

# URGENT ACTION

## UTAH CLEMENCY BOARD AGREES TO HOLD HEARING

**On 19 May, the Utah Board of Pardons and Parole announced that it will hold a hearing on 10 and 11 June to consider clemency for Ronnie Lee Gardner. He is due to be executed on 18 June.**

The Board's decision follows its review of arguments for and against commutation of Ronnie Gardner's death sentence made in written petitions from the prisoner's lawyers and from the State Attorney General's office. The Board could have rejected Ronnie Gardner's clemency petition without a hearing, but will now consider further arguments and testimony. This will include expert opinion presented at the hearing about Ronnie Gardner's dysfunctional background and its effects on him, as well as on his personal development on death row.

Ronnie Gardner, now aged 49, was tried in October 1985 and sentenced to death for the first-degree murder of Michael Burdell. A state court judge ruled in 1991 that Ronnie Gardner had been denied adequate legal representation at the sentencing stage of his trial, including as a result of Gardner's lawyer's failure to investigate and present mitigating evidence to the jury. He ordered a new sentencing hearing. However, the Utah Supreme Court overturned the decision, ruling that errors by the lawyers had not been shown to have prejudiced the trial. The state had denied Gardner funding to retain expert witnesses, but he received this funding once the case went into the federal courts. Mitigating evidence not fully provided to the jury was presented to the federal courts, relating to Ronnie Gardner's deprived and abusive background, together with expert evidence that he has brain damage. In 2009, the US Court of Appeals for the 10<sup>th</sup> Circuit noted that "it is undisputed that Mr Gardner's childhood was troubled," and added that "reasonable minds may differ on the likely impact on the jury of more thoroughly researched mental health testimony." However, the Court of Appeals upheld the Utah Supreme Court's judgement.

Ronnie Gardner has been on death row for nearly 25 years, more than half of his life. In 1999, a US Supreme Court judge wrote that "the longer the delay" between conviction and execution, "the weaker the justification for imposing the death penalty in terms of punishment's basic retributive and deterrent purposes." In 2002, the same judge noted that the uncertainty and lengthy delays between sentencing and execution "can inflict horrible feelings and an immense mental anxiety amounting to a great increase of the offender's punishment."

### **PLEASE WRITE IMMEDIATELY in English or your own language, in your own words:**

- Welcoming the Board's decision to hold a commutation hearing in the case of Ronnie Lee Gardner;
- Observing that, while you are not seeking to excuse the murder of Michael Burdell, the hearing offers a chance for the Board to consider expert opinion about Ronnie Gardner's deprived and abusive childhood and its effects on him, and about his personal development on death row;
- Noting that those with the power of executive clemency can give weight to issues which the courts have been unable or unwilling to consider or to remedy;
- Noting that Ronnie Gardner has spent 25 years on death row, in itself effectively a life sentence, and a fact that further undermines any assertion by the state that retribution or deterrence will be served by this execution;
- Calling on the Board to commute Ronnie Gardner's death sentence.

### **PLEASE SEND APPEALS BEFORE 18 JUNE 2010 TO:**

Utah Board of Pardon and Parole

448 East Winchester Street, Suite 300,  
Murray, Utah, 84107, USA

**Fax: +1 801 261 6481**

**E-Mail: [bopinfo@utah.gov](mailto:bopinfo@utah.gov)**

**Salutation: Dear Board members**

### **And copies to:**

Diplomatic representatives of the USA  
accredited to your country.

Please check with your section office if sending appeals after the above date. This is the first update of UA: 113/10 (AMR 51/039/2010). Further information: <http://www.amnesty.org/en/library/info/AMR51/039/2010/en>.

**AMNESTY  
INTERNATIONAL**



# URGENT ACTION

## UTAH CLEMENCY BOARD AGREES TO HOLD HEARING

### ADDITIONAL INFORMATION

Amnesty International opposes the death penalty unconditionally, in all cases and in all countries, regardless of the method used to kill the prisoner, or the nature of the crime for which he or she was sentenced to death. The USA has carried out 22 executions so far this year, and 1,210 since resuming judicial killing in 1977. Utah accounts for six of these executions, including the first carried out in the USA after the 1976 Supreme Court decision that allowed executions to resume: Gary Gilmore was shot by a Utah firing squad on 17 January 1977 after refusing to appeal against his death sentence. Three of the five men executed in Utah since then have also been so-called "volunteers" who waived appeals and "consented" to execution. The execution of Ronnie Gardner would be the first in Utah since 1999 and the first "non-consensual" execution there since 1992. Ronnie Gardner has chosen to be put to death by firing squad rather than lethal injection.

According to the evidence presented during Ronnie Gardner's federal appeals, his childhood was one of abuse and deprivation: His mother suffered from mental illness, the family's economic circumstances were dire, the children were neglected. The family household was marked by criminality, violence and abuse. Ronnie Gardner suffered meningitis as a child, resulting in possible brain damage. He developed a severe tic, possibly Tourette syndrome. He was sexually abused by an older brother, and later by the man who became his foster carer. He began engaging in substance abuse, such as sniffing paint thinner, from the age of five or six and carried on until he was 18, and was introduced to LSD, marijuana, and alcohol before the age of 10. His stepfather involved him in criminal acts, taking him to Wyoming to steal liquid mercury from oil industry facilities. Ronnie Gardner sustained a number of serious head injuries during his childhood. In a brief filed in May 2010 in state court, his lawyers stated: "The jury convicted Mr Gardner of an intentional killing and sentenced him to death without hearing all these facts. They never heard about the terrible conditions and the moral depravity in the environment of his upbringing. The jury never heard about the physical and sexual abuse and criminality in the household. None of the jurors knew anything about the meningitis, head injuries, inhalant, alcohol and drug abuse, the tic, organic brain syndrome, cognitive and intellectual deficits, impulse disorder, hard signs and radiological evidence of the brain damage."

Those supporting clemency include Michael Burdell's father and his fiancée, as well as a close friend who was at the courthouse with Michael Burdell on the day he was shot. His 86-year-old father signed a sworn statement on 19 April 2010 that: "I do not believe Gardner should be executed. I do not believe my son, Michael Burdell, would want Gardner to be executed. I do not believe Gardner should be executed because I do not believe the murder was premeditated. Gardner himself had been shot and his shooting my son was a spur of the moment reaction. Furthermore, I do not believe Gardner is the same person today that he was in 1985. My son was a caring and generous person who tried to help others. It would not have been in his nature to condone Gardner's execution. He would not have approved of it at all". The fiancée states: "Michael Burdell would not have wanted Ronnie Lee Gardner put to death. There is absolutely no question about this in my mind." The friend who was with Michael Burdell in the courthouse when he was shot, has emphasised that Michael Burdell was a pacifist "who lived his convictions, and I am certain that he would not want Ronnie Lee Gardner to be put to death."

In its 17 May 2010, brief filed with the Board of Pardons and Parole, the Utah Attorney General's office urged the Board to deny clemency, arguing that "there is no question about Gardner's guilt" and that his death sentence "fits the crime, his criminal history, and his character". Ronnie Gardner's death sentence, it argued, "represents the price Gardner must pay for his injuries to society, not just to Burdell".

Further information on UA: 113/10 Index: AMR 51/046/2010 Issue Date: 21 May 2010

**AMNESTY  
INTERNATIONAL**

