

# URGENT ACTION

## MENTALLY ILL MAN FACING EXECUTION IN FLORIDA

**John Ferguson, a 65-year-old man with a decades-long history of serious mental illness, including repeated diagnoses of paranoid schizophrenia by prison doctors, is due to be executed in the US state of Florida on 5 August. He has been on death row for 35 years.**

In two separate trials in 1978 presided over by the same judge, John Ferguson was convicted of eight murders committed near Miami – six which took place in July 1977 in Carol City and two in Hialeah in January 1978. He received eight death sentences. The Florida Supreme Court remanded the case for re-sentencing after it found judicial error in the sentencing phases of both trials. As the original trial judge had retired, a different judge, without holding a hearing, re-imposed the eight death sentences. These have been upheld on appeal.

John Ferguson has a history of serious mental illness that predates the crimes. According to his attorneys, he first reported having visual hallucinations in 1965 at the age of 17 and was first diagnosed with paranoid schizophrenia in 1971, a diagnosis that has been repeated dozens of times since then. In 1975, a court-appointed psychiatrist concluded that Ferguson's severe mental illness rendered him dangerous and meant that he "should not be released under any circumstances" from a maximum security mental hospital. However, he was discharged and within three years was on death row. The diagnoses of serious mental illness, including by prison doctors, have continued since he has been on death row. In 1991 for example, the prison authorities assessed him as "suffering from chronic schizophrenia, paranoid type" and that he "has suffered from this disease for many years, probably as early as 1971; and his present competency to assist his counsel in legal proceedings is questionable at best".

The execution of a prisoner who lacks a rational understanding of the reason for and reality of their punishment, that is, who is "incompetent" for execution, violates the US Constitution. According to John Ferguson's lawyers, this is the case for their client who, among other things, believes his body will not remain in his grave, that he will come back to life after execution, that he will "sit at the right hand of God" and save the USA from a communist plot.

John Ferguson was previously scheduled for execution in October 2012. This was stayed while litigation ensued on the question of his competence. On 21 May 2013, a three-judge panel of the US Court of Appeals for the 11<sup>th</sup> Circuit upheld the Florida courts' finding that although Ferguson suffers from, and is not faking, serious mental illness, he "is aware that the State is intending to execute him and that he will physically die as a result of the execution". The 11<sup>th</sup> Circuit panel stated that Ferguson "believes, as tens of millions if not hundreds of millions of other people do, that there is life after death. Countless people also believe, as he does, that they are among God's chosen people. But Ferguson's religious belief is more grandiose than that because he believes he is the Prince of God". On 25 July, Ferguson's lawyers filed a petition before the US Supreme Court seeking a stay of execution and review of what they argue would be an unconstitutional execution.

### **Please write immediately in English or your own language:**

- Acknowledging the seriousness of the crimes for which John Ferguson was sentenced to death and the suffering such crimes cause;
- Expressing concern that the State of Florida is seeking to execute a man with a long history of serious mental illness that predates the crimes and has continued during his more than three decades on death row;
- Calling on Governor Scott to stop this execution and commute John Ferguson's death sentences.

### **PLEASE SEND APPEALS BEFORE 5 AUGUST 2013 TO:**

Governor Rick Scott, Office of the Governor, The Capitol, 400 S. Monroe St. Tallahassee, FL 32399-0001, USA

Email: [Rick.scott@eog.myflorida.com](mailto:Rick.scott@eog.myflorida.com)

Salutation: **Dear Governor**

**Also send copies to diplomatic representatives accredited to your country.**

Please check with your section office if sending appeals after the above date.

**AMNESTY  
INTERNATIONAL**



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### ADDITIONAL INFORMATION

Numerous individuals with histories of serious mental illness have been put to death in the USA since the US Supreme Court approved new capital statutes in 1976. In 1986, in *Ford v Wainwright*, the Court affirmed that the execution of the insane violated the US Constitution's Eighth Amendment ban on "cruel and unusual punishments". However, the *Ford* majority neither defined competence for execution (although Justice Powell's suggestion that the test should be whether the prisoner was aware of his or her impending execution and the reason for it was generally adopted by states), nor did a majority of the Court mandate specific procedures that must be followed by the individual states to determine whether an inmate was legally insane. The result was different standards in different states and minimal protection for seriously mentally ill inmates (see *USA: The execution of mentally ill offenders*, January 2006, <http://www.amnesty.org/en/library/info/AMR51/003/2006/en>).

In June 2007, in *Panetti v. Quarterman*, the Supreme Court moved to clarify the *Ford* ruling which it acknowledged had "not set forth a precise standard for competency" (see <http://www.amnesty.org/en/library/info/AMR51/114/2007/en>). The *Panetti* majority said that "A prisoner's awareness of the State's rationale for an execution is not the same as a rational understanding of it...Gross delusions stemming from a severe mental disorder may put an awareness of a link between a crime and its punishment in a context so far removed from reality that the punishment can serve no proper purpose." The court acknowledged that "a concept like rational understanding is difficult to define". In other words, there will always be errors and inconsistencies. Not only should the execution of mentally ill offenders be abhorrent even to those who do not oppose this punishment, so should arbitrariness. In the end, there is only one solution – abolition. In the meantime, the power of executive clemency should be used.

When the 11<sup>th</sup> Circuit upheld in May 2013 the Florida courts' finding that John Ferguson was competent for execution, one of the three judges wrote separately to point out that the Florida Supreme Court had failed to apply the *Panetti* standard correctly. Repeating in the Ferguson case what it had said in 2000 in the case of another mentally ill prisoner (Thomas Provenzano, who was subsequently executed, see <http://www.amnesty.org/en/library/info/AMR51/137/1999/en>), the state Supreme Court asserted that "the Eighth Amendment requires only that defendants be aware of the punishment they are about to receive and the reason they are to receive it". The 11<sup>th</sup> Circuit judge said: "that statement of the law is patently incorrect in the wake of *Panetti*... *Panetti* requires more".

Since John Ferguson has been on death row, dozens of countries have abolished the death penalty, bringing to 140 the number that are abolitionist in law or practice today. There are also signs that what the US Supreme Court terms "standards of decency" (a notion it cited in its *Ford* ruling) are evolving in the USA against this punishment. Using this measure, the Court outlawed the execution of offenders with mental retardation in 2002 and those under 18 years old at the time of the crime in 2005.

In addition, four US states have legislated to abolish the death penalty in the past four years – New Mexico (2009), Illinois (2011), Connecticut (2012) and Maryland (2013), and 18 states are now abolitionist. The annual number of death sentences in the USA has declined since its peak in the 1990s. Florida remains one of the states bucking this trend. In 2012, there were 22 death sentences passed in Florida, more than in any year since 1998 and more than 25 per cent of all new death sentences nationally. Legislation recently enacted in Florida threatens to increase the pace of executions in the state (see <http://www.amnesty.org/en/library/info/AMR51/038/2013/en>).

Amnesty International opposes the death penalty unconditionally. There have been 21 executions in the USA this year, and 1,341 nationwide since 1976. Florida accounts for 77 of these executions, three of which have been carried out this year.

Name: John Ferguson  
Gender m/f: m

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