

EXTRA 11/01

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**USA (North Carolina) Ernest Paul McCarver, white, aged 39**

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Ernest McCarver is scheduled to be executed in North Carolina on 2 March 2001. He was sentenced to death in 1992 for the robbery and murder of Woodrow Hartley in January 1987.

Woodrow Hartley was stabbed to death at the restaurant in Concord where he worked, and where Ernest McCarver was formerly employed as a dishwasher. McCarver was arrested later on the same day and confessed to the murder.

At the 1992 trial, the jury found two aggravating factors, namely that the murder was committed to avoid arrest and during a robbery with a dangerous weapon. They also found 14 mitigating factors, including that: the offence was committed while McCarver was under the influence of mental or emotional disturbance; his capacity to appreciate the criminality of his conduct was impaired at the time of the crime; he has a history of passivity and non-violence; his IQ is in the lower range of borderline intellectual functioning and as such he functions intellectually as a 10 or 12 year old; he cooperated with police and voluntarily confessed; he flourishes in a structured setting; he was and is emotionally neglected and has chronic feelings of deprivation, inadequacy and anger; he has suffered from clinical depression throughout his life; he was the victim of severe economic deprivation; he was taught criminal behaviour at a very early age by his parents who forced him to engage in criminal activity; and he was sexually abused at a young age.

During their sentencing deliberations, the jurors indicated that they were deadlocked. They sought clarification on a written instruction before them, asking the judge if they had to be unanimous in deciding whether the aggravating factors outweighed the mitigating ones or vice versa. The judge replied that they did, and told them to return to their deliberations. The jury later voted that the two aggravating factors outweighed the 14 mitigating factors and that McCarver should therefore be executed rather than spared.

When the North Carolina Supreme Court upheld McCarver's death sentence in 1995, two Justices dissented, saying that the trial judge had been wrong to instruct the jury in the way that he had, and that the jury "may have relied upon an erroneous instruction to make its recommendation of a sentence of death". The two justices voted to overturn the death sentence.

Ernest McCarver was born in 1960. When he was two, his parents were sent to prison for burglary. He and his three-year-old brother, Lee, were temporarily placed in foster care. When the parents were released, they resumed their criminal activities and would take the two boys with them to commit burglaries. Later, Ernest and Lee lived with their grandmother. She was impoverished and in poor health. There was not enough money for food or clothes, and the boys turned to stealing in order to survive. They suffered sexual abuse at this time. Ernest was a sickly child and missed a lot of school. At the age of 12, he and Lee were sent to an orphanage, where Ernest was diagnosed with depression. He was allegedly subjected to sexual and physical abuse at the orphanage. In 1975, the father took Lee out of the orphanage, but left Ernest there, claiming he was not his father. Ernest later joined Lee and his father who again involved the two teenagers in burglaries. Soon afterwards, the father was returned to prison. The murder of Woodrow Hartley occurred when Ernest McCarver was 26, soon after he himself had become a father, and a few days

after the mother of the child ended their relationship to marry another man. Ernest McCarver was said to be very distressed by the break up.

#### **BACKGROUND INFORMATION**

The US death penalty is a lethal lottery. Questions of innocence, poor legal representation, official misconduct, and confused juries continue to characterize its application. Whether a defendant receives a life or death sentence can hinge as much on factors such as where the murder was committed, and the race and social status of the victim or defendant, as on the heinousness of the crime. Furthermore, numerous condemned inmates in the USA are mentally impaired, in contravention of international standards.

There is a strong moratorium movement in North Carolina, and on 25 January the council of the small town of Cary became the 12<sup>th</sup> local government in the state to pass a resolution calling for a moratorium on executions. A legislative commission studying the state's death penalty has also voiced its support for a moratorium. It is recommending ending the use of the death penalty against people with mental retardation and taking measures to eliminate racial bias in the application of the death penalty. Its legislative recommendations have yet to come before the legislature.

Fourteen prisoners have been executed in the USA this year, bringing to 697 the total number of executions since 1977. In North Carolina, the Governor has the exclusive authority to grant clemency.

#### **RECOMMENDED ACTION: Please send faxes/express/airmail letters, IN YOUR OWN WORDS, in English or your own language, using the following guide:**

- expressing sympathy for the family and friends of Woodrow Hartley, and explaining that you do not seek to excuse his murder;
- opposing, however, the execution of Ernest McCarver;
- noting that international standards oppose the use of the death penalty against the mentally impaired, and that North Carolina may soon reject the use of the death penalty against those with mental retardation;
- noting that the jury found his mental age to be that of a 10-12 year old (you may note that North Carolina bans the use of the death penalty against those with a chronological age of under 17 at the time of the crime);
- noting that the jurors found 14 mitigating factors, and that two state Supreme Court judges voted to overturn the death sentence on the grounds that the trial judge's erroneous instruction may have coerced the jury's decision;
- noting that the power of executive clemency exists to compensate for the rigidities of the law, and arguing that the cycle of deprivation, neglect and abuse that has marked Ernest McCarver's life cries out for a compassionate response;
- noting the widespread concern over the fairness and reliability of the US death penalty and the strong movement for a moratorium in North Carolina, and urging the Governor to support a moratorium.

#### **APPEALS TO:**

Governor Michael F. Easley  
 Office of the Governor  
 20301 Mail Service Center  
 Raleigh, NC 27699-0301, USA  
**Fax: + 1 919 715 3175 or + 1 919 733 2120**  
**Salutation: Dear Governor**

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

You may also write brief letters of concern (not more than 250 words) to:

- Letters to the Editor, *Raleigh News and Observer*, PO Box 191, Raleigh, NC 27602, USA. **Fax: + 1 919-829-4872. E-mail: [forum@nando.com](mailto:forum@nando.com)**
- Letters to the Editor, *Charlotte Observer*, PO Box 20848, Charlotte, NC 28230, USA. **Fax: + 1 704 377 6214. E-mail: [opinion@charlotteobserver.com](mailto:opinion@charlotteobserver.com)**

**PLEASE SEND APPEALS IMMEDIATELY.**