which permit the trial judge to overrule the jury's sentencing recommendation. Florida's "override" provision was upheld as constitutional by the US Supreme Court in 1984. In more than 100 capital trials since 1973, judges in Florida have ignored the jury's recommendation of life imprisonment and imposed the death penalty (in only one tenth of such cases have judges shown mercy by overturning a sentence of death).

On 14 June 1995, Governor Lawton Chiles vetoed a bill which sought to render a jury's capital sentencing recommendation in Florida meaningless by allowing the trial judge to completely disregard the jury's opinion as to the appropriate sentence. He wrote, *"Just as we entrust juries to determine innocence or guilt, we also entrust juries to determine the appropriate sentence. I would support a law which held that a jury recommendation of imprisonment would not be subject to override by the judge."* On 15 June, Governor Chiles granted an indefinite stay of execution to Joe Spaziano (see follow-up to EXTRA 58/95, AMR 51/83/95), so that additional investigation could be conducted because of doubts as to his guilt. Joe Spaziano's trial jury had recommended a life sentence which was overridden by the trial judge, who imposed a sentence of death.

In Florida, the Governor has sole power to grant clemency, although a decision to commute a death sentence must have the approval of at least three members of the cabinet. The Governor holds a clemency hearing in each case after a death sentence has been affirmed by the Florida Supreme Court. If clemency is denied, no reasons need be given.

As of 30 April 1995, there were 342 prisoners under sentence of death in Florida. The most recent execution in Florida was that of Ray Stewart, on 22 April 1994.

RECOMMENDED ACTION: Please send faxes/express and airmail letters/make telephone calls in English:

- expressing concern that Bernard Bolender is scheduled to be executed in Florida on 12 July 1995;
- stating Amnesty International's opposition to the death penalty in all cases as a violation of the right to life and the right not to be subjected to cruel, inhuman or degrading treatment or punishment as proclaimed in the Universal Declaration of Human Rights;
- urging, therefore, that Bernard Bolender's death sentence be commuted;
- expressing deep concern that Bernard Bolender was sentenced to death in spite of a jury's recommendation that his sentence be life imprisonment.

APPEALS TO:

Governor of Florida
The Honourable Lawton Chiles
The Capitol
Tallahassee, FL 32399-0001
USA
Telephone: +1 904 488 2272
Telegrams: Governor Chiles, Florida, USA
Faxes: +1 904 487 0801
Salutation: Dear Governor

COPIES OF YOUR APPEALS TO:

Miami Herald
1 Herald Plaza
Miami, FL 33101
USA
Faxes: +1 305 376 8950

and to diplomatic representatives of the USA accredited to your country

PLEASE SEND APPEALS IMMEDIATELY.