

PUBLIC

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UA 45/05 Death penalty / Legal concern

USA (Ohio) **William Henry Smith (m), aged 47, black**

William Smith is scheduled to be executed in Ohio on 8 March 2005. He was sentenced to death in April 1988 for the rape, robbery and murder of a 47-year-old woman, Mary Bradford, in her home in Cincinnati in September 1987. He has been on death row for almost 17 years.

There is evidence that William Smith, who grew up in an environment of deprivation and abuse, suffers from a personality disorder and organic brain damage. His mother suffered from mental illness, as did his stepfather, who was also violent towards the children. From the age of nine to 14, William Smith himself was resident in a psychiatric facility where he was treated with anti-psychotic medication and electric shock therapy. After he left there as a young teenager, he took to living on the streets or with friends. He began using drugs, and would later be diagnosed with alcohol dependence, cannabis dependence and cocaine dependence which, in a post-conviction assessment, a clinical psychologist has concluded may have affected Smith's conduct on the night of the crime.

William Smith initially entered a plea of not guilty by reason of insanity, but later withdrew it when mental health evaluations did not support such a plea. For such a plea to be successful, the defendant has to prove not only a mental disease or defect, but that the latter rendered him or her unable to appreciate the wrongfulness of their conduct. The trial began on 4 April 1988 and he was convicted on 6 April 1988. The sentencing phase began on 11 April 1988. His lawyers failed to prepare for this phase until after the conviction stage had ended.

The trial lawyers presented as central to their effort to save their client from the death penalty Dr Nancy Schmidtgoessling, a clinical psychologist who was one of the court-appointed experts who had evaluated William Smith's mental state at the time of the crime after he had indicated he would offer an insanity plea. Her role had been as a neutral expert rather than as an advocate for the defendant. To act as mental health mitigation expert for the defence is a different question, and requires broader consideration of the defendant's mental health problems and background, beyond the narrow question of legal sanity, for presentation to the sentencing court. According to William Smith's clemency lawyers, however, the trial attorneys never met with Dr Schmidtgoessling to discuss her testimony and prepare her for her testimony. Instead, she was left to draw upon the report she had completed on the insanity question. She herself has now admitted that it was unreasonable to rely on her as the centre of the mitigation effort. In addition, the prosecutor had reportedly argued that the mental health mitigation should be discounted because it did not rise to the level necessary to support an insanity defence.

When the US Court of Appeals for the Sixth Circuit upheld William Smith's death sentence in 2003, one of the three judges dissented, arguing that under a 1985 US Supreme Court decision (*Ake v. Oklahoma*), William Smith should have been provided with a mental health expert to investigate and present mitigation evidence at his sentencing. The judge wrote: "Smith endured an exceedingly difficult childhood. He spent time living with abusive foster parents, was diagnosed with diffuse cerebral dysfunction, and spent time in a juvenile psychiatric facility where, among other things, he received electric shock therapy. Given this history, the lack of expert assistance to which Smith was entitled under *Ake* had such a substantial and injurious effect or influence in determining the sentencing decision, that I have grave doubt about the harmlessness of the error."

On 15 February 2005, the Ohio parole board announced that it had voted 8-0 against recommending that Governor Bob Taft either issue a reprieve from execution or commute the death sentence of William Smith.

The board had found that there were a number of mitigating factors in the case, namely that William Smith suffered “an abysmal childhood of deprivation and abuse”; that he had displayed a “sincere, genuine and strong expression of remorse” for the crime (in a meeting with a parole board member, William Smith had “tearfully stated that he takes full responsibility for his inexcusable, unjustifiable and inexplicable behaviour”); that, at the time of the crime, he had “suffered from a personality disorder that may have manifested in a loss of impulse control”; and that he has “demonstrated exemplary conduct and adjustment” in prison. Nevertheless, the board decided that the seriousness of the crime outweighed these mitigating circumstances.

The Board’s recommendation is not binding on the Governor.

BACKGROUND INFORMATION

Amnesty International opposes the death penalty in all cases, regardless of question of guilt or innocence, the seriousness of the crime, or the method the state chooses to kill the condemned prisoner. This is a punishment that is an affront to human dignity and a part of a culture of violence rather than a solution to it. It has not been shown to have a unique deterrent effect, denies the possibility of rehabilitation and reconciliation, carries the risk of irreversible error as well as inconsistent and discriminatory application, and consumes resources that could be used to fight violent crime and assist those affected by it.

Today, 118 countries are abolitionist in law or practice. In this context, the USA’s claims to be a progressive force for human rights ring hollow. It has carried out 949 executions since 1977. Ohio accounts for 15 of these executions.

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 Mary Bradford, explaining that you are not seeking to excuse the manner of her death or to minimize the suffering caused;
- opposing the execution of William Smith;
- noting the mitigating factors in this case, the apparently minimal preparation by the trial lawyers for the sentencing phase, and the dissenting opinion in the US Court of Appeals for the Sixth Circuit;
- expressing regret at the parole board’s decision not to recommend clemency;
- urging the governor to commute this death sentence, and to begin to lead the State of Ohio away from the death penalty.

APPEALS TO:

Governor Bob Taft
30th Floor
77 South High Street

Columbus, Ohio 43215-6117, USA

Email: (via website) <http://governor.ohio.gov/contactinfopage.asp>
<mailto:Governor.Taft@das.state.oh.us>

Fax: +1 614 466 9354

Salutation: Dear Governor

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

PLEASE SEND APPEALS IMMEDIATELY.