

PUBLIC

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Death penalty

16 July 2004

USA (Alabama)

James Barney Hubbard (m), white, aged 74

James Hubbard is scheduled to be executed in Alabama on 5 August 2004. He was sentenced to death in 1977 for the murder of Lillian Montgomery.

According to the court record, Lillian Montgomery was killed at her home in Tuscaloosa on the morning of 10 January 1977, dying as a result of three gunshot wounds to the head, face and shoulder. James Hubbard, who had moved in with Lillian Montgomery following his release from prison after serving 20 years on a second-degree murder conviction, rang the police after the shooting. When they arrived he told them that the victim had shot herself. At the police station, after the police gave him some whisky when he asked for a drink "to steady his nerves" (he had already been drinking), James Hubbard signed a statement, repeating his earlier claim that Lillian Montgomery had committed suicide.

James Hubbard was tried in September 1977 and sentenced to death. After Alabama's death penalty statute was found unconstitutional by the US Supreme Court in 1980, Hubbard was granted a new trial. He was again sentenced to death in April 1982.

His appeals have been unsuccessful, including on the claim that his statement to the police had been involuntary on account of his alcoholism and low intelligence. His IQ has been assessed at 80, in the borderline mental retardation range. On 2 July 2004, Indiana Governor Joseph Kernan commuted Darnell Williams's death sentence shortly before he was due to be executed. Governor Kernan noted the 2002 US Supreme Court decision, *Atkins v Virginia*, outlawing the use of the death penalty for those who have mental retardation. The Governor wrote: "Williams's IQ has been measured at 78 and 81, and he attended special education classes throughout his schooling. The usual 'cut-off' for mental retardation is IQ of 70-75, and Williams falls above that level... The courts have set a clear legal standard, but it remains problematic to confidently place the solemn decision of life or death on a few percentage points on either side of a line. Williams's mental status weighs as a factor in the clemency process."

James Hubbard is reported to have prostate and colon cancer. He has been on death row for a quarter of a century and is now 74 years old. If executed, he would be the oldest person to be put to death in the USA since it resumed executions in 1977.

BACKGROUND INFORMATION

Amnesty International opposes the death penalty in all cases, regardless of the gravity of the crime, the guilt or innocence of the condemned, or the method used to kill the prisoner. The death penalty is an affront to human dignity and a symptom of a culture of violence, and consumes resources that could otherwise be used towards constructive strategies to combat violent crime and to offer assistance to its victims and their families. In addition, the US capital justice system is marked by arbitrariness, discrimination and error.

Today 117 countries are abolitionist in law or practice. In contrast, there have been 918 executions in the USA since it resumed executions in 1977, more than 750 of them since 1990. Alabama accounts for 28 of these executions. There have been 33 executions in the USA this year.

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

- expressing sympathy for the family and friends of Lillian Montgomery and for the suffering that her death will have caused;
- opposing the execution of James Hubbard;
- noting his low IQ level, his ill-health and the fact that he is an elderly man;
- urging the Governor to grant clemency.

APPEALS TO:

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

Fax: +1 334 353 0004

Email: http://www.governor.state.al.us/contact/contact_form.aspx

Salutation: Dear Governor

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

PLEASE SEND APPEALS IMMEDIATELY.