

URGENT ACTION

TEXAS EXECUTION SET 32 YEARS AFTER CONVICTION

David Lee Powell is scheduled to be executed in the US state of Texas on 15 June for the murder of a police officer committed more than three decades ago. David Powell, who was 27 years old at the time of the crime, is now aged 59.

Officer Ralph Ablanado was shot dead in the state capital, Austin, in May 1978. **David Powell** was convicted of his murder in October 1978. He was sentenced to death according to Texas law, which stipulates that in order for such a sentence to be passed, a jury must decide that it is probable that he would commit future acts of criminal violence that would constitute a continuing threat to society. In 1989, the US Supreme Court overturned the conviction and death sentence (see over). David Powell was retried in 1991 and again sentenced to death. In 1994, this sentence was overturned by the Texas Court of Criminal Appeals because of an error in the judge's instructions to the jury.

In 1999, a new sentencing hearing was held. As evidence of David Powell's future dangerousness, the prosecution relied primarily on the facts of the crime committed over two decades earlier. It also presented evidence that in 1970, when Powell was a teenager (he was now approaching 50), he had stolen a car and used false identification. The prosecution also sought to boost its case by pointing to evidence that he had broken rules in prison: all were minor infractions spread thinly over the years since his conviction, such as having an extra pair of socks and shorts in his cell; not making his bed before 6am; playing his radio too loud; cursing at a guard when he was not allowed to have contact lens solution; and refusing to obey an order to remove a poster from the wall of his cell.

The defence presented evidence that before David Powell started using drugs at university, he had been a law-abiding promising student. His drug use led to increasing paranoia and irrational behaviour, leading up to the crime. After he stopped using drugs, once he was in prison, he returned to something like his former self, and several prison guards testified that he was a model inmate. Nevertheless, the jury decided that he would pose a danger to society if allowed to live, even in prison, and sentenced him to death for a third time. His current lawyer has told Amnesty International that David Powell "is not the same person he was in May 1978. He is now (and has been for a long time) remorseful, humble, steadfastly non-violent, and a positive role-model".

In 1999, a US Supreme Court judge wrote that the longer the delay between conviction and execution, "the weaker the justification for imposing the death penalty in terms of punishment's basic retributive and deterrent purposes." In 2002, the same judge noted that the uncertainty and lengthy delays between sentencing and execution "can inflict horrible feelings and an immense mental anxiety amounting to a great increase of the offender's punishment."

PLEASE WRITE IMMEDIATELY in English or your own language, in your own words (include inmate No: #000612):

- Explaining that you are not seeking to excuse the killing of Austin Police Officer Ralph Ablanado;
- Noting that more than three decades have passed since the crime, calling into further question any assertion by the state that retribution or deterrence will be served by this execution;
- Noting evidence of David Powell's rehabilitation, in contrast to the jury's finding of "future dangerousness";
- Calling on the Parole Board to recommend that Governor Rick Perry commute David Powell's death sentence;
- Calling on the District Attorney of Travis County to move to have the execution date withdrawn, and not reset.

PLEASE SEND APPEALS BEFORE 15 JUNE 2010 TO:

Clemency Section, Texas Board of Pardons and Paroles
8610 Shoal Creek Blvd. Austin, TX 78757-6814, USA
Fax (512) 467-0945

Email: bpp-pio@tdcj.state.tx.us

Salutation: Dear Board members

Also send copies to diplomatic representatives of the USA accredited to your country. Please check with your section office if sending appeals after the above date.

District Attorney Rosemary Lehmborg
Travis County District Attorney's Office
PO Box 1748, Austin, TX 78767, USA
Fax: +1 512 854-9695

Salutation: Dear District Attorney

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ADDITIONAL INFORMATION

In May 1978, David Powell asked his former girlfriend Sheila Meinert to drive him from Austin to the city of Killeen to conduct a drug deal. In the car was a large quantity of drugs, a handgun and an AK-47 rifle, both loaded, and a hand grenade. They were stopped by Officer Ralph Ablanado when he noticed the vehicle had no rear licence plate. He gave Sheila Meinert a traffic ticket and radioed in to see if there were any arrest warrants outstanding against them. He allowed them to drive off before the check was completed because the dispatcher informed him that the computer system was malfunctioning. The message then came back that there was an arrest warrant against David Powell (for theft), and Officer Ablanado pulled Sheila Meinert's car over again. As he approached, he was shot from the back of the car.

Prior to David Powell's trial, the judge ordered that he be subjected to a psychiatric examination to assess his competence to stand trial and his sanity at the time of the crime. The defence was not told that the experts would assess the defendant's future dangerousness, and David Powell himself had not been advised that he could remain silent. Yet both experts testified at the trial that, based on their examinations, they believed that David Powell would commit acts of future violence. In 1989, the US Supreme Court overturned the death sentence, noting that "for a defendant charged with a capital crime, the decision whether to submit to a psychiatric examination designed to determine his future dangerousness is literally a life or death matter which the defendant should not be required to face without the guiding hand of counsel".

According to David Powell's current lawyer, at the 1991 trial, scores of police marched into the courtroom with black ribbons over their badges. The Austin Police Association (APA) continues to support David Powell's execution. On 18 May 2008, the 30th anniversary of Officer Ablanado's death, the APA took out a full page advertisement in the *Austin American-Statesman* newspaper announcing that David Powell's federal appeal in the US Court of Appeals for the Fifth Circuit Court would be heard in New Orleans on 3 June 2008. After the hearing, attended by about 25 Austin police officers, the APA president was quoted in the newspaper as saying "hopefully this last appeal will be done and we can move on with setting an execution date so we can move on and the family of Ralph Ablanado can finally get closure". Today, the APA website carries the news of David Powell's execution date and that the APA has chartered a bus for "friends and fellow police officers wishing to travel to Huntsville" on the day of the execution.

The APA advertisement of 18 May 2008 also included the assertion that on the day of his death, Officer Ablanado had "returned fire with nine shots." Until then, the state's case had been that he had not fired his gun before he was shot by David Powell. No trial witness had ever testified that the officer fired his weapon. Powell's lawyers filed a new habeas corpus petition on this issue, arguing that such information might have altered the sentencing outcome, and might provide evidence about the involvement of Sheila Meinert in the shooting. The Texas Court of Criminal Appeals summarily denied the petition in September 2009.

Amnesty International unconditionally opposes the death penalty, in all cases and in all countries. The USA has carried out 1,206 executions since resuming judicial killing in 1977. Texas accounts for 456 of these executions. There have been 18 executions in the USA this year, nine of them in Texas. Today 139 countries are abolitionist in law or practice. More than 70 countries have legislated to abolish the death penalty since David Powell was first sent to death row.

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