

URGENT ACTION

CLEMENCY DECISION GOES TO MONTANA GOVERNOR

The Montana parole board has voted against clemency for Ronald Smith, a Canadian man on the state's death row for a double murder committed 30 years ago. This vote is not binding on the Governor of Montana, who can still commute the death sentence.

In a letter to Governor Brian Schweitzer on 21 May, the Board of Pardons and Parole advised that, following a clemency hearing on 2 May, the Board had voted against recommending clemency for **Ronald Smith**. The letter said that "justice is best served for the majority of citizens of the State of Montana" by such a recommendation.

Ronald Smith and Rodney Munro were charged with the capital murder of Harvey Madman Jr. and Thomas Running Rabbit Jr., two Native American men shot dead on 4 August 1982. Ronald Munro accepted a plea bargain, pleaded guilty to aggravated kidnapping, was sentenced to 60 years in prison, and was released in 1998. The prosecutor offered Ronald Smith a similar deal – if he pled guilty to murder he would not face the death penalty but be sentenced to life imprisonment and be eligible for release in some 17 years. He rejected the deal, pled guilty to capital murder, refused to present mitigating evidence, and asked for the death penalty, which the judge handed down in March 1983. Within weeks, Ronald Smith changed his mind, stating that he had been severely depressed when he made the plea but that he now wanted to live. In 1984 the judge affirmed the sentence, but this was overturned in 1990. Ronald Smith was re-sentenced to death in 1992, this was in turn reversed, and he was again sentenced to death in 1995. It is this death sentence, and the 1983 conviction, that has survived on appeal.

In 2010, the Ninth Circuit Court of Appeals ruled that Ronald Smith's trial lawyer had "failed to investigate the facts of the crime, failed to investigate Smith's mental state at the time of the crime, and failed to discuss possible defenses before Smith pled guilty". However, it ruled that Ronald Smith had not proved that his lawyer's failings harmed him. One of the three federal judges dissented, arguing that "it is hard to escape the fact that we would not be here if Smith had not succumbed to his semi-suicidal thoughts and instead accepted the plea bargain", and that with effective representation there was a "reasonable probability" he would have made a different decision.

Ronald Smith was aged 24 in 1982 and is now 54. The Ninth Circuit noted the extensive evidence of his reform, model conduct in prison, and deep remorse, but said that such issues were for consideration by the executive clemency authorities. At its hearing on 2 May, the parole board was presented with such evidence, through a range of witnesses (see overleaf). Ronald Smith also testified, telling the victims' families that he was "horrendously sorry" for his crime and apologizing to them for the "the pain and suffering I've put you through."

Please write immediately, in English or your own language:

- Acknowledging the seriousness of the crime and expressing sympathy for the victims' families;
- Noting the extensive evidence of Ronald Smith's remorse, reform and exemplary prison conduct;
- Urging Governor Schweitzer to grant clemency to Ronald Smith.

PLEASE SEND APPEALS BEFORE 4 JULY 2012 TO:

Governor Brian Schweitzer

Office of the Governor, Montana State Capitol Bldg., PO Box 200801, Helena, MT 59620-0801, USA

Fax: +1 406 444 5529

Email: <http://governor.mt.gov/contact/commentsform.asp> (requires US postal address)

Salutation: Dear Governor

And to diplomatic representatives accredited to your country. Please insert local diplomatic addresses below:

Name Address 1 Address 2 Address 3 Fax Fax number Email Email address Salutation Salutation

Please check with your section office if sending appeals after the above date. This is the first update of UA 73/12. Further information:

<http://amnesty.org/en/library/info/AMR51/019/2012/en>

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ADDITIONAL INFORMATION

Under the administrative rules of the Montana Board of Pardons and Parole, clemency may be recommended where the petitioner “has demonstrated an extended period of exemplary performance.” At the hearing on 2 May, the board members heard testimony from numerous witnesses regarding Ronald Smith’s exemplary conduct on death row and his deep remorse. Witnesses supporting clemency included retired prison officials, a clinical psychologist, a Catholic priest and prison educator, a former probation officer and members of the Smith family (since being on death row, Smith has established and maintained strong relationships with his family, including with his own daughter and his two grandchildren). The psychologist said that Ronald Smith “has demonstrated significant change in attitude, thoughts and behaviour. He is what would be considered a model prisoner in the modern setting”. He said that prison guards who had close contact with Smith described him as respectful and cooperative. This was echoed by a former FBI agent who had worked with the Montana law enforcement authorities and who had conducted a number of interviews with prison officials. The latter, he said, had “uniformly described [Smith] as a model inmate, respectful and respected”. A retired prison officer said that, based on his experience with Ronald Smith over 22 years, if it was up to him, he would commute the death sentence not to life without parole, but with the possibility of parole.

Another criterion for executive clemency established by the Board of Pardons and Parole is that “extraordinary mitigating or extenuating circumstances exist.” According to Ronald Smith’s lawyers, his childhood was marked by physical abuse at the hands of his father and mother, and he grew up in an environment of alcoholism. Ronald Smith himself began drinking around the age of 11. He came into conflict with the law as a child, and from the age of 16 was held in an adult facility with adult offenders.

In its 2010 decision, the Ninth Circuit Court of Appeals noted that extensive psychological testing of Ronald Smith had concluded that, at the time of the crime, he was “suffering from or under the influence of extreme emotional disturbance.” The psychologist who testified at his 1995 re-sentencing hearing stated that “I’ve never seen a case that I have worked on in 15 years in a capital case of anyone making this much . . . impressive change in real, significant . . . rehabilitation.” The Court of Appeals noted that “by all accounts, Smith has reformed his life”, but concluded that consideration of this issue was beyond its jurisdiction, adding: “Clemency claims are committed to the wisdom of the executive branch.”

In its 2010 decision, the Ninth Circuit found that Smith’s trial lawyer “did not ensure that Smith fully understood the alternative courses of action available to him”. It continued: “Although Smith’s lawyer was on notice that Smith had been a habitual drug user and that he wanted to die – both facts that might have developed into mitigating circumstances with the right investigation – Smith’s lawyer conceded that he did not discuss with Smith ‘anything that would have operated as a viable defense”. In her dissent from the ruling that Ronald Smith had not been prejudiced by his lawyer’s failures, Judge Betty Fletcher noted that this attorney, who had never worked on a death penalty case before, had provided “pitifully little assistance” and an “alarmingly poor performance”. Judge Fletcher pointed to evidence that Ronald Smith’s decision to plead guilty had been the product of severe depression, and had followed months of solitary confinement in harsh conditions in pre-trial custody and death threats against him from other inmates because of his crime. The record, Judge Fletcher argued, “clearly demonstrates that, once Smith told [his lawyer] that he wanted to plead guilty and seek the death penalty, [the lawyer] gave up on him”. Given the evidence that Ronald Smith had been drinking heavily on and before the day of the murders as well as consuming large amounts of LSD, in addition to evidence of emotional disturbance, Judge Fletcher argued that there had been possible defences open to him.

Amnesty International opposes the death penalty in all cases, unconditionally. There have been 1,295 executions in the USA since 1977, including three in Montana, most recently in August 2006. There have been 18 executions in the USA in 2012.

Name: Ronald Smith

Gender m/f: m

Further information on UA: 73/12 Index: AMR 51/035/2012 Issue Date: 23 May 2012