

URGENT ACTION

MENTAL DISABILITY CLAIM AS EXECUTION IMMINENT

A 54-year-old African American man, Marvin Wilson, is due to be executed in Texas on 7 August for a murder committed in 1992. A clinical neuropsychologist has concluded that he has an intellectual disability that would render his execution unconstitutional.

On 4 November 1992, **Marvin Wilson** was arrested, and then released on bail, for possession of cocaine. Six days later the body of Jerry Williams, a police informant whose information had led to the arrest, was found in Beaumont, Texas. He had been shot. Marvin Wilson was charged with murder, convicted, and sentenced to death in 1994. In 1997, his conviction was overturned by the Texas Court of Criminal Appeals (TCCA) due to improper arguments to the jury by the prosecutor. He was retried in 1998 and again convicted and sentenced to death. His precise role in the murder and the reliability of the evidence used against him remain under challenge by his current lawyers.

In 2002, the US Supreme Court, in *Atkins v. Virginia*, outlawed the execution of people with “mental retardation” under the Constitution’s ban on “cruel and unusual punishments”. The Court did not define retardation, although it pointed to definitions used by the American Psychiatric Association and the American Association of Mental Retardation (AAMR, now the American Association of Intellectual and Developmental Disabilities, AAIDD). Under such definitions, mental retardation is a disability, manifested before the age of 18, characterized by significantly sub-average intellectual functioning (generally indicated by an IQ of less than 70) accompanied by limitations in two or more adaptive skill areas such as communication, self-care, work, and functioning in the community. The Court left it to the states as to how to comply with the ruling. Ten years later, the Texas legislature still has not enacted a law to comply with the ruling. In the absence of such legislation, in 2004 the TCCA issued temporary guidelines.

In 2003, Marvin Wilson’s lawyers challenged his death sentence under *Atkins*. In 2004, a court-appointed neuropsychologist with 22 years of clinical experience concluded that Wilson had mental retardation. He personally conducted nine different tests of varying sorts and reviewed existing materials and records. He noted that over the years, Marvin Wilson’s IQ had been assessed between 61 and 75, the lowest being that most recently conducted, under a test widely considered to be the most accurate. Marvin Wilson had been in special education classes throughout his schooling as a child and the expert found that as an adult his language development was “well within the impaired range”, his reading comprehension was “very limited”, and his conceptual and practical skills were substantially impaired. The state has presented no expert testimony to rebut this evidence, but the state courts rejected the *Atkins* claim under the TCCA guidelines and the federal courts have upheld this denial.

Please write immediately, in English or your own language, citing Marvin Wilson’s Inmate No. #999098:

- Explaining that you are not seeking to excuse the murder of Jerry Williams or downplay the suffering caused;
- Noting the evidence of Marvin Wilson’s intellectual disability, which an expert has concluded constitutes mental retardation, not rebutted by any expert evidence presented by the state;
- Noting that a decade after the *Atkins v. Virginia* ruling, Texas still has not passed a law to comply with it;
- Opposing the execution of Marvin Wilson and calling for his death sentence to be commuted.

PLEASE SEND APPEALS BEFORE 7 AUGUST 2012 TO:

Clemency Section, Texas Board of Pardons and Paroles

8610 Shoal Creek Blvd. Austin, TX 78757-6814, USA

Fax +1 512 467 0945

Email: bpp-pio@tdcj.state.tx.us

Salutation: Dear Board members

Governor Rick Perry

Office of the Governor,

PO Box 12428, Austin, Texas 78711-2428, USA

Fax: + 1 512 463 1849

Salutation: Dear Governor

Send copies 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.

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ADDITIONAL INFORMATION

A Texas trial-level court rejected Marvin Wilson's *Atkins* claim in November 2004. The TCCA and the federal courts upheld this decision, despite the fact that the state had not presented any expert testimony to rebut the defence expert's conclusion that Marvin Wilson met the criteria for a diagnosis of mild mental retardation. The state court addressed the question of adaptive deficits and the question of onset of mental retardation before the age of 18 in a single paragraph. Indeed it made no explicit findings about whether Marvin Wilson had significant limitations in adaptive functioning. Instead, it made findings under the 2004 "temporary" guidelines drawn up the TCCA in the absence of guidance from the Texas legislature [known as the "Briseño" factors as they were developed in the case of death row inmate José Briseño]. Thus, for example, the state court found that there was no evidence that Marvin Wilson was a follower, that he was capable of lying when he felt it in his best interest, that the crime had displayed deliberate forethought and planning, and that there was no evidence that anyone had considered or diagnosed him as having mental retardation before the age of 18.

In 2011, the US Court of Appeals for the Fifth Circuit noted that "other factfinders might reach a different conclusion as to whether Wilson is mentally retarded on the evidence" before the state court. However, the Fifth Circuit ruled that under the deferential standards that federal courts are required to give state court rulings under US law, Marvin Wilson had failed to overcome the "presumption of correctness" attached to the state court's decision. Wilson's lawyers are currently seeking review by the US Supreme Court, including on the question of whether Texas – and the Fifth Circuit as the federal court overseeing capital cases out of Texas – have become "extreme outliers" in providing deficient protection under *Atkins* as a result of relying on the "Briseño factors". In their brief to the Court, they argue: "Texas courts and the Fifth Circuit are...allowing the execution to proceed, having concluded that *Atkins* does not apply to Mr Wilson because he does not satisfy the so-called 'Briseño' factors. The Briseño factors, which Texas courts use to conduct MR [mental retardation] inquiries, narrow the universe of offenders that *Atkins* protects by permitting execution of offenders with 'mild MR,' the condition for which *Atkins* originally announced the Eighth Amendment exemption." The question for the Supreme Court, the brief asserts, is "whether Texas can evade *Atkins* and whether lower federal courts must enforce it."

The lawyers are also continuing to challenge the reliability of Marvin Wilson's conviction, and point to reasons that the US Supreme Court gave in *Atkins* for prohibiting the death penalty against offenders with mental retardation who it said had categorically less culpability because of their impairments (for example that such a disability can cause a person to be a poor witness on his own behalf, to make false confessions and so on). In their brief to the Supreme Court, the lawyers note that Marvin Wilson "received his sentence under precisely the circumstances that make the capital punishment of offenders with MR problematic: he was one of multiple perpetrators, the eyewitness identification of the primary assailant shifted over time, the more-sophisticated accomplice fingered Mr Wilson as the leader, and evidence of Mr Wilson's 'confession' came from the accomplice's wife."

Amnesty International opposes the death penalty unconditionally in all cases, regardless of questions of guilt or innocence, the crime, or the method used to kill the prisoner. Today, more than 140 countries are abolitionist in law or practice. In the USA there have been 1301 executions since executions resumed there in 1977. Texas accounts for 483 of these executions. There have been 24 executions in the USA so far in 2012, six of them in Texas.

Name: Marvin Lee Wilson

Gender m/f: m

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