

URGENT ACTION

SUPREME COURT IS LAST HOPE TO STOP EXECUTION

Warren Hill is due to be put to death in Georgia, USA, on 15 July. All seven experts who have assessed him now say that he has ‘mental retardation’, which would make his execution unconstitutional. His lawyers are asking the US Supreme Court to step in.

In 2002 a state judge found that **Warren Hill** – who was sentenced to death in 1991 for the 1990 murder of fellow prisoner Joseph Handspike – had “significantly sub-average general intellectual functioning”, but that he had not, beyond a reasonable doubt, proved his “adaptive deficits”. In 1988, Georgia’s legislature had passed a law prohibiting the use of the death penalty against anyone found “beyond a reasonable doubt” to have “mental retardation”. The law defined this as the offender having “significantly sub-average general intellectual functioning,” resulting in “impairments in adaptive behavior”.

The US Supreme Court ruled in 2002 in *Atkins v. Virginia* that the execution of people with mental retardation violates the US Constitution. Warren Hill’s lawyers appealed in light of the *Atkins* ruling. This time the trial-level judge decided that the standard of proof should be “a preponderance of the evidence”, and that under this lower standard, Warren Hill’s impairment did amount to mental retardation. However, the state appealed to the Georgia Supreme Court which in 2003 ruled 4-3 that the “beyond a reasonable doubt” standard was acceptable in this context. The case went to the federal courts, and in 2011 the US Court of Appeals for the 11th Circuit ruled 7-4 that, even if Georgia had “somehow inappropriately struck the balance” in its statute, US law prevented a federal court from acting even if it considered the state Supreme Court’s decision upholding that law to be “incorrect or unwise”.

In February 2013, with all seven experts involved in the case now agreeing that Warren Hill had mental retardation (see below), the 11th Circuit stopped Warren Hill’s execution. However on 22 April the three-judge panel denied his new petition on the grounds that it was barred under the restrictive standards imposed on successive petitions by the Anti-Terrorism and Effective Death Penalty Act (AEDPA) of 1996. One of the judges dissented, arguing that “a congressional act cannot be applied to trump Hill’s constitutional right not to be executed”. She wrote that “the state of Georgia will execute a mentally retarded man when it carries out the execution of Warren Lee Hill. There is no question that Georgia will be executing a mentally retarded man because all seven health experts who have ever evaluated Hill, both the State’s and Hill’s, now unanimously agree that he is mentally retarded”.

Warren Hill’s lawyers are asking the US Supreme Court to stop the execution. It had upheld the constitutionality of the AEDPA in 1996, finding that it had not repealed the Court’s power to consider “original habeas petitions” (in exceptional circumstances to take a case brought directly to it rather than on appeal from a lower court). Several US law professors have filed a brief arguing that this is a case in which the Court should take this unusual step.

Please write immediately in English or your own language:

- Noting that all seven experts who have assessed Warren Hill now agree that he has mental retardation, which would render his execution unconstitutional;
- Calling on the Attorney General to concede this and to support the petition for Supreme Court intervention.

PLEASE SEND APPEALS BEFORE 15 JULY 2013 TO:

The Honorable Sam Olens, Attorney General of Georgia
40 Capitol Square, SW, Atlanta, GA 30334, USA
Fax: +1 404 657 8733
Email: AGOlens@law.ga.gov
Salutation: Dear Attorney General

And copies to: Governor Nathan Deal,
Georgia State Capitol, Atlanta, GA 30334, USA
Fax: +1 404 657 7332
Email: <http://gov.georgia.gov/webform/contact-governor-international-form>

Also send copies to diplomatic representatives accredited to your country.

Please check with your section office if sending appeals after the above date. This is the third update of UA 197/12. Further information: <http://www.amnesty.org/en/library/info/AMR51/058/2012/en>

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ADDITIONAL INFORMATION

Signing the AEDPA into law on 24 April 1996, President Bill Clinton said: "For too long, and in too many cases, endless death row appeals have stood in the way of justice being served. From now on, criminals sentenced to death for their vicious crimes will no longer be able to use endless appeals to delay their sentences." The US Supreme Court has said that under the AEDPA federal courts must operate a "highly deferential standard for evaluating state-court rulings, which demands that state court decisions be given the benefit of the doubt". The UN Special Rapporteur on extrajudicial, summary or arbitrary executions expressed serious concern in 1998 that "the guarantee of due process in capital cases [had] been seriously jeopardized" by the AEDPA, which placed unprecedented restrictions on prisoners raising claims of constitutional violations. In 2012, the UN Special Rapporteur reiterated concern about the failure of the USA to address the AEDPA's curtailment of judicial review.

In its 22 April 2013 ruling in the Warren Hill case, the 11th Circuit panel ruled 2-1 that the AEDPA barred his successive petition. In support of that petition, Warren Hill's lawyers had filed affidavits signed in February 2013 by the three experts who had testified for the state in late 2000 that they did not believe Hill had mental retardation. In their affidavits, all three revealed that they had changed their minds and now considered that Hill did have mental retardation, thereby now agreeing with the four experts presented by the defence in 2000. The two judges in the 11th Circuit majority said that they had "considered with care and caution our colleague's dissent. We are required, however, to apply the rules of the AEDPA".

For her part, the dissenting judge wrote: "The state of Georgia and the majority... take the position that a federal court cannot consider Hill's newly discovered and compelling evidence because Congress's gate-keeping rules under AEDPA preclude us from allowing a mentally retarded person to vindicate his constitutional right to never be put to death. The perverse consequences of such an application of AEDPA is that federal court must acquiesce to, even condone, a state's insistence on carrying out the unconstitutional execution of a mentally retarded person... The idea that courts are not permitted to acknowledge that a mistake has been made which would bar an execution is quite incredible for a country that not only prides itself on having the quintessential system of justice but attempts to export it to the world as a model of fairness". She further argued that the AEDPA should not be interpreted to require the execution of a prisoner in a case where the current state of the evidence "virtually guarantees that he can establish his mental retardation", indeed can "satisfy even the preposterous burden of proof Georgia demands". No other US state requires proof of mental retardation beyond a reasonable doubt in the death penalty context. Indeed, a majority of the USA's 32 death penalty states, and the federal government, utilize the "preponderance of the evidence" standard, under which the Georgia trial-level judge found Warren Hill to have mental retardation.

There is no petition for clemency before the Georgia Board of Pardons and Paroles, which already denied clemency in 2012. The final hope for a stay of execution rests with the US Supreme Court. Several leading mental health professionals have signed an *amici curiae* (friends of the court) brief in support of Warren Hill's petition to the Supreme Court, saying: "As clinicians in the field of mental disabilities, *amici* are acutely conscious of the stakes in capital cases, and believe that a death sentence cannot rest upon what are now acknowledged to be diagnostic errors".

On 3 July 2013, a Georgia county court set a seven-day window in which the execution of 53-year-old Warren Hill can be carried out. The execution warrant is valid noon on 13 July and expires at noon on 20 July. The Commissioner of the Georgia Department of Corrections has scheduled the execution for 7.00 pm on 15 July at the Georgia Diagnostic and Classification Prison in Jackson.

There have been 18 executions in the USA this year, and 1,338 executions since 1977, 53 of them in Georgia. Amnesty International opposes the death penalty in all cases.

Name: Warren Hill

Gender m/f: m

Further information on UA: 197/2012 Index: AMR 51/046/2013 Issue Date: 8 July 2013