

URGENT ACTION

UTAH BOARD DENIES CLEMENCY; LAWSUIT FILED

On 14 June, the Board of Pardons and Parole in Utah, USA, denied clemency to Ronnie Lee Gardner. His lawyers have filed a civil rights lawsuit in federal court challenging the fairness of the clemency process. Ronnie Gardner is scheduled to be executed by firing squad on 18 June.

The Board of Pardons and Parole held a clemency hearing on 10 and 11 June. In a unanimous decision issued on 14 June, the Board wrote that “no sufficient reason exists to grant clemency or to commute Gardner’s death sentence”. Later on 14 June, Ronnie Gardner’s lawyers filed a lawsuit in the US District Court for the District of Utah calling into question “the fairness and impartiality of the Board’s deliberative process” and requesting a stay of execution. According to his lawyers, Ronnie Gardner’s right to a clemency process before a neutral decision-maker was denied because the state Attorney General’s Office was simultaneously pursuing Ronnie Gardner’s execution while serving as legal advisor to the Board of Pardons and Parole. In support of their claim, Ronnie Gardner’s lawyers have presented to the District Court a statement by an expert in legal ethics, who concludes that “the simultaneous representations raise an impossible conflict of interest that renders the proceeding before the Board of Pardons and Parole hopelessly in violation of any standard of neutrality, objectivity, independence or propriety”.

The Utah Attorney General's Office subsequently revealed that it had issued an internal memorandum on 11 May 2010 to establish a “conflict screen” between the agency’s lawyers advising the Board and its lawyers representing the state in opposing clemency. This memorandum purports to restrict communications and sharing of information relating to the Gardner case between the two sets of state lawyers in order to nullify this conflict within the Attorney General’s Office. The same legal expert, a law professor at Yale University, responded to this disclosure in a supplementary statement filed in the District Court, in which he said that this action “cures nothing and the conflict of interest remains as profound and disturbing as it ever was”. The problem, he added, was “the fact that the lawyer representing the Board works for the very same Attorney General who seeks Mr Gardner’s execution... No number of screens – even if built of concrete – could prevent the Attorney General’s stated goal – Mr Gardner’s death by firing squad – from corrupting the Board’s neutral processes, a result that has undoubtedly already occurred, to say nothing of the profound appearance of impropriety the representation by the Attorney General’s office of the Board has already created”. On 15 June, the District Court denied the motion for a stay of execution. The lawyers are appealing to the US Court of Appeals for the 10th Circuit.

Three of the jurors from Ronnie Gardner’s 1985 trial have signed statements indicating that they no longer support his execution, including one who says that she felt coerced by other jurors into voting for death (see overleaf).

PLEASE WRITE IMMEDIATELY in English or your own language, in your own words:

- Regretting the Board of Pardons and Parole’s decision to deny clemency for Ronnie Lee Gardner;
- Expressing concern at the perception of unfairness generated by the state Attorney General’s simultaneous pursuit of Ronnie Gardner’s execution and its representation of the Utah Board of Pardons and Parole;
- Calling on the Governor to issue a reprieve for Ronnie Gardner so that the Board can reconsider its decision without such a perceived conflict of interest calling its impartiality into question;
- Noting that a number of jurors from the 1985 trial have indicated their opposition to this death sentence.

PLEASE SEND APPEALS BEFORE 18 JUNE 2010 TO:

Utah Governor: Governor Gary R. Herbert

Fax: +1 801 538 1528

Email: gherbert@utah.gov

Salutation: Dear Governor

Also send copies to diplomatic representatives of USA accredited to your country. Please check with your section office if sending appeals after the above date. This is the second update of UA: 113/10 (AMR 51/039/2010). Further information:

<http://www.amnesty.org/en/library/info/AMR51/039/2010/en>

**AMNESTY
INTERNATIONAL**



URGENT ACTION

UTAH BOARD DENIES CLEMENCY; LAWSUIT FILED

ADDITIONAL INFORMATION

Ronnie Gardner, now aged 49, was tried in October 1985 and sentenced to death for the first-degree murder of Michael Burdell. A state court judge ruled in 1991 that Ronnie Gardner had been denied adequate legal representation at the sentencing stage of his trial, including as a result of Gardner's lawyer's failure to investigate and present mitigating evidence to the jury. He ordered a new sentencing hearing. However, the Utah Supreme Court overturned the decision, ruling that errors by the lawyers had not been shown to have prejudiced the trial. The state had denied Gardner funding to retain expert witnesses, but he received this funding once the case went into the federal courts. Mitigating evidence not fully provided to the jury was presented to the federal courts, relating to Ronnie Gardner's deprived and abusive background, together with expert evidence that he has brain damage. In 2009, the US Court of Appeals for the 10th Circuit noted that "it is undisputed that Mr Gardner's childhood was troubled," and added that "reasonable minds may differ on the likely impact on the jury of more thoroughly researched mental health testimony." However, the Court of Appeals upheld the Utah Supreme Court's judgement.

Ronnie Gardner's lawyers have obtained statements from four of the jurors from the original trial. One states that if she had heard the mitigating evidence now available, she might have voted for a life sentence. In addition, she added, if life imprisonment without parole had been an option at the time (as it now is), "there may have been a different outcome". A second former juror is clearer: "If I would have heard these mitigating factors 25 years ago, I would have voted for life". A third former juror said that if life without parole had been an option in 1985, "I would have chosen that". A fourth juror, who was heavily pregnant at the time of the trial, has revealed that "I was the last juror to agree to vote for the death penalty. I felt I was coerced into voting for death. At one point during deliberations, I locked myself in a bathroom to avoid the pressure I was feeling. I agreed to vote for death because I just wanted to go home". She added that she supports commutation of his death sentence, and that "If I were voting today I would not be swayed and would vote for life without parole".

Amnesty International opposes the death penalty unconditionally, in all cases and in all countries, regardless of the method used to kill the prisoner, or the nature of the crime for which he or she was sentenced to death. The USA has carried out 28 executions so far this year, and 1,216 since resuming judicial killing in 1977. Utah accounts for six of these executions, including the first carried out in the USA after the 1976 Supreme Court decision that allowed executions to resume: Gary Gilmore was shot by a Utah firing squad on 17 January 1977 after refusing to appeal against his death sentence. Three of the five men executed in Utah since then have also been so-called "volunteers" who waived appeals and "consented" to execution. The execution of Ronnie Gardner would be the first in Utah since 1999 and the first "non-consensual" execution there since 1992. Ronnie Gardner has chosen to be put to death by firing squad rather than lethal injection.

Under Article VII, Section 12.3(a) of the Utah Constitution / Code, the state Governor "may grant respites or reprieves in all cases of convictions for offenses against the state except treason or conviction on impeachment. These respites or reprieves may not extend beyond the next session of the board [of Pardons and Parole]. At that session, the board shall continue or determine the respite or reprieve, commute the punishment, or pardon the offense...".

Further information on UA: 113/10 Index: AMR 51/051/2010 Issue Date: 16 June 2010

**AMNESTY
INTERNATIONAL**

