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Death penalty / Legal concern

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USA (Virginia)

Percy Levar Walton (m), black, aged 29

Levar Walton, who suffers from serious mental illness, is scheduled to be executed in Virginia on 10 June. He was sentenced to death in 1997 for the murders of an elderly white couple, Elizabeth and Jesse Hendrick, aged 81 and 80, and a 33-year-old black man, Archie Moore, in the town of Danville in November 1996.

In 1999, three mental health experts concluded that Levar Walton suffers from severe schizophrenia and was probably suffering from this mental illness at the time of the crime. Walton, who was 18 years and one month old at the time of the murders, had displayed signs of emerging mental illness since the age of 16. He manifested bizarre beliefs and inappropriate behaviour after his arrest, in pre-trial custody, and during the trial. In telephone calls from the jail to his family, he insisted that his mother was his sister, and referred to his father as his brother, his grandfather as his father and his grandmother as his mother. He said that he had discovered that he had two brothers, when he had none. He told his mother that he was the Queen Bee, and his grandmother that he was Superman. He told relatives that he was Jesus Christ, and that he was a millionaire. He insisted that he would come back to life as soon as he was executed, and that he would retrieve and bring back alive his grandfather who had recently died. In a 1999 affidavit, his lawyer recalled how Levar Walton "did not meaningfully assist us in preparing a defence... Often times it was extremely difficult to communicate with Mr Walton, and there were occasions where we could not tell whether he understood what we were saying to him. Other times it was clear from Mr Walton's questions and responses to my questions that Mr Walton understood little of what I was telling him". The lawyer recalled that "we were unable to convince Mr Walton that he would not come back to life" if he was executed.

The defence asked for a mental health expert, and the trial judge appointed a psychologist. After a series of meetings with Levar Walton, the psychologist developed serious doubts about his competence to stand trial, finding that Walton's articulation of his thoughts was incomprehensible. He was particularly troubled by Levar Walton's notion that execution did not result in permanent death. The psychologist recommended that Walton be placed in a secure psychiatric hospital. This was rejected by the trial judge.

At first Levar Walton said that he wanted to plead guilty. Then in September 1997 he told his lawyer that he wanted to plead not guilty and have a jury trial because he was innocent. Days later, he reverted to admitting guilt. At end of that month, asked whether he would plead guilty or not guilty, he refused to speak, but responded by writing the word "chair" on a piece of paper. He told his lawyer that he wanted to be executed in order "to come back to life so he could be with his honeys". In court in October 1997, he pleaded guilty to the murders, the judge accepted the plea and, after a sentencing phase at which no mental health evidence was presented, sentenced him to death. At the sentencing trial, Walton's conduct was extremely prejudicial. He repeatedly burst out laughing and smiled inappropriately. The prosecutor argued that Walton's outbursts indicated a "sadistic, ruthless, cold-blooded murderer who has no conscience, no remorse and no right to live in a civilized society".

Levar Walton's mental illness has worsened on death row – prison records have described an inmate who is "floridly psychotic". In a March 2006 ruling on his case, six judges on the US Court of Appeals for the Fourth Circuit noted the "substantial evidence that Percy Levar Walton does not understand that his execution will mean his death, defined as the end of his physical life". They further noted that "there is no dispute that since his sentencing, Walton has fallen deeper and deeper into mental illness". According to Levar Walton's current lawyer, who has visited him regularly, Walton is unable to care for himself, such as in matters of basic personal hygiene. She has no doubt that he is severely mentally impaired.

There is evidence that in addition to his mental illness, Levar Walton functions, at best, at borderline mental retardation level and has the mental age of a young child. If the crimes for which he was sentenced to death had been committed five weeks earlier, Levar Walton would have been 17 years old and his execution would be illegal under US and international law. By all accounts, Levar Walton is less developed intellectually than most 18-year-olds.

In 2002, in *Atkins v. Virginia*, the Supreme Court prohibited the death penalty for people with mental retardation, finding that "standards of decency" had evolved in the USA to the extent that such use of the death penalty now violated the Constitution. The Court further reasoned that the impairments of defendants with mental retardation diminish their personal culpability and their ability to understand consequences, rendering the death penalty unjustifiable on grounds of retribution or deterrence. Amnesty International believes that there is a profound inconsistency in exempting people with mental retardation from the death penalty while those with serious mental illness remain exposed to it. The same rationale of diminished culpability, greater vulnerability and limited capacity applies to defendants afflicted with severe mental illness. For further information, see *USA: The execution of mentally ill offenders*, January 2006, <http://www.amnesty.org/en/library/info/AMR51/003/2006/en> (including information on Levar Walton's case).

Virginia accounts for 98 of the 1,100 executions in the USA since judicial killing resumed in 1977. In 1999, Virginia's then Governor, James Gilmore, commuted the death sentence of Calvin Swann on grounds of his schizophrenia from which he had suffered since his late teens. Swann was tried in front of the same judge, by the same prosecutor, and with the same defence lawyer, as Percy Levar Walton.

Amnesty International opposes the death penalty in all cases, unconditionally. There is no such thing as a humane, fair, reliable or useful death penalty system (see *'The pointless and needless extinction of life': USA should now look beyond lethal injection issue to wider death penalty questions*, <http://www.amnesty.org/en/library/info/AMR51/031/2008/en>).

RECOMMENDED ACTION: Please send appeals to arrive as quickly as possible, in English or your own language, in your own words:

- expressing sympathy for the relatives of Elizabeth and Jesse Hendrick and of Archie Moore, and explaining that you are not seeking to minimize the suffering their deaths will have caused;
- opposing the execution of Percy Levar Walton, noting compelling evidence that he had begun suffering from serious mental illness more than a year before the crime, that his illness has deepened on death row, and also that he functions, at best, at the level of borderline mental retardation and has the mental age of a child;
- noting that six judges on the Fourth Circuit Court of Appeals said in 2006 that "there is no dispute that since his sentencing, Walton has fallen deeper and deeper into mental illness", and that this deterioration has reportedly continued;
- recalling Governor James Gilmore's 1999 decision to commute the death sentence of Calvin Swann because of the prisoner's schizophrenia, and calling for clemency for Percy Levar Walton.

APPEALS TO:

Governor Tim Kaine
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Fax: +1 804 371 6351

Email via website: <http://www.governor.virginia.gov/AboutTheGovernor/contactGovernor.cfm>

Salutation: Dear Governor

COPIES TO: diplomatic representatives of the USA accredited to your country.

PLEASE SEND APPEALS IMMEDIATELY. Check with the International Secretariat, or your section office, if sending appeals after 10 June 2008.