

**PUBLIC**

**AI Index: AMR 51/186/2007**

**29 November 2007**

**Further information on UA 225/07 (AMR 51/137/2007, 30 August 2007) and follow-up (AMR 51/149/2007, 28 September 2007) – Death penalty/Legal concern**

**USA (Alabama)                      Thomas Douglas Arthur (m), white, aged 65**

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Thomas Arthur is now scheduled for execution on 6 December in Alabama. The state is pursuing his execution despite what appears to be a moratorium on executions in the USA pending the US Supreme Court's examination of the constitutionality of lethal injections. In addition, Alabama has not granted Thomas Arthur's request to be allowed to conduct DNA testing of evidence relating to the crime.

Thomas Arthur was sentenced to death for the 1982 murder of Troy Wicker. The victim's wife, Judy Wicker, was also convicted and sentenced to life imprisonment for the murder. She was released on parole after testifying at Thomas Arthur's 1991 retrial.

At her own trial, Judy Wicker had testified that Thomas Arthur was not involved in the murder, but that a stranger had killed her husband, and had also raped her, as she had told the police. At Arthur's 1991 retrial, she testified that she, Teresa Rowland and Rowland's boyfriend Theron McKinney had discussed killing Troy Wicker in early 1981. She testified that she knew that the murder would take place on 1 February 1982, that she and Thomas Arthur had gone to the house together, and that she had agreed to tell the police that her husband had been murdered by an African American burglar. She said that she collected \$90,000 in insurance proceeds, and that she paid \$10,000 to Arthur and \$6,000 to Rowland, and gave a car and jewellery to McKinney for their assistance in the murder. Teresa Rowland and Theron McKinney were apparently not investigated for their alleged role in the crime. Neither of them was prosecuted.

Thomas Arthur maintains his innocence of the murder. No physical evidence links him to the crime. Hair samples and fingerprints from the crime scene were tested, but did not match Thomas Arthur's. He was convicted on disputed circumstantial evidence and the testimony of Judy Wicker, who had committed perjury at either her trial or Arthur's retrial.

On appeal in 2002, two affidavits were filed which contradict Judy Wicker's testimony that Thomas Arthur was with her on the morning of the murder. The affidavits, signed by Alphonso High and Ray Melson, stated that he had visited them that morning. The state has not disputed that these affidavits, if true, establish that Thomas Arthur was about an hour's drive away from the Wickers' home at the time of the murder. However, the state obtained its own affidavits from High and Melson contradicting their original statements. Thomas Arthur's lawyers raised critical questions about the circumstances under which these witnesses retreated from their original testimonies and requested a hearing to resolve the factual disputes; their request was denied. In 2006, the US Court of Appeals for the 11<sup>th</sup> Circuit ruled that the disputed affidavits were not sufficient to meet the threshold for a federal hearing on new evidence of innocence under US law.

In support of his argument that he should be allowed back into court for a hearing on his innocence claim, Thomas Arthur is seeking to have modern DNA testing conducted on various pieces of evidence related to the crime, including Judy Wicker's bloodstained clothing, the rape evidence, and hair samples. Such testing, it is argued, could establish that someone other than him was at the crime scene, thereby discrediting Judy Wicker's trial testimony against Arthur.

On 5 November 2007, the Innocence Project, which represents inmates seeking DNA testing to prove their innocence, wrote to the Alabama Governor's Office responding to its request for advice on how to approach requests for post-conviction DNA testing in capital cases. In its letter to the Governor's Policy Director, the

Innocence Project outlined its guidance and urged the Governor to grant DNA testing in Thomas Arthur's case. Its letter stated: "We believe that the Arthur case easily fits within the category of cases where DNA testing should be granted... In fact, DNA testing has the potential to conclusively prove that Mr Arthur was not the perpetrator of this crime and to identify the real killer."

Alabama has rescheduled Thomas Arthur's execution despite the fact that there appears to be a *de facto* national moratorium on executions in the USA pending the US Supreme Court's consideration of the constitutionality of the use of lethal injection as an execution method (see *Pause for thought: Another lethal injection halted by US Supreme Court*, <http://web.amnesty.org/library/Index/ENGAMR511612007>). While Amnesty International expects that either the 11<sup>th</sup> Circuit Court of Appeals or the US Supreme Court will stay the execution on the lethal injection issue, there is no absolute guarantee of this outcome at this stage.

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

- explaining that you are not seeking to condone the manner of Troy Wicker's death;
- noting that Thomas Arthur was convicted on the basis of circumstantial evidence and the testimony of Judy Wicker, who has committed perjury and was providing testimony in return for assistance with her parole bid;
- expressing concern that Thomas Arthur has not had a judicial hearing on evidence of his innocence, and that the State of Alabama is resisting modern DNA testing of evidence from the crime;
- calling on the governor to allow such testing to take place, noting that a number of errors have been uncovered in capital cases throughout the USA, some as a result of DNA testing;
- expressing concern that Alabama set a new execution date in this case despite moves across the USA to halt executions pending the US Supreme Court's consideration of the lethal injection issue;
- opposing the execution of Thomas Arthur, and noting that in contrast to his death sentence Judy Wicker served 10 years in prison having been convicted of the murder, and that two other people implicated in the murder were apparently not even investigated.

**APPEALS TO:**

Governor Bob Riley, State Capitol, 600 Dexter Avenue, Montgomery, AL 36130, USA

**Fax:** +1 334 353 0004

**Email, via Governor's website at:**

[http://www.alabamainteractive.org/alabamainteractive\\_shell/Welcome.do?url=http://governor.alabama.gov](http://www.alabamainteractive.org/alabamainteractive_shell/Welcome.do?url=http://governor.alabama.gov)

**Salutation:** Dear Governor

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

**PLEASE SEND APPEALS IMMEDIATELY.**