

EXTERNAL (for general distribution)

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EXTRA 47/92

Death Penalty

27 April 1992

USA: Texas

Justin Lee MAY

Justin Lee May is scheduled to be executed in Texas on 7 May 1992. May is white and aged 44. He was convicted of the murder of Jeanetta Murdaugh, a white woman, who was shot dead during a shop robbery in Freeport, Texas, in 1978. The crime went unsolved for more than five years. In 1983, Justin May and Richard Miles were arrested for the murder. Richard Miles accepted a "plea bargain" from the state whereby he was allowed to plead guilty to non-aggravated non-capital murder after he testified that May had committed the murder.

In their petition for executive clemency, Justin May's lawyers presented new evidence which casts doubt on his guilt. They contended that the prosecution's case rested on "fabricated corroboration" and was fundamentally unsafe. The only two witnesses who claimed to identify May as the killer have since admitted that they lied at his trial. One was co-accused Richard Miles, the owner of the murder weapon. In exchange for his testimony that May had shot the victim, Miles' own capital indictment was dismissed. The other witness was in prison with May and Miles following their arrest. He testified that they talked about the crime and that May was identified as the killer. He later recanted his testimony in a lengthy affidavit. No fingerprints or other physical evidence found at the crime scene linked May to the murder.

Justin May suffers from brain damage and mental impairments stemming from the physical abuse he suffered as a child. A majority of the federal judges who heard his case on appeal considered his death sentence to be unconstitutional and unjust on the grounds of his mental impairment. His conviction and death sentence were, nevertheless, upheld on appeal. At his trial the jury did not learn that May suffered multiple illnesses as a child and endured regular, severe beatings from his father. On at least one occasion he was beaten to unconsciousness. May suffered numerous head injuries in early adulthood. In 1986, a medical examination revealed significant neurological brain damage and psychological abnormalities.

Justin May has a good behavioural record in prison. Prison officials as well as family and friends have urged that he not be executed. His supervisors in the prison factory describe him as cooperative, respectful and productive. In an affidavit to the clemency petition they stated, "we do not believe he would be a threat to the prison society if he were given a life sentence instead of being executed."

BACKGROUND INFORMATION

Amnesty International is deeply concerned at the increasing number of execution dates being set and the high rate of executions in Texas.

Texas leads the nation in death sentencing and executions. At the beginning of 1992 there were 345 prisoners under sentence of death. Forty-seven prisoners have been executed since 1982 - nearly twice as many as in any other US state. Texas has executed five prisoners so far in 1992, the most recent being Billy White on 23 April (see further information on EXTRA 41/92, AMR 51/57/92, 24 April 1992). The method of

execution is lethal injection.

In February 1992 the US Supreme Court agreed to rule in a Texas death penalty case whether the US Constitution permits the execution of an innocent person (Herrera v Collins, decision expected in 1993). The case is that of Leonel Herrera who, like Justin May, has presented the federal courts with evidence supporting his claim of innocence (see EXTRA 50/91, AMR 51/25/91, 7 August 1991, and most recent further information, AMR 51/52/92, 14 April 1992).

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Clemency has not been granted to any prisoner under sentence of death in Texas since the death penalty was reintroduced there in the mid-1970s. Since 1976 Texas has, however, been forced by the courts to release four death row prisoners after evidence emerged which cast doubt on their guilt. Under the Texas clemency rules, the governor may commute a death sentence only if she receives a favourable clemency recommendation from the 18-member Board of Pardons and Paroles. The Board has convened only very rarely to consider petitions for clemency. Their reluctance to hold full clemency hearings is a matter of great concern to Amnesty International.

Amnesty International opposes the death penalty in all cases as a violation of the right to life and the right not to be subjected to cruel, inhuman or degrading treatment or punishment, as proclaimed in the Universal Declaration of Human Rights.

RECOMMENDED ACTION: Please send telegrams/telexes/faxes/express and airmail letters:

- urging the Texas Board of Pardons and Paroles to convene a clemency hearing to consider the case of Justin Lee May;
- asking the Board to recommend that Governor Richards grant clemency to Justin Lee May by commuting his death sentence;
- expressing grave alarm at the move by the state of Texas to proceed with May's execution despite evidence that a miscarriage of justice may have occurred;
- as a minimum measure, requesting that Justin May's execution be stayed pending the US Supreme Court's ruling on the important constitutional issue raised in the case of Leonel Herrera given the similarity between the two cases;
- making reference to Justin May's childhood abuse and mental impairments as strong additional grounds for granting clemency;
- expressing deep concern at the increasing numbers of executions being scheduled in Texas, and at the state's high rate of executions.

APPEALS TO

1. Texas Board of Pardons and Paroles
8610 Shoal Creek Boulevard, PO Box 13401
Capitol Station
Austin, TX 78758-6887
USA

Telegrams: Texas Board Pardons/Paroles, Austin, TX 78711, USA

Telephone: +1 512 459 2782

Faxes: +1 512 459 2790; +1 512 406 5231

[Salutation: Dear Board Members]

COPIES OF YOUR APPEALS TO:

The Honorable Dan Morales	Austin, TX 78711-2548
Office of the Attorney General	USA
PO Box 12548, Capitol Station	Faxes: +1 512 463 1849

The Honorable Ann Richards
Governor of Texas
Office of the Governor
PO Box 12428, Capitol Station
Austin, TX 78711
USA

Faxes: +1 512 463 1849

and to diplomatic representatives of the USA in your country.

PLEASE SEND APPEALS IMMEDIATELY. Check with the International Secretariat, or your section office, if sending appeals after 6 May 1992.