

PUBLIC

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EXTRA 19/03

Death penalty / Legal concern

USA (Ohio)

Lewis Williams (m), black, aged 44

Lewis Williams is scheduled to be executed in Ohio on 16 April. He was sentenced to death for the murder of an elderly white woman, Leoma Chmielewski, in 1983.

After the jury convicted the 24-year-old Lewis Williams of the crime, the trial moved into its sentencing phase. At this stage of a US capital trial, the prosecution presents “aggravating” evidence for execution and the defence presents mitigating evidence for leniency. Jurors took three days to reach a death verdict, despite being presented with minimal evidence by the defence to weigh in mitigation against the state’s argument for the death penalty. The trial lawyers presented only three witnesses at the sentencing – a childhood friend of Lewis Williams, and two family members.

In August 2001, a panel of the US Court of Appeals for the Sixth Circuit upheld the death sentence against Lewis Williams. The panel rejected the claim that he had been denied adequate representation by his lawyers’ failure to fully investigate his troubled background of abuse and neglect for presentation at the sentencing stage. The controlling US Supreme Court precedent on this issue, decided in 1984, provides that errors by defence lawyers do not merit the reversal of conviction or sentence unless the defendant can prove that such errors had prejudiced the outcome of the case, a standard of proof that is very difficult to meet. Under this rule, the appeal courts must be “highly deferential” to a lawyer’s performance, and must “indulge a strong presumption that counsel’s conduct falls within the wide range of reasonable professional assistance.”

Even under this stringent standard, one of the three judges on the Sixth Circuit issued a strong dissent on the Williams case. She wrote that his trial lawyers’ preparation for the sentencing phase had been “wholly inadequate”, and that if they had “simply discussed Williams’s life with core family members” they would likely have discovered mitigating evidence of his dysfunctional and abusive family background. This included the sexual molestation by a cousin at the age of five; physical abuse – whippings three to four times a week, including with extension cords – that Williams was subjected to as a child by his father; his witnessing of the physical abuse of his mother by his stepfather; his father’s drug abuse and Lewis Williams’s own resort to illegal drugs, including cocaine, by the age of 13, and Lewis Williams’s low IQ (at the age of 11, his IQ was assessed as 76, indicating possible borderline mental retardation).

The federal judge also wrote that if the trial lawyers “had taken the time to obtain Williams’s school, juvenile, and treatment records”, they would have discovered that his mother had sought psychological treatment for him at the age of 11. The boy had begun running away from home around the age of eight or nine. The jury heard extensive evidence that Williams had been in trouble with the law as a juvenile, but were given none of the mitigating background that could help to explain it. The Sixth Circuit judge wrote that if the trial lawyers had investigated fully, they would have found evidence that the juvenile justice system had failed to meet his psychological and emotional needs.

The judge concluded that a description of Lewis Williams’s background “might well have influenced the jury’s appraisal of Williams’s moral culpability... Given the wealth of information that the attorneys could have presented regarding Williams’s troubled life, and the ease with which the attorneys could have obtained such information, it is difficult to imagine how the attorneys’ failure to conduct a proper investigation and then present meaningful mitigating evidence did not prejudice Williams.”

BACKGROUND INFORMATION

In contrast to the clear majority of countries that have turned their backs on the death penalty, the USA continues to resort to judicial killing. Since resuming executions in 1977, more than 840 men and women

have been put to death. The imposition of death sentences in the United States continues to be marked by arbitrariness, discrimination and error. Eighty per cent of the people executed since 1977 have been put to death for crimes involving white victims, even though blacks and whites are the victims of murder in the USA in approximately equal numbers. Most capital defendants are too poor to afford their own lawyer, and so are appointed counsel by the state. Many prisoners have been put to death despite compelling evidence that they were denied their right to adequate legal representation. International standards require that capital defendants receive such assistance "at all stages of proceedings".

In 2000, a landmark study of the US capital justice system was released. It had examined death penalty cases between 1973 and 1995 and found that the rate of prejudicial error in capital cases was 68 per cent. In other words, courts found serious, reversible error in almost seven of every 10 of the thousands of death sentences that were reviewed on appeal during the 23-year study period. The study, conducted at Columbia University in New York found that the most common errors were inadequate legal representation and the suppression of evidence by prosecutors or police. The study expressed grave concern that the courts may not be reversing all errors.

The power of executive clemency exists to compensate for the rigidity of the judiciary. In 1993, the US Supreme Court described executive clemency as the 'fail-safe' in the justice system, adding that it is an "unalterable fact that our judicial system, like the human beings who administer it, is fallible".

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 of Leoma Chmielewski, explaining that you are not seeking to excuse the manner of her death or to minimize the suffering it will have caused;
- opposing the execution of Lewis Williams and urging clemency in his case;
- expressing concern that the jury heard minimal evidence of the defendant's dysfunctional and abusive background on which to base their sentencing decision;
- noting that even without this information they evidently had trouble reaching a verdict, suggesting that the mitigating evidence that was available could have persuaded one or more jurors to vote for life;
- noting the strong dissenting opinion by a federal judge on the Sixth Circuit Court of Appeals that Lewis Williams's trial representation had been "wholly inadequate" at the sentencing phase;
- noting the very high threshold for a successful appeal on inadequate legal representation, and pointing out that the power of executive clemency exists to compensate for the rigidity of the judiciary and harsh or disproportionate sentencing.

APPEALS TO:

Governor Bob Taft, 30th Floor, 77 South High Street, Columbus, Ohio 43215-6117, USA

Fax: +1 614 466 9354

Email: Governor.Taft@das.state.oh.us

Salutation: Dear Governor

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

You may also write brief letters (not more than 250 words) to:

Letters to the Editor, *The Plain Dealer*, 1801 Superior Ave., Cleveland 44114, USA.

Fax: + 1 216 999 6209

Email: letters@plained.com

PLEASE SEND APPEALS IMMEDIATELY.