URGENT ACTION

COURT BLOCKS EXECUTION, DECISION AWAITED

The US Supreme Court prevented the State of Georgia from executing Keith Tharpe on 26 September, to give the Justices more time to consider the claim that juror racism infected his 1991 trial.

Keith Tharpe was due to be executed at 7pm on 26 September for the September 1990 murder of his sister-in-law, Jacquelin Freeman. Twenty-four hours before the execution, the State Board of Pardons and Paroles denied clemency. In Georgia, the board is the only executive body with the constitutional authority to consider clemency.

At 10.25pm on 26 September 2017 – over three hours after the execution was due to begin – the US Supreme Court issued a stay. The stay was so that the Court could consider, without the time pressure of an imminent execution, whether to review the merits of Keith Tharpe's federal petition or not. The stay of execution is solely related to the question of the alleged juror racism uncovered after the trial and how the federal courts had dealt with that claim. The Court will consider whether to take the case under its ordinary scheduling, over the coming two months. If the Court decides not to review the petition on its merits, the stay will be dissolved and the state could seek another execution warrant. The order made clear that three Justices – Justices Clarence Thomas, Samuel Alito and Neil Gorsuch – would have allowed the execution to proceed.

Seven years after Keith Tharpe's 1991 trial, his appeal lawyers conducted an interview with a white male former juror on the case (Keith Tharpe is African American, as was Jaquelin Freeman), during which they said he described, among other things, his belief that there were "two kinds of black people in the world – 'regular black folks' and 'niggers'." One said that according to the former juror, "if the victim in Mr Tharpe's case had been one of the niggers, he would not have cared about her death". The second lawyer also signed an affidavit recalling the former juror reflecting on whether "niggers even have souls. I don't know. You tell me"; and that he "felt that because a black person doesn't have a soul, giving one the death penalty was no big deal".

The affidavit signed by the former juror was filed in court on 26 May 1998 and faxed to the state's lawyers that same day. The following day, the former juror signed another statement, this time for the state. In it, he claimed he had been drunk when he signed the prior affidavit and that he had been misled by the lawyers about the purpose of their visit. In their affidavits, the lawyers maintained that they had clearly identified themselves and the purpose of their visit, and that the former juror "did not appear to be tired or alcohol-impaired at any time throughout our visit", but "alert and animated", including as he was signing the affidavit.

The state court ruled that the affidavits were inadmissible under Georgia law, and that therefore juror misconduct had not been proven. The court ruled that the claim had anyway been defaulted because it had not been raised earlier. The federal courts upheld this. Keith Tharpe's lawyers argued in his federal petition that two recent US Supreme Court decisions involving racism invalidated the inadmissibility and procedural default rulings.

No further action by the UA Network is requested at this stage. Many thanks to all who sent appeals.

This is the first update of UA 216/17. Further information: www.amnesty.org/en/documents/amr51/7117/2017/en/

Name: Keith Tharpe
Gender m/f: m

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