

PUBLIC

AI Index: AMR 51/037/2009

13 March 2009

UA 76/09

Death penalty/Legal concern

USA (Ohio)

**Brett Xavier Hartman (m), white, aged 34**

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Brett Hartman is due to be executed in Ohio on 7 April. He was sentenced to death in 1998 for the murder of Winda Snipes in 1997. The Ohio Parole Board has recommended that Governor Ted Strickland not intervene to stop the execution. The governor is not bound by this recommendation.

Winda Snipes, aged 46, was murdered in her apartment in Akron, Ohio, on 9 September 1997. She had been stabbed multiple times and her throat had been slit. After her death, her hands had been cut off. Brett Hartman, then aged 23, had been seen with Winda Snipes, with whom he had a sexual relationship, in the hours before her death. On the evening of 9 September, police received a number of anonymous calls telling them to go to the apartment building, where they would find a body. Brett Hartman told police the following day that it was he who had called them, and that it had been he who had found the body. He said that he had left Winda Snipes alive in her apartment in the early hours of 9 September, and when he had returned on the evening of the same day he had found her mutilated body. He said he had "freaked out," tried to remove any evidence linking him to the apartment, and left. He maintains that he did not kill Winda Snipes.

Brett Hartman was brought to trial for the murder, convicted on 30 April 1998 and sentenced to death the following month. An issue of contention during the appeals process has been the quality of his legal representation during the sentencing phase of the trial. The US District Court, for example, upheld the death sentence despite noting that Hartman's lawyer's presentation of mitigation evidence was "not exemplary," and might have fallen below standards recommended by the American Bar Association.

In 2007, a three-judge panel of the US Court of Appeals for the Sixth Circuit considered the question of Hartman's sentencing phase representation. At the May 1998 sentencing, Hartman's lawyer presented only two witnesses, Hartman's sister and his aunt. The lawyer did not introduce into evidence the May 1998 report of a clinical and forensic psychologist, Dr James Siddall, who had evaluated Hartman, nor was the psychologist called as a witness. The Siddall report identified 10 mitigating factors, including Hartman's family history of alcoholism, his own serious problems with alcohol and substance abuse throughout his childhood and early adulthood, and his highly unstable childhood, which included periods of living on the streets. The report also noted uncorroborated evidence that he had been abused by step-parents.

In July 2007, the Sixth Circuit concluded that Hartman's sentencing phase representation had been constitutionally adequate. It ruled that the testimony provided by Hartman's sister and aunt had addressed to some degree most of the issues raised in the Siddall report, "albeit from a lay perspective". One of the three judges dissented, arguing that Brett Hartman should receive a new sentencing trial. Judge Eric Clay wrote that "trial counsel failed to provide objectively reasonable representation at the mitigation phase", including by having failed to follow up with further investigation the various issues raised in the psychologist's report. Judge Clay also concluded that the trial lawyer had failed to present mitigation evidence that he had in his possession, including evidence that Hartman suffered from a number of mental health problems.

Judge Clay wrote that "the numbers in this case paint a compelling picture:" 10 mitigating factors identified by Dr Siddall; the trial lawyer received the Siddall report "a mere five days" before the sentencing phase; there were only two mitigation witnesses presented; the entirety of the mitigation case spanned only 40 pages of transcript; and the lawyer's closing argument only spanned 10 pages of transcript, "culminating in a two and a half page story about the ancient Greek philosopher and orator Aeschylus [sic]," the conclusion of which was

Hartman's lawyer telling the jury "the answer is in your hand." Quantitatively and qualitatively, Judge Clay wrote, "trial counsel's performance fell below prevailing professional norms."

In February 2009, the Ohio Parole Board considered the case for clemency. Hartman's clemency petition reiterated that the trial lawyer had only presented to the jury "a limited slice of Hartman's history...a few isolated and unconnected incidents...without any explanation of how they affected his development or behaviour... It is apparent that the chaos, constant dislocation, isolation, rejection, and psychological abuse that Brett experienced as a child had extremely harmful effects on his development." The Board rejected the claim as "without merit.... Brett Hartman received a fair trial at which the jury heard his personal story."

Since being on death row, Brett Hartman has earned a paralegal qualification and been ordained as a minister, as well as teaching himself to paint. The Board concluded that "despite his accomplishments in prison, no amount of good deeds can mitigate against the horrors and brutality of this crime." The Board received testimony from a friend of Winda Snipes, "on behalf of the victim and the victim's family." The Board's report notes that "the family of the victim wants the execution of Brett Hartman to go forward."

Brett Hartman told the Board that he had not killed Winda Snipes. He wrote, "I have always felt horrible about her death, the way she died and how this has effected [sic] her family. No one should ever have to endure what Winda did as no family should have to lose a loved one as her family lost Winda." The Board concluded that despite evidence pointing to his guilt, "he displays no remorse." It rejected clemency.

### **BACKGROUND INFORMATION**

Amnesty International opposes the death penalty in all cases, unconditionally. To end the death penalty is to abandon a destructive, diversionary and divisive public policy that is not consistent with widely held values. It not only runs the risk of irrevocable error, it is also costly, in social and psychological terms as well as to the public purse (a fact which is drawing increasing public concern in the USA in the current economic climate). It has not been proved to have a special deterrent effect. It tends to be applied in a discriminatory way, on grounds of race and class. It denies the possibility of reconciliation and rehabilitation. It promotes simplistic responses to complex human problems, rather than pursuing explanations that could inform positive strategies. It prolongs the suffering of the murder victim's family, and extends that suffering to the loved ones of the condemned prisoner. It diverts resources that could be better used to work against violent crime and assist those affected by it. It is a symptom of a culture of violence, not a solution to it. It is an affront to human dignity. It should be abolished.

There have been 1,156 executions in the USA since judicial killing resumed there in 1977, 28 of them in Ohio. There have been 20 executions in the USA so far in 2009, none in Ohio.

### **RECOMMENDED ACTION: Please send appeals to arrive as quickly as possible, in your own words:**

- explaining that you are not seeking to excuse the murder of Winda Snipes, or to downplay the suffering caused;
- expressing concern that at the sentencing phase of Brett Hartman's trial the jury was not provided with full mitigation evidence, or any expert evidence, and noting the strong Sixth Circuit dissent in this case;
- noting that Brett Hartman continues to maintain his innocence;
- regretting the parole board's vote against a recommendation for clemency;
- urging the Governor to grant clemency and to commute Brett Hartman's death sentence;
- calling on the Governor to support a moratorium on executions in Ohio with a view to abolition.

### **APPEALS TO:**

Governor Ted Strickland

Governor's Office, Riffe Center, 30th Floor, 77 South High Street, Columbus, OH 43215-6108, USA

**Fax: +1 614 466 9354**

**Email: From the USA: <http://www.governor.ohio.gov/Assistance/ContacttheGovernor/tabid/150/Default.aspx>**

**Email: From outside USA: [governor.strickland@das.state.oh.us](mailto:governor.strickland@das.state.oh.us)**

**Salutation: Dear Governor**

**PLEASE SEND APPEALS IMMEDIATELY.**