

PUBLIC

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Death penalty / Legal concern

18 February 2003

USA (Oklahoma)

Scott Allen Hain (m), white, aged 32

Scott Hain is scheduled to be executed in Oklahoma on 3 April 2003 for a double murder committed when he was 17 years old. International law, respected in almost every country in the world, prohibits the use of the death penalty against people who were under 18 at the time of the crime.

Scott Hain and Robert Lambert (see below) were sentenced to death at separate trials for the murders of Michael William Houghton, aged 27, and Laura Lee Sanders, aged 22, on 6 October 1987. The two victims had been kidnapped in Sanders' car, robbed, and forced into the vehicle's boot (trunk). The car was then set on fire. Scott Hain was sentenced to death in May 1988. In 1993, he was granted a new sentencing because of an error in the jury instructions at the original trial. He was eventually re-sentenced to death in 1994.

At the time of his arrest, Scott Hain's mother was under court-ordered treatment for alcoholism. His father was also a heavy drinker and spent little time at home. He allegedly used to physically abuse Scott, who was also sexually abused by a babysitter when he was about eight. His father introduced him to marijuana when he was nine or 10 years old. The boy's school record was poor, he had to repeat several grades, and he dropped out of school around the age of 13. From around that time, he began to get into trouble with the law and spent time in juvenile detention for property offences. He absconded on several occasions. During this time, he was involved in burglary and theft with his father. In July 1987, Scott Hain, now 17, absconded from a juvenile facility for the last time. For most of the next three months he lived on the streets, and increasingly resorted to alcohol and drugs, including crack cocaine. During this time he met Robert Lambert, who was four years older, and they became involved in crime in order to obtain drugs. Scott Hain had no record of violence up to this time.

BACKGROUND INFORMATION

Robert Lambert, who is still on death row, has a claim of mental retardation. He may therefore be protected by the 2002 US Supreme Court ruling, *Atkins v Virginia*, which found that the execution of people with mental retardation is unconstitutional. The Court found that such executions contravened "evolving standards of decency" in the USA, and that the disabilities of such offenders rendered the use of the death penalty against them disproportionate. The Court noted that the international community "overwhelmingly disapproved" of such executions.

Offenders who were 16 or 17 at the time of their crimes can still be subject to the death penalty in the USA under a 1989 Supreme Court decision, *Stanford v Kentucky*. However, the international condemnation referred to in the *Atkins v Virginia* decision is even clearer in relation to child offenders than it is for offenders with mental retardation. There is also all but equal evidence of a national "consensus" in the USA against both categories of execution under the criteria used by the Supreme Court. In addition, as with offenders with mental retardation, children have characteristics that similarly render the death penalty an excessive sanction against them. For example, young people are vulnerable to peer pressure and the domination of their elders, they are impulsive, immature, have poor judgment, and tend not to see the long-term consequences of their actions. In addition, the profile of the typical condemned teenager is not of a youngster from a stable, supportive background, but rather of a mentally impaired or emotionally disturbed adolescent emerging from a childhood of abuse, deprivation and poverty. For further information see *USA: Indecent and internationally illegal: The death penalty against child offenders* (AMR 51/143/2002, September 2002).

In October 2002, four of the nine Supreme Court Justices dissented from the Court's refusal to revisit its 1989 *Stanford v Kentucky* decision on young offenders: "There are no valid procedural objections to our reconsideration of the issue now, and, given our recent decision in *Atkins v Virginia*, we certainly should do so." The dissenters stated that the execution of people for crimes committed when they were under 18 years old was "a relic of the past... We should put an end to this shameful practice."

The imposition of the death penalty against people who were under 18 at the time of the crime is prohibited by international law, and has been roundly condemned by United Nations bodies and officials. The Geneva Conventions, the International Covenant on Civil and Political Rights, the Convention on the Rights of the Child, the American Convention on Human Rights and the United Nations Safeguards Guaranteeing Protection of the Rights of Those Facing the Death Penalty, all have provisions exempting this age group from execution. In October 2002, the Inter-American Commission on Human Rights concluded: "The acceptance of this norm crosses political and ideological boundaries and efforts to detract from this standard have been vigorously condemned by members of the international community... [T]his proscription binds the community of States, including the United States".

Since 1990, the USA has executed 18 child offenders, compared to 14 such executions reported in the rest of the world combined. These 14 occurred in Democratic Republic of Congo, Iran, Nigeria, Pakistan, Saudi Arabia, and Yemen. Yemen and Pakistan have now abolished such use of the death penalty in law. Oklahoma executed Sean Sellers in 1999, the first and so far only person to be put to death for a crime committed at 16 since the USA resumed executions in 1977 (the others were 17).

RECOMMENDED ACTION: Please send appeals to arrive as quickly as possible, in English or your own language, in your own words:

- expressing sympathy for the family and friends of Michael William Houghton and Laura Lee Sanders, and explaining that you are not seeking to condone the manner of their deaths or the suffering caused;
- expressing concern that the State of Oklahoma intends to violate an unequivocal principle of international law by executing Scott Hain who was under 18 at the time of the crime;
- noting that four US Supreme Court Justices have described the execution of young offenders as a "shameful practice" which should be ended, particularly in light of *Atkins v Virginia*, a decision which may result in the death sentence of Scott Hain's co-defendant being overturned;
- noting that such executions have been roundly condemned across the world, and that Oklahoma will cause serious damage to its international reputation by carrying out this execution;
- urging the Governor to do all in his power and influence to stop this execution and to bring Oklahoma into line with global standards of justice and decency.

APPEALS TO:

Governor Brad Henry
Office of the Governor
State Capitol Building
2300 N. Lincoln Blvd., Room 212
Oklahoma City, OK 73105, USA
Fax: +1 405 521 3353
Email: governor@gov.state.ok.us
Salutation: Dear Governor

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

PLEASE SEND APPEALS IMMEDIATELY. Check with the International Secretariat, or your section office, if sending appeals after 31st March 2003.