

PUBLIC

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**Further information on EXTRA 17/03 (AMR 51/030/2003, 21 February 2003) and follow-up (AMR 51//039/2003, 13 March 2003) - Death penalty / Legal concern**

**USA (Texas)**

**Delma Banks (m), black, aged 45**

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On 24 February 2004 the US Supreme Court overturned Delma Banks's death sentence after concluding that he was denied a fair trial because the state failed to disclose key evidence. Delma Banks had been minutes from execution in Texas on 12 March 2003 when the Supreme Court intervened.

Delma Banks was sentenced to death by an all-white jury in October 1980 for the murder of Richard Wayne Whitehead, a 16-year-old white male, in April of that year. Delma Banks has been on death row for more than half his life and maintains his innocence.

The Supreme Court ruled that prosecutors had improperly withheld information from the defence lawyers during the sentencing phase of the 1980 trial (see original EXTRA). The Court wrote that "the State withheld evidence that would have allowed Banks to discredit two essential prosecution witnesses. The State did not disclose that one of those witnesses was a paid police informant, nor did it disclose a pre-trial transcript revealing that the other witness's trial testimony had been intensively coached by prosecutors and law enforcement officers." The Supreme Court noted that throughout the appeal process in the Texas courts, "the State continued to hold secret the key witnesses' links to the police and allowed their false statements to stand uncorrected."

In 2000, after the "long-suppressed evidence came to light", a federal District Court Judge, the only judge to have heard all the evidence not heard by the trial jury, ordered the state to reduce the sentence or to give Banks a new sentencing. He cited the trial lawyer's "dismal" performance at the sentencing phase of the 1980 trial, which lasted half a day, and the prosecution's failure to disclose to the jurors that one of state's witnesses was a paid informant. Together, the federal judge concluded, these two factors undermined the reliability of the jury's sentencing verdict. However, the state appealed, and in an unpublished opinion in August 2002, the federal US Court of Appeals for the Fifth Circuit reinstated the death sentence.

The US Supreme Court said that the Fifth Circuit had been wrong to do so. The Supreme Court wrote: "When police or prosecutors conceal significant exculpatory or impeaching material in the State's possession, it is ordinarily incumbent on the State to set the record straight." The Court added that: "Prosecutors' dishonest conduct or unwarranted concealment should attract no judicial approbation".

The Supreme Court said that Delma Banks should also be allowed to appeal his murder conviction, as that may have been tainted by state misconduct. The case has now been remanded back to the Fifth Circuit. If the court orders a new trial, the local county prosecutor has said that he will seek another death sentence.

**No further action is requested from the Urgent Action network at present. Many thanks to all who sent appeals.**