

**PUBLIC**

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**Further information on UA 123/08 (AMR 51/039/2008, 09 May 2008) – Death penalty / Legal concern**

**USA (Virginia) Percy Levar Walton (m), black, aged 29**

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Levar Walton has had the death sentence against him commuted by the Governor of Virginia, Timothy Kaine. Walton, who suffers from serious mental illness, including paranoid schizophrenia, was due 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.

On 9 June, Governor Timothy Kaine issued a statement that “the question of Walton’s mental status is of the utmost importance in assessing whether the Commonwealth [of Virginia] may carry out his death sentence. For this reason, the court system has wrestled with the question of whether Walton’s mental capacity imposes a bar to his execution. Notwithstanding consistent decisions upholding his conviction, the courts found it necessary to carefully examine whether Walton’s death sentence could be carried out consistent with the U.S. Constitution.”

Governor Timothy Kaine noted that in 2006, when he had previously delayed Walton’s execution so that his competence could be evaluated, “I was compelled to conclude that Walton was seriously mentally impaired and that he met the Supreme Court’s definition of mental incompetence. Because one could not reasonably conclude that Walton was fully aware of the punishment he was about to suffer and why he was to suffer it, I decided that his execution could not proceed at that time.”

Governor Timothy Kaine said that he had concluded that commutation was not appropriate at that time because it was “within the realm of possibility” that Levar Walton’s mental health could improve. However, in the time since then, “there has been no discernible improvement in Walton’s condition and no evidence that his mental impairment is temporary. Walton differs in fundamental ways from other death row offenders. He lives in a self-imposed state of isolation that includes virtually no interest in receiving or understanding information. Walton communicates only infrequently, almost invariably in response to direct questions, and those responses are minimal in nature. He has nothing in his cell other than a mattress, a pillow and a blanket. He shows no interest in contact with the outside world and has no television, radio, magazines, books or stationery. He has no personal effects of any kind. This minimal existence has been in evidence for the past five years.”

Governor Timothy Kaine concluded that “In light of this information, I am again compelled to find that one cannot reasonably conclude that Walton is fully aware of the punishment he is about to suffer and why he is to suffer it. Given the extended period of time over which Walton has exhibited this lack of mental competence, I must conclude that a commutation of his sentence to life in prison without possibility of parole is now the only constitutionally appropriate course of action.”

Governor Timothy Kaine stated that although Walton’s mental incompetence was enough on its own to warrant commutation, there were other issues that he had considered when making the clemency decision. He noted that since Walton’s trial the US Supreme Court had ruled that the execution of someone with mental retardation or someone who was under 18 years old at the time of the crime was unconstitutional. Walton was less than two months past his 18<sup>th</sup> birthday when he committed the crimes, and was already suffering from

mental illness at the time. Governor Timothy Kaine also noted that in his most recent IQ test, Walton's IQ had been assessed at 66, within the mental retardation range.

In reaching his decision to commute the death sentence to life imprisonment without the possibility of parole, Governor Timothy Kaine said "I remain mindful of the terrible injustice that Walton perpetrated against Jessie E. Kendrick, Elizabeth W. Kendrick, and Archie D. Moore, Jr. My thoughts and prayers are with the families of these honourable people."

**No further action by the UA Network is requested. Many thanks to all who sent appeals.**