

EXTERNAL (for general distribution)

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UA 77/93

Death Penalty

19 March 1993

USA (Texas) :

Gary GRAHAM

Gary Graham, black, is scheduled to be executed in Texas, USA, on 29 April 1993, for a murder committed when he was 17. He was convicted and sentenced to death in November 1981 for the murder of Bobby Lambert, a white man, in May 1981. If carried out, this would be the sixth execution of a juvenile offender in the USA since the death penalty was reinstated in the late 1970s and the fourth in Texas under its present laws - contrary to international law and practice.

Bobby Lambert was shot dead during an attempted robbery in the parking lot of a Houston grocery store on 13 May 1981. Gary Graham was charged with Lambert's murder after he was arrested for a series of offences during an alleged week-long crime spree. Although Gary Graham pleaded guilty to a series of offences during the week in question, including an alleged rape, he denied involvement in the murder of Bobby Lambert. He was convicted mainly on the identification evidence of an eye-witness who picked him out at a police line-up and who had a fleeting glance of Bobby Lambert's assailant. Several other people present at the scene of the murder did not pick out Graham.

It was argued on appeal that Gary Graham was inadequately represented by his trial lawyers who failed to fully explore or present alibi evidence. It was also argued that his trial counsel had failed to order a full range of psychological tests but relied only on a simple competency test conducted by the state. A later psychiatric examination found possible brain damage caused by a number of childhood head injuries. Although these appeals were rejected, his present lawyers are continuing to investigate alleged discrepancies in the evidence on which he was convicted, in support of a possible innocence claim.

An appeal to the US Supreme Court in the case was dismissed in January 1993. By a narrow majority of five votes to four, the Court rejected the claim that the Texas death penalty law was unconstitutional in not allowing the jury to consider youth as a separate mitigating circumstance in the sentencing proceeding. The Court did not consider the merits of the claim, however, holding instead that Graham was seeking a "new rule of law" which could not be retroactively applied to his case. The dissenting opinion vigorously disputed this ruling.

Since his imprisonment, Gary Graham has obtained educational certificates. He also edits a prison magazine called Endeavour, which argues against the death penalty and describes the cases of inmates on death row.

BACKGROUND INFORMATION

The last juvenile offender to be executed in the USA was Johnny Garrett in February 1992

- also in Texas. The Texas Board of Pardons and Paroles denied clemency in his case despite his history of severe physical and sexual abuse and widespread appeals from church leaders, human rights bodies and others in the USA and around the world. Under Texas clemency rules, the governor may commute a death sentence only if she receives a favourable recommendation from a majority of the Board. The Texas Board of Pardons and Paroles has never granted clemency in any case since the death penalty was reinstated in the 1970s.

At the end of 1992, there were 34 juvenile offenders under sentence of death in 13 states in the USA, eight of these in Texas.

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Treaties and standards exempting people under 18 from the death penalty were developed in recognition of the fact that the death penalty is wholly inappropriate for individuals who have not attained full maturity. However serious the crime, the imposition on a young person of a sentence of such finality, denying any possibility of rehabilitation or reform, is contrary to contemporary standards of justice and humane treatment, and international standards. The International Covenant on Civil and Political Rights (ICCPR), signed by the USA in 1977, and ratified in April 1992 (but with the US government reserving its right "subject to its Constitutional constraints" to impose the death penalty on juvenile offenders), the American Convention on Human Rights (ACHR), the United Nations (UN) Convention on the Rights of the Child, and Safeguards guaranteeing protection of the rights of those facing the death penalty adopted by the UN Economic and Social Council in 1984 exempt people under 18 from the death penalty.

The execution of juvenile offenders is extremely rare worldwide. The USA is one of only seven countries known to have executed juvenile offenders in the last decade (the other countries are Barbados, which has since raised its minimum age to 18; Iran, Iraq, Nigeria, Pakistan and Bangladesh).

Amnesty International opposes the death penalty in all cases as a violation of the right to life, and the right not to be subjected to cruel, inhuman and degrading treatment or punishment, as enshrined in the Universal Declaration of Human Rights.

RECOMMENDED ACTIONS: Faxes/telephone calls/telegrams/Telexes/express and airmail letters in English if possible:

- expressing concern that Gary Graham, who was sentenced to death for a crime he committed when he was only 17 years of age, is scheduled to be executed on 29 April 1993;
- urging the Board to recommend that Governor Richards grant clemency to Gary Graham on humanitarian grounds;
- pointing out that the imposition of a death sentence on an individual who was under the age of 18 at the time of the offence contravenes internationally recognized human rights standards for minimum age for use of the death penalty;
- stating that the death penalty is a wholly inappropriate penalty for individuals who have not attained full physical or emotional maturity at the time of their actions, and that however heinous the crime, the imposition on a young person of a sentence which denies any possibility of eventual rehabilitation or reform is contrary to contemporary standards of justice and humane treatment.

APPEALS TO

Texas Board of Pardons and Paroles
8610 Shoal Creek Boulevard, PO Box 13401
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Austin, TX 78711-3401

Salutation: Dear Board Members

USA

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COPIES TO:

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and to diplomatic representatives of the USA accredited to your country.

PLEASE SEND APPEALS IMMEDIATELY. Check with the International Secretariat, or your section office, if sending appeals after 29 April 1993.