

URGENT ACTION

GEORGIA SETS EXECUTION DESPITE RACISM CLAIM

Kenneth Fults, a 47-year-old African American man sentenced to death in 1997, is due to be executed on 12 April in Georgia. In 2005, one of the jurors signed a sworn statement that he had voted for the death penalty because “that’s what the nigger deserved”.

In May 1997, **Kenneth Fults** pleaded guilty to the murder of Cathy Bounds, a white woman who was shot in her home on 30 January 1996. After a three-day sentencing hearing, the jury voted for the death penalty. Eight years later, in April 2005, one of the jurors from the sentencing, a white man, signed a sworn statement in which he said of Kenneth Fults: “I don’t know if he ever killed anybody, but that nigger got just what should have happened. Once he pled guilty, I knew I would vote for the death penalty because that’s what the nigger deserved”. When this admission of a juror having voted for death out of racial prejudice and before any evidence had been presented at the sentencing was raised on appeal, the state argued that it was too late for the issue to be reviewed on its merits. The courts have agreed that the claim is “procedurally defaulted” and have allowed the death sentence to stand.

The courts have also dismissed the claim that Kenneth Fults was provided less than adequate legal representation at the sentencing. Although the jury heard some mitigating evidence – that the defendant’s IQ had been assessed at 74, that he suffered depression, and could not always understand the consequences of his actions – some other former jurors have signed affidavits that the trial lawyer made little effort to save his client from the death penalty and was seen to be sleeping during proceedings. They said that they should have been presented with information such as the evidence uncovered by appeal lawyers about Kenneth Fults’s childhood of neglect and abandonment – he was born to a 16-year-old mother who later became addicted to crack cocaine – and evidence of intellectual disability. In 2006, a clinical psychologist assessed Kenneth Fults as “a mildly mentally retarded individual” (now known as intellectual disability), with an IQ of 72.

A state court rejected the claim that Kenneth Fults has an intellectual disability that would render his execution unconstitutional. Georgia uses the “beyond a reasonable doubt” standard for determining intellectual disability in this context (all other US death penalty states use a lower burden of proof). In 2014, the US Court of Appeals noted that Kenneth Fults’ claim was “not without some force”, but under the deferential standard required for federal review of state court decisions upheld the death sentence.

Please write immediately in English or your own language:

- Calling for the execution of Kenneth Fults to be stopped and for his death sentence to be commuted;
- Expressing concern at the racist motivation for voting for the death penalty expressed by a former juror;
- Expressing concern that the jury did not hear full mitigating evidence about the defendant’s childhood and his possible intellectual disability.

PLEASE SEND APPEALS BEFORE 12 APRIL 2016 TO:

Chairman

Terry Barnard
Georgia Board of Pardons and Paroles
2 Martin Luther King, Jr. Drive, SE Suite 458, Balcony Level, East
Tower Atlanta, GA 30334-4909, USA
Fax: +1 404-651-6670
Email: laqsmith@pap.state.ga.us
Salutation: Dear Chairman Barnard

And copies to:

Governor Nathan Deal
Office of the Governor, 206 Washington Street,
111 State Capitol, Atlanta, Georgia 30334, USA
Fax: +1 404-657-7332
Email: <http://gov.georgia.gov/webform/contact-governor-international-form> or <http://gov.georgia.gov/webform/contact-governor-domestic-form>

Also send copies to diplomatic representatives accredited to your country. Please insert local diplomatic addresses below:

Name Address 1 Address 2 Address 3 Fax Fax number Email Email address Salutation Salutation
Please check with your section office if sending appeals after the above date.

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ADDITIONAL INFORMATION

In June 2015, US Supreme Court Justice Stephen Breyer noted that multiple studies have concluded that “individuals accused of murdering white victims, as opposed to black or other minority victims, are more likely to receive the death penalty” in the USA. In 2008, Justice John Paul Stevens wrote that the Court had allowed race “to continue to play an unacceptable role in capital cases”, and pointed to *McCleskey v. Kemp* in 1987 in which the Court had upheld a Georgia death sentence despite the “strong probability that McCleskey’s sentencing jury...was influenced by the fact that [he was] black and his victim was white.”

In 1986, the Supreme Court had acknowledged the danger that racist attitudes could influence decisions made by capital jurors. Because of the “range of discretion entrusted to a jury in a capital sentencing hearing, there is a unique opportunity for racial prejudice to operate but remain undetected,” the Court said. In a case such as that before it, that of a black defendant accused of killing a white victim, “a juror who believes that blacks are violence prone or morally inferior, might well be influenced by that belief” in deciding to vote for death. Such a juror might also be “less favourably inclined” toward mitigating evidence put on by the defence. Under this ruling, a defendant accused of an interracial capital crime can have prospective jurors informed of the victim’s race and questioned about racial bias. Questioned during jury selection for Kenneth Fults’s sentencing in 1997, the man who in 2005 would assert his racist view in an affidavit was asked whether he harboured any racial prejudice. He said that he did not. When asked whether it made any difference to him that the defendant in the case was black and the victim was white, he likewise replied that it did not. His 2005 affidavit would suggest that he lied in this jury selection process.

Other former jurors have also signed affidavits describing what they recall as the poor legal representation provided to Kenneth Fults at the 1997 sentencing. One said: “It was clear to me during Mr Fults’s trial that his lawyer, Mr Mostiler, did not provide any real representation of him. He just didn’t really do anything at all, and several times I saw him sleeping during the trial. His head would be bowed down and he wasn’t doing anything like writing. In fact, I never saw him write anything down or take any kind of notes. I was not surprised by Mostiler sleeping, because I also sat on another jury where Mostiler was the defense lawyer and I saw him sleeping during that trial too. Because Mr Mostiler didn’t offer us much evidence or information about Mr Fults’s childhood and life, I don’t believe he had a fair trial. Mr Fults’s current lawyers have told me about how Mr Fults was neglected and abandoned as a child and that he is mentally retarded. Mostiler didn’t bring this up at trial and he should have, so that we would have known more about Mr Fults before we talked about whether to give him the death penalty.”

Another of the former jurors said: “Mr Fults’s lawyer, Mr Mostiler, did not seem to care about Mr Fults or his case... He was uninterested in what was happening, and it seemed like something was wrong with him. I saw him fall asleep repeatedly during the trial, and he would wake up, startled, when it was his turn to examine witnesses. I saw him sleeping off and on throughout the whole trial. It really bothered me because here there was a man on trial for his life and his lawyer didn’t even care enough to stay awake, much less properly cross-examine the witnesses... Mostiler didn’t put up much information about Mr Fults’s life or his background... I have just learned that he went through a lot as a child and that he has been diagnosed as mentally retarded. If this information had been presented at the trial, it would have made a difference to me.”

International standards require that capital defendants receive adequate legal representation at all stages of proceedings, and also prohibit the use of the death penalty against defendants with mental disabilities. There have been nine executions in the USA this year, two of them in Georgia. Georgia accounts for 62 of the 1,431 executions carried out nationwide since the US Supreme Court approved revised capital statutes on 2 July 1976. Amnesty International opposes the death penalty in all cases.

Name: Kenneth Fults
Gender m/f: m

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