

**PUBLIC**

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**Death penalty / Legal concern**

**4 February 2004**

**USA (Texas) Edward Brian Capetillo (m), Hispanic, aged 26**

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Edward Capetillo is scheduled to be executed in Texas on 30 March 2004. He was sentenced to death in 1996 for the murder of a 20-year-old white woman, Kimberly Williamson, in 1995. Edward Capetillo was 17 at the time of the murder. A fundamental principle of international law prohibits the use of the death penalty against child offenders – anyone who was under 18 at the time of the crime.

According to evidence introduced at the trial, on 16 January 1995, 19-year-old twins Allison and Matt Vickers were at home with their friends Kimberly Williamson and Grant Barnett. Brothers James and Curtis Duke, together with Ryan Spillane and Michael Williams, were at the Dukes' apartment. The latter group discussed buying marijuana, and selling Spillane's gun and electronic scale to Matt Vickers to obtain the money to do so. After Matt Vickers declined the offer by telephone, the four, joined by Edward Capetillo, then discussed robbing him. The five drove to the home of the Vickers, Edward Capetillo armed with a rifle and James Duke with Spillane's handgun. The situation culminated in the shooting of Grant Barnett, Matt Vickers and Kimberly Williamson. The latter two died. Williamson had been shot twice by Capetillo. Matt Vickers had been shot with both weapons. Grant Barnett survived.

At the time of the crime, Edward Capetillo was a high school student, a promising athlete, and from an unbroken middle class home (this is unusual – the typical child offender on death row in the USA comes from a background of abuse, deprivation and poverty). He did not have a criminal record. At his sentencing, witnesses on his behalf included family members, teachers, friends, and neighbours. To convince the jury that he would be a future danger to society if allowed to live – a prerequisite for a death sentence in Texas – the state relied on the facts of the crime, including the teenager's alleged lack of remorse immediately following it, and evidence that he had disciplinary problems at school and was hostile to authority. The jury voted for death.

Of the four defendants in this case (Ryan Spillane was not charged), Edward Capetillo was the only one against whom Harris County sought a death sentence. He was also the only one who was not white. James Duke (the other presumed shooter) and Michael Wilson were charged with capital murder. They received life prison terms, and Curtis Duke received a 20-year sentence for murder. Studies have consistently shown that those who kill whites in the USA are more likely to end up with a death sentence than those who kill non-whites. If the defendant is not white, the likelihood of a death sentence may be even greater. Whites and blacks are the victims of murder in almost equal numbers, yet of the almost 900 executions since 1977, 80 per cent were of people convicted of crimes with white victims. Hispanics represent about 12 per cent of the US population. From 1993 to 1999, the recorded murder rate for Hispanics was more than 40 per cent higher than the national homicide rate. Less than five per cent of executions carried out since 1977 were for crimes involving Hispanic victims.

Texas accounts for 60 per cent (13 of 22) of the executions of child offenders carried out in the USA since 1977. Edward Capetillo is the first of three child offenders scheduled for execution in Texas before the end of June. All three are Hispanic. Ten of the 13 child offenders executed in Texas were convicted of crimes involving white victims. No white child offender has been executed for killing a black or Latino person. Nine of the 13 executions have been of black or Latino prisoners. Of the 28 people under sentence of death in Texas for crimes committed when they were 17, six are white, eight are black, one is Asian, and 13 are Hispanic. At least 16 of the 28 were convicted of crimes involving white victims. Only one of the 28 is a white defendant sentenced to death for killing a minority victim. There are currently 10 child offenders on death row who were, like Capetillo, prosecuted in Harris County. Six are Hispanic, one is Asian and three are black.

On 26 January 2004, the US Supreme Court agreed to revisit its 1989 decision in which it ruled that people who were 16 or 17 at the time of the crimes could be executed. Edward Capetillo's lawyer filed a motion in a Texas trial court seeking a stay of execution pending the Supreme Court's ruling on this issue, expected in 2005. However, on 29 January, the judge rejected the appeal. The Harris County District Attorney, whose office prosecuted Capetillo and the two other people facing execution in June for crimes committed when they were 17, has made it clear that he will pursue all three executions.

### **BACKGROUND INFORMATION**

In recognition of the immaturity of children and their capacity for rehabilitation and change, four human rights treaties as well as international humanitarian law (the laws of war), prohibit the use of the death penalty against anyone who was under 18 at the time of the crime. The Convention on the Rights of the Child has been ratified by 192 countries, all but Somalia and the USA. In 2002, the Inter-American Commission on Human Rights concluded that the prohibition on the execution of child offenders had become a peremptory norm of international law (*jus cogens*). The Commission noted that "the acceptance of this norm crosses political and ideological boundaries" and that the norm was binding on all countries, including the USA. No country can legally exempt itself from this global ban.

The USA accounts for 54 per cent of the world's executions of child offenders known since 1990 (19 of 35) and 65 per cent of those reported since 1998 (13 of 20). Although there are sporadic executions of child offenders elsewhere, the USA is now the only country which openly acknowledges executing child offenders within its normal criminal justice system and claims for itself the right to do so. Iran has been the second worst violator on this issue. However, a bill drafted by the judiciary to raise the minimum age for imposition of the death penalty to 18 was approved by the Iranian parliament in December 2003. Amnesty International is expecting this bill to be ratified into law.

### **RECOMMENDED ACTION: Please send appeals in English or your own language, in your own words. In appeals to the Board of Pardons please include Edward Capetillo's prisoner number #999185.**

- expressing sympathy for the family and friends of Kimberly Williamson and Matt Vickers, explaining that you are not seeking to condone the manner of their deaths or the suffering caused;
- explaining that you are shocked that Texas continues to use the death penalty against people who were 17 at the time of the crime in violation of international law binding on all jurisdictions in the USA, noting developments in the Islamic Republic of Iran;
- expressing concern at the apparent racial bias in the use of the death penalty, and the disproportionate impact it has on minority communities in Texas, including the Hispanic community;
- calling for clemency in the interest of decency and the reputation of the State of Texas and the USA.

### **APPEALS TO:**

Rissie L. Owens, Chairperson, Texas Board of Pardons and Paroles  
P.O. Box 13401, Austin, Texas 78711-3401, USA

**Fax:** + 1 512 463 8120 or +1 512 406 5482

**Salutation:** Dear Ms Chairperson

The Honorable Rick Perry, Governor of Texas, State Capitol, PO Box 12428, Austin, TX 78711, USA

**Fax:** +1 512 463 1849 / 0039 / 1932

**Salutation:** Dear Governor

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

You may also write brief letters (not more than 250 words) to: Viewpoints, C/O *Houston Chronicle*, P.O. Box 4260, Houston, Texas 77210, USA. **Fax: +1 713-362-3575. Email to [viewpoints@chron.com](mailto:viewpoints@chron.com)**

**PLEASE SEND APPEALS IMMEDIATELY.**