

URGENT ACTION

FLORIDA EXECUTION RESET, INNOCENCE MAINTAINED

Michael Lambrix is scheduled to be executed in Florida at 6pm on 5 October. Twenty-three years old when he was sent to Florida's death row in 1984, he is now 57. He maintains that he acted in self-defence during the crime in question.

Clarence Moore and Aleisha Bryant were killed on 6 February 1983 and buried near the trailer home that **Cary Michael Lambrix** shared with Frances Smith. Michael Lambrix was charged with murder. His 1983 trial ended in a mistrial after the jury could not agree on a verdict. At retrial in 1984, the jury voted to convict him of two counts of first-degree murder and recommended the death penalty, by 10 votes to two for one murder and eight to four for the other. Michael Lambrix maintains his innocence of pre-meditated murder, claiming he acted in self-defence when Clarence Moore fatally attacked Aleisha Bryant and came at him when he tried to stop the assault.

The prosecution's key witness for its case against Michael Lambrix was Frances Smith, who testified that Lambrix had killed the victims. The judge did not allow the defence to raise prior inconsistent statements she had given to police. Deborah Hanzel, who was living with Smith's cousin at the time, testified that Michael Lambrix had told her that he killed the victims. She recanted this in 2003, saying that Lambrix "never told me at any time or in any manner indicated to me that he killed the victims". She said that Frances Smith had told her "she didn't really know what happened outside but that Mr Lambrix had told her that the guy [Moore] went nuts and he had to hit him". Deborah Hanzel said that she had lied because she had been asked by Smith to corroborate her story and had done so "due to the fear instilled in me" about Lambrix "by Frances Smith and state officials". She was recanting now, she said, because "I cannot run from the truth. I do not want to feel the guilt anymore".

In November 2015, Michael Lambrix's lawyer was informed, with no explanation, that executive clemency had been denied. Execution was set for 11 February 2016. This was stayed after the US Supreme Court ruled on 12 January 2016 that Florida's capital sentencing statute was unconstitutional. The Florida Supreme Court has deemed that this ruling does not to apply to those, like Michael Lambrix and scores of others, whose death sentences were final by June 2002, even if they were based on non-unanimous jury votes, which would now be unlawful. On 9 March 2017, the state supreme court lifted the stay, and said that "we will not generally second-guess the executive's determination that clemency is not warranted". On 1 September, the governor set the execution for 5 October.

Please write immediately in English or your own language:

- Calling for the execution to be halted, denial of clemency reconsidered, and the death sentence commuted;
- Expressing deep concern at the non-transparency of Florida's clemency process;
- Noting that Michael Lambrix denies pre-meditated murder and maintains that he acted in self-defence, that that the state's case was circumstantial, and pointing to the Hanzel recantation;
- Noting that Michael Lambrix was sentenced under a law now deemed unconstitutional, and on non-unanimous jury recommendations for the death penalty, which would now be unlawful in Florida.

PLEASE SEND APPEALS BEFORE 5 OCTOBER 2017 TO:

Governor Rick Scott
Office of the Governor, The Capitol
400 S. Monroe St.
Tallahassee, FL 32399-0001, USA
Email: Rick.scott@eog.myflorida.com
Salutation: Dear Governor

Office of Executive Clemency
Florida Parole Commission, 4070 Esplanade Way
Tallahassee, FL 32399-2450, USA
Email: ClemencyWeb@fpc.state.fl.us
Fax: +1 850 414-6031 or +1 850 488-0695
Salutation: Dear Members of the Clemency Board

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. This is the second update of UA 31/15. Further information:

<https://www.amnesty.org/en/documents/amr51/3192/2016/en/>

**AMNESTY
INTERNATIONAL**



URGENT ACTION

FLORIDA EXECUTION RESET, INNOCENCE MAINTAINED

ADDITIONAL INFORMATION

On 12 January 2016, in *Hurst v. Florida*, the US Supreme Court ruled Florida's capital sentencing scheme unconstitutional because it gave juries only an advisory role in sentencing. This, it said, was incompatible with its 2002 *Ring v. Arizona* decision that the US Constitution requires juries, rather than judges, to make the factual findings necessary to sentence a defendant to death. In December 2016, the Florida Supreme Court ruled that *Hurst* applied retroactively to just over half of the nearly 400 prisoners then on death row, who would be entitled to resentencing if the state failed to prove that the "*Hurst* error" was "harmless". Justice James Perry dissented, arguing that the majority had decided "to arbitrarily draw a line between June 23 and June 24, 2002 – the day before and the day after *Ring* was decided", but "does not offer a convincing rationale as to why 173 death sentenced persons should be treated differently than those whose sentences became final post-*Ring*...The majority's application of *Hurst v. Florida* makes constitutional protection depend on little more than a roll of the dice." Justice Barbara Pariente also argued that *Hurst* should apply retroactively to all death sentences, pointing out that "we must be extraordinarily vigilant in ensuring that the death penalty is not arbitrarily imposed". She subsequently noted in the March 2017 decision in Michael Lambrix's case that given her way she "would vacate [his] sentences of death and remand for a new penalty phase".

Governor Scott signed into law a new post-*Hurst* sentencing statute in March 2016. That was ruled unconstitutional by the Florida Supreme Court in October for not requiring juror unanimity on votes for death. The legislature passed a new statute, requiring juror unanimity, which the Governor signed on 17 March 2017. In its October 2016 ruling, the Florida Supreme Court noted evidence that juries not required to reach unanimity "tend to take less time deliberating and cease deliberating when the required majority vote is achieved rather than attempting to obtain full consensus" and noted "that the requirement of unanimity in capital jury findings will help to ensure the heightened level of protection necessary for a defendant who stands to lose his life as a penalty". Florida's lack of a unanimity requirement until now may be one reason why it accounts for more wrongful convictions uncovered in capital cases than any other state, accounting for 17 per cent of the national total since 1973.

Under state law, the Florida governor can grant reprieve from execution of up to 60 days, but can commute a death sentence only with the approval of two members of the Board of Executive Clemency. The Board is comprised of the Governor and members of the Cabinet. The Governor can deny clemency for any reason, regardless of the Board's vote on the matter. Executive clemency has not been granted in a Florida capital case since 1983. In 2006, the American Bar Association concluded that the lack of transparency surrounding Florida's clemency process meant that it was impossible to determine the extent to which "inappropriate political considerations" impacted that process. In a letter to the Board of Executive Clemency after Michael Lambrix was denied clemency in 2015, his lawyer submitted that his client had received neither a "meaningful clemency interview" nor a "meaningful clemency hearing".

Amnesty International opposes the death penalty unconditionally. Today 141 countries are abolitionist in law or practice. In 1972, Florida became the first in the USA to revive the death penalty after the US Supreme Court had overturned the country's capital laws earlier that year because of the arbitrary manner in which death sentences were being handed down. The Court upheld new statutes, including Florida's, in July 1976. In 1979, Florida carried out the USA's first "non-consensual" execution under these laws, three and a half years before any other state did the same thing. It carried out its first post-*Hurst* execution on 24 August 2017, its 93rd execution since 1976. There have been 1,460 executions in the USA since 1976, 18 of them this year.

For further information on Florida's death penalty, see Death in Florida, <https://www.amnesty.org/en/documents/amr51/6736/2017/en/>.

Name: Cary Michael Lambrix
Gender m/f: m

Further Information on UA: 31/15 Index: AMR 51/7138/2017 Issue Date: 21 September 2017