

URGENT ACTION

ALABAMA SETS EXECUTION OF 70-YEAR-OLD MAN

Thomas Arthur, aged 70, is scheduled to be executed in the US state of Alabama on 29 March for a murder committed in 1982. He has been on death row for more than 25 years.

On 1 February 1982, police were called to the home in north-western Alabama of Judy and Troy Wicker. Troy Wicker, aged 35, had been killed by a single shot through his right eye. Four bullet casings were found at the scene. Judy Wicker was lying injured and had traces of blood on her. Her sister Teresa Rowland was kneeling beside her. Judy Wicker told police that she had come home to find an African American man in the house, that he had raped her, and shot her husband. The murder weapon was never found.

Judy Wicker was charged with committing the murder to collect the insurance proceeds, convicted and sentenced to life imprisonment. **Thomas Douglas Arthur** was accused of the actual shooting and charged with capital murder because he had a previous murder conviction. In 1983, he was sentenced to death. His conviction was overturned in 1985 due to improper admission of evidence. He was sentenced to death at a retrial in 1987. In 1990 his conviction was again overturned because of improper admission of evidence. The parole board was asked if Judy Wicker might be released early in exchange for her testimony against Thomas Arthur at his retrial. At this meeting with the board, Judy Wicker was represented by a lawyer who was subsequently hired as a prosecutor and represented the state at this retrial. The state's main witness at this trial was Judy Wicker, the prosecutor's former client whose testimony the prosecution had sought in return for assistance with her parole bid. Judy Wicker was paroled about a year after Thomas Arthur's 1991 retrial, having served 10 years in prison.

At her own trial in 1982, Judy Wicker had testified that Thomas Arthur was not involved in the murder, but that a burglar had killed her husband. This was what she had told the police at the time of the murder. However, at Arthur's 1991 retrial, she testified that in 1981, she, Teresa Rowland and Rowland's boyfriend, Theron McKinney, had discussed killing Troy Wicker. She testified that she knew that the murder would take place on 1 February 1982, that she and Thomas Arthur had gone to the house together, and that she had agreed to tell the police that her husband had been murdered by an African American burglar. She said that she collected \$90,000 in insurance proceeds, and that she paid \$10,000 to Thomas Arthur and \$6,000 to Teresa Rowland, and gave a car and jewellery to Theron McKinney for their assistance in the murder. Neither Rowland nor McKinney was prosecuted.

Thomas Arthur maintains his innocence. There is no physical evidence against him. He is not seeking executive clemency, but continues to seek DNA testing of crime scene evidence to confirm the sworn statement of another inmate who claims to have killed Troy Wicker but which a state court has dismissed as a lie (see overleaf).

Please write immediately, in English or your own language:

- Explaining that you are not seeking to excuse violent crime or to minimize the suffering caused by it;
- Expressing concern that the state continues to block Thomas Arthur's request for advanced DNA testing;
- Urging the Governor to prevent the execution of Thomas Arthur, who has been on death row for over 25 years.

PLEASE SEND APPEALS BEFORE 29 MARCH 2012 TO:

Governor Robert Bentley

State Capitol, 600 Dexter Avenue, Montgomery, Alabama 36130, USA

Fax: +1 334 353 0004

Salutation: Dear Governor

Send copies to diplomatic representatives accredited to your country

Please check with your section office if sending appeals after the above date.

**AMNESTY
INTERNATIONAL**



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ADDITIONAL INFORMATION

At his 1991 retrial, Thomas Arthur was concerned about the adequacy of his court-appointed lawyers' preparation and investigation of the case and their lack of communication with him. The trial judge allowed him to represent himself, without conducting any hearing into whether he was knowingly and voluntarily waiving his right to counsel. The prosecution linked him to the crime through the testimony of Judy Wicker, herself convicted in the murder and an admitted perjurer, as well as through testimony alleging that he had got someone to buy bullets the day before the crime. Another witness testified that he had dropped a rubbish bag into the river on the day of the murder. A large amount of money was found in his belongings some time after the murder. The state has presented no physical evidence against Thomas Arthur and his fingerprints were not found at the scene. He was convicted on 5 December 1991 after a three-day trial. At the sentencing on the same day, he urged the jury to pass a death sentence, stating that he would not be executed because his conviction would be overturned on appeal, telling the jury that he had already twice been sentenced to death. After a sentencing phase that lasted for about 90 minutes, the jury voted 11-1 to recommend a death sentence. On 24 January 1992, the judge formally sentenced Thomas Arthur to death.

On appeal in 2002, two affidavits were filed in court which contradicted Judy Wicker's testimony that Thomas Arthur was with her on the morning of the murder. Alphonso High and Ray Melson stated that he had visited them that morning. If true, their statements would establish that Thomas Arthur was about an hour's drive away from the Wickers' home at the time of the murder. However, the state obtained its own affidavits from the two men contradicting their original statements. Thomas Arthur's lawyers requested a hearing to resolve the factual disputes. In 2006, the US Court of Appeals for the 11th Circuit ruled that the disputed affidavits did not constitute sufficient new evidence for Arthur to be granted a new federal hearing of his case.

In July 2008, Alabama prisoner Bobby Ray Gilbert, serving a life sentence, signed a sworn statement that he had killed Troy Wicker. He said that he had been having an affair with Judy Wicker in 1982, and that she had asked him to kill her abusive husband. He said that he shot Troy Wicker with a sawed-off rifle which he had been given by his grandfather when he was seven years old. He said that after the murder, while still at the crime scene, he and Judy Wicker had had unprotected sex. A number of weeks after the murder, he said, Judy Wicker had paid him \$2,000 for the killing. In his affidavit Gilbert claimed that he wanted "to set the record straight," and was "no longer afraid since the US Supreme Court ruled that a minor cannot receive the death penalty" (he stated that he was under 18 at the time of the crime). A state trial-level court conducted an evidentiary hearing in 2009 and concluded that Gilbert's claims were false and that the statement had been prepared with Thomas Arthur's assistance. Narrow DNA testing ordered by the court did not identify Gilbert's (or Arthur's) DNA profile, but indicated that Judy and Troy Wicker had had sex before he was shot. The court concluded that this further exposed the Gilbert affidavit as a fraud.

Thomas Arthur is seeking advanced DNA testing on a wig that was worn by the gunman, in an effort to prove that the Gilbert affidavit is true and that Arthur was not present at the crime. His lawyers have said that they are prepared to pay for the testing, but the state continues to block them. His lawyers are also arguing that his execution would be unconstitutional because potentially exonerating DNA testing of rape kit evidence taken at the time of the crime has been rendered impossible because the state claims that the kit has been destroyed (which it only claimed in 2008 after six years of litigation on the matter).

Amnesty International opposes the death penalty in all cases, regardless of questions of guilt or innocence, the facts of the crime, or the method of execution. Today, some 140 countries are abolitionist in law or practice. There have been 1281 executions in the USA since judicial killing resumed there in 1977, including 55 in Alabama. There have been four executions in the USA so far in 2012, carried out in Florida, Mississippi, Oklahoma and Texas.

Name: Thomas Douglas Arthur

Gender m/f: m

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