

URGENT ACTION

LAST-MINUTE STAY OF EXECUTION FOR TEXAS MAN

On 18 October, the US Supreme Court granted a stay of execution to Anthony Haynes about two-and-a-half hours before he was scheduled to be put to death in Texas, for the murder of an off-duty police officer committed when he was 19 years old.

On 18 October, 33-year-old **Anthony Haynes** was scheduled to be killed in the Texas lethal injection chamber at 6pm, after 13 years on death row. At about 3.30pm, the US Supreme Court said it had voted 7-2 to grant the stay in order to allow more time to decide whether to review the merits of Anthony Haynes' petition. If the Court decides not to take the case, the stay of execution will be dissolved. The Court's order stated that Justices Antonin Scalia and Samuel Alito opposed the stay. The Texas Board of Pardons and Paroles had already voted against clemency.

In 1999, Anthony Haynes was convicted of the fatal shooting of off-duty police officer Kent Kincaid in Houston, Texas on 22 May 1998. To obtain a death sentence, the state had to persuade the jury that Anthony Haynes would be a continuing threat to society, even in prison. Although the defendant had no prior criminal record that the state could point to, the state's case was helped by the defence lawyers' failure to present a range of available mitigation evidence. For example, the jury heard neither expert mitigation testimony on the defendant's history of mental health problems, nor testimony on the mitigating effects of youth.

The failure of Anthony Haynes' court-appointed appeal lawyer to raise in state court the claim of inadequate legal representation at trial meant that it was "procedurally defaulted", that is barred, from federal judicial review. However, in March 2012 the US Supreme Court issued a ruling in an Arizona case – *Martinez v. Ryan* – that opened the door to prisoners possibly overcoming this procedural default rule in certain cases where they had been denied effective representation during the state-level appeals. In September 2012, Anthony Haynes' lawyer filed a petition in US District Court urging it (in light of the *Martinez* ruling) to reverse its prior judgment handed down in 2007 that Anthony Haynes' claim was procedurally defaulted, and to now review the claim that he was provided inadequate assistance of legal counsel at his 1999 sentencing when his trial lawyer failed to present the jury with "a case for life". On 3 October, the District Court refused to issue a stay and the US Court of Appeals for the Fifth Circuit also rejected the appeal. This had been anticipated as the Fifth Circuit has previously held that the *Martinez* ruling does not apply to Texas cases. The petition before the US Supreme Court argues that the Fifth Circuit is wrong in that holding. The Court granted the stay in order to decide whether to review this petition.

Accompanying the petition before the federal courts are signed statements from more than three dozen people, asserting that the crime was far out of character for a teenager they knew as non-violent and respectful. Many have stated that they were available and willing to testify at the trial but were not contacted by the defence. For further information, see *USA: The less than one percent doctrine*, October 2012, <http://www.amnesty.org/en/library/info/AMR51/084/2012/en>

No further action by the UA network is requested at present. Many thanks to all who sent appeals.

This is the first update of UA 270/12. Further information: <http://amnesty.org/en/library/info/AMR51/078/2012/en>

Name: Anthony Haynes
Gender m/f: m

Further information on UA: 270/12 Index: AMR 51/089/2012 Issue Date: 19 October 2012

**AMNESTY
INTERNATIONAL**

