

PUBLIC

AI Index: AMR 51/106/2006

UA 190/06

Death penalty / Legal concern

06 July 2006

USA (South Carolina)

William Downs (m), white, aged 38

William Downs is scheduled to be executed in South Carolina on 14 July 2006. He was sentenced to death in 2002 for the rape and murder of Keenan O'Mailia, a six-year-old boy. William Downs has given up appeals against his conviction and death sentence.

William Downs, who apparently attempted suicide while in pre-trial custody, insisted on pleading guilty to the murder of the boy. This meant that he waived his right to a jury trial. William Downs refused to allow his lawyer to present any mitigating evidence. His lawyer persuaded him to consider a plea of "guilty but mentally ill" by telling him that it could help others. Under South Carolina law, a defendant is guilty but mentally ill (GBMI) if, at the time of the crime, he or she could tell right from wrong, but was unable to conform his or her conduct to the requirements of the law "because of mental disease or defect". Shockingly, a successful plea of GBMI does not rule out the possibility of the death penalty (see pages 30-35 of AI report *USA: The execution of mentally ill offenders*, AMR 51/003/2006).

The trial judge held a hearing on the question of whether a plea of "guilty but mentally ill" could be upheld. Of three doctors presented as expert witnesses at the hearing, only one concluded that William Downs was mentally ill as defined under the South Carolina GBMI statute. On 21 June 2002, the judge noted that the burden was on the defendant to prove this plea by a preponderance of the evidence, and ruled that this burden had not been met. The judge then accepted the unqualified guilty plea. The judge found a number of mitigating factors, including that William Downs had no significant history of violent conduct; and that his capacity to appreciate the criminality of his act or to conform his conduct to the requirements of the law was "substantially impaired". Nevertheless, on 25 June 2002, the judge sentenced him to death. Just before the sentence was passed, the victim's mother reportedly stated that she forgave William Downs.

William Downs' childhood was one marked by poverty as well as physical and sexual abuse. His father allegedly subjected the children to severe beatings, including with a fibre glass fishing pole, electric cords, and the handle of a cattle whip. On a least one occasion the children had to be taken for emergency hospital treatment. William Downs attempted suicide when he was 10 years old; the first of a number of attempts.

William Downs has been found competent to waive his appeals. Various mental health experts have agreed that he suffers from depression, and have noted his numerous suicide attempts. At a hearing into his competency to waive his appeals, one of the doctors noted that William Downs may have suffered a major depressive episode in the past and that he has been unhappy all his life. A forensic psychiatrist testified that she did not have enough evidence to rule out a diagnosis of major depression, and could therefore not offer an opinion on his competency. The judge found that William Downs did not have a current desire to commit suicide, but that he preferred execution to imprisonment. The judge ruled him competent to drop his appeals.

BACKGROUND INFORMATION

In 1972, the US Supreme Court overturned the USA's capital laws after finding that the death penalty was being applied in an arbitrary manner (*Furman v. Georgia*). Four years later, in *Gregg v. Georgia*, the Court approved new laws passed by state legislatures. Executions resumed in January 1977 after almost a decade without them. There have been some 500,000 murders in the USA since 1977. In the same period about 7,000 people have been sentenced to death, just over 1,000 of whom have been executed and about 3,300 of whom remain on death row. The capital justice system, which attempts to select the "worst of the worst" crimes and offenders for execution, is marked by arbitrariness, discrimination and error. As the UN Special Rapporteur on extrajudicial, summary or arbitrary executions concluded in 1998, "race, ethnic origin

and economic status appear to be key determinants of who will, and who will not, receive a sentence of death" in the USA. In 2000, the findings of a long-term study were released which concluded that US death sentences are "persistently and systematically fraught with error" that had required judicial remedy from the appeal courts.

About one in 10 of the people executed since 1977 have been so-called "volunteers", prisoners who had dropped their appeals and "consented" to execution. Any number of factors may lead a prisoner not to pursue appeals against his or her death sentence, including mental disorder, physical illness, remorse, bravado, religious belief, the severity of conditions of confinement, including prolonged isolation and lack of physical contact visits, the bleak alternative of life imprisonment without the possibility of parole, pessimism about appeal prospects, a quest for notoriety, or simply a desire to gain a semblance of control over a situation in which the prisoner is otherwise powerless. Rational or irrational, a decision taken by someone who is under threat of death at the hands of others cannot be consensual. What is more, it cannot disguise the fact that the state is involved in a premeditated killing – part of a culture of violence, not a solution to it.

Whether or not prisoners who "ask" to be executed are deluding themselves about the level of control they have gained over their fate – after all, they are merely assisting their government in what it has set out to do anyway – the state is guilty of a far greater deception. It is peddling its own illusion of control: that, by killing a selection of those it convicts of murder, it can offer a constructive contribution to efforts to defeat violent crime. In reality, the state is taking to refined, calculated heights what it seeks to condemn – the deliberate taking of human life. While such executions are sometimes referred to as a form of state-assisted suicide, "prisoner-assisted homicide" would be a more accurate label. For if a death row inmate seeks to commit actual suicide, the state will make every effort to prevent it. The phenomenon of prisoners "volunteering" for execution contributes to the lottery of the death penalty. To put it another way, given the rate of reversible error found in capital cases, if the approximately 120 "volunteers" executed since 1977 had pursued their appeals, there is a significant possibility that a number of them would have had their death sentences overturned to prison terms by the appeal courts.

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

- expressing sympathy for the family of Keenan O'Mailia, and explaining that you are not seeking to downplay the seriousness of the crime or the suffering caused;
- opposing the execution of William Downs, noting his background of childhood abuse, depressive illness and suicide attempts, the questions about his mental competency that have been raised, and your opposition to the death penalty in general;
- calling on the Governor to stop this execution and to grant clemency to William Downs.

APPEALS TO:

Governor Mark Sanford
Office of the Governor, PO Box 12267
Columbia, SC 29211, USA

Fax: +1 803 734 5167

Email: via website: <http://www.scgovernor.com/Contact.asp?sitecontentid=33>

Salutation: Dear Governor

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

PLEASE SEND APPEALS IMMEDIATELY.