

PUBLIC

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UA 291/06 Death penalty/Legal concern

USA (Texas) Willie Marcel Shannon (m), black, aged 33

Willie Shannon is scheduled to be executed in Texas on 8 November 2006. He was sentenced to death in 1993 for the murder of Benjamin Garza during a carjacking in Houston in July 1992.

Willie Shannon was 19 years old at the time of the crime. He maintains that he did not intend to kill Benjamin Garza, but that the gun went off during a struggle with the victim. At the sentencing phase of his trial, the state presented testimony that Willie Shannon had raped a woman on the day of the carjacking. The prosecution used the evidence to attempt to show that Shannon would be a future danger to society if allowed to live, a prerequisite for a death sentence in Texas. Attempts in recent years to have the forensic evidence from the alleged sexual assault DNA tested were unsuccessful after the authorities stated that the Houston Police Department crime laboratory had destroyed the evidence in 1997.

After the Texas Court of Criminal Appeals had denied Willie Shannon's appeals against his conviction and death sentence, the case moved into the federal courts. After an appeal was filed in the case in March 2002, the state of Texas moved to have the federal District Court reject the petition because it had been filed too late under the time limits for filing federal appeals required under the Anti-Terrorism and Effective Death Penalty Act (AEDPA) of 1996. The Act placed new restrictions on prisoners raising claims of constitutional violations in *habeas corpus* petitions. It imposed time limits on the raising of constitutional claims, restricted the federal courts' ability to review state court decisions, placed limits on federal courts granting and conducting evidentiary hearings, and prohibited "successive" appeals except in narrow circumstances.

In July 2005, the District Court granted the state's motion to dismiss Willie Shannon's petition. In April 2006, the US Court of Appeals for the Fifth Circuit affirmed the District Court's ruling, stating that "equitable remedies are not intended for those who sleep on their rights".

Willie Shannon's appeal lawyers have challenged the quality of the defence representation that he was provided at his 1993 trial. They claim that the trial counsel failed to conduct an adequate investigation into possible mitigating evidence to present at the sentencing phase of the trial, and failed to present a single witness at the sentencing. The appeals indicate that the jury was thus left unaware of evidence of Willie Shannon's learning disabilities and his dysfunctional home life. Dismissing the appeals as filed in an untimely manner under the AEDPA means that the issue of whether the trial counsel's performance fell below constitutional standards has not been considered by the federal courts.

Willie Shannon's lawyers are seeking a stay of execution from the US Supreme Court on the grounds that there is another case pending before the Court which could impact his case. On 31 October 2006, the Court heard oral arguments in the case of *Lawrence v. Florida*, and will now consider whether Florida death row inmate Gary Lawrence's appeal in federal court was filed in a timely manner under the AEDPA. There is a difference of opinion on this issue of timing of appeals under the AEDPA among the federal Circuits of the US Court of Appeals.

Willie Shannon's appeal for a stay of execution, noting that the US Supreme Court will likely decide the Lawrence case by June 2007 at the latest, states: "Staying Mr Shannon's November 8, 2006, execution date will cause only minimal delay in the event this Court decides all questions against Lawrence. The failure to stay Mr Shannon's execution will obviously result in irreparable harm should Lawrence prevail...Because a ruling in favour of Lawrence...would change the disposition of Mr Shannon's case and permit federal habeas review of his trial attorney's failure to present a single witness in the punishment phase of the case".

BACKGROUND INFORMATION

Signing the AEDPA into law on 24 April 1996, President Bill Clinton had stated that “from now on, criminals sentenced to death for their vicious crimes will no longer be able to use endless appeals to delay their sentences.” In 1998, following his mission to the USA, the United Nations Special Rapporteur on extrajudicial, summary or arbitrary executions, wrote that: “The enactment of the 1996 Anti-terrorism and Effective Death Penalty Act...[has] further jeopardized the implementation of the right to a fair trial as provided for in the [International Covenant on Civil and Political Rights] and other international instruments”. In 1997, a leading US lawyer wrote: “The provisions of the Anti-terrorism and Effective Death Penalty Act of 1996 restricting the power of federal courts to correct constitutional error in criminal cases represent a decision that results are more important than process, that finality is more important than fairness, and that proceeding with executions is more important than determining whether convictions and sentences were obtained fairly and reliably.”

Texas is the leading death penalty state in the USA, accounting for 378 of the 1,054 executions carried out in the USA since judicial killing resumed there in 1977 (36 per cent). Texas has routinely violated international standards and safeguards relating to the death penalty, including in its failure to ensure adequate legal representation of indigent capital defendants either at the trial stage or the state appeals stage (see, for example, *Texas: In a world of its own as 300th execution looms*, AI Index: AMR 51/010/2003, 23 January 2003, <http://web.amnesty.org/library/index/engamr510102003>).

The US Supreme Court has recently agreed to hear three Texas death penalty cases, in a move that some observers have interpreted as being a signal from the Court that it is frustrated with how condemned prisoners' appeals are dealt with by the Texas Court of Criminal Appeals and the US Court of Appeals for the Fifth Circuit.

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

- expressing sympathy for the family and friends of Benjamin Garza, explaining that you are not seeking to excuse violent crime or downplay the suffering caused;
- opposing the execution of Willie Shannon;
- expressing concern at the quality of Willie Shannon's legal representation at his trial, and that the jury was left without available mitigating evidence to weigh against a death sentence, including reported evidence of the young defendant's learning disabilities and his dysfunctional home life;
- expressing concern that the federal courts have not been able or willing to consider this issue, under constraints placed on them by federal law;
- noting that the power of executive clemency is not constrained by the limits placed on the courts;
- calling on the Governor to intervene to stop this execution in the event that the courts do not.

APPEALS TO:

Governor Rick Perry
Office of the Governor
P.O. Box 12428
Austin, Texas 78711-2428
USA

Fax: +1 512 463-1849

Salutation: Dear Governor

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

PLEASE SEND APPEALS IMMEDIATELY.