

PUBLIC

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Death penalty

03 May 2005

USA (Oklahoma)

Garry Thomas Allen (m), black, aged 48

Garry Allen is scheduled to be executed in Oklahoma on 19 May 2005. He was sentenced to death for the 1986 murder of Gail Titsworth, with whom he had had two children. The Oklahoma Pardon and Parole Board has recommended that Governor Brad Henry commute Garry Allen's death sentence.

Garry Allen shot Gail Titsworth on 21 November 1986; three days after she had moved out from their home with their two sons, aged six and two. The shooting occurred outside a day care centre in Oklahoma City where she had gone to pick up the two boys. The two adults argued, culminating in Garry Allen pulling out a revolver and shooting Gail Titsworth. Allen walked away, but as a day care centre employee was helping Gail Titsworth into the centre, he returned and shot Titsworth in the back despite her pleas for mercy.

A police officer in the area responded within minutes to the shooting. There was a struggle between the officer and suspect, during which Allen was shot in the face with the officer's gun. Allen was taken to hospital where he remained for the next two months. As a result of the gunshot wound, Garry Allen lost his left eye, the hearing in one ear, and suffered permanent brain damage.

Doubt was raised about Garry Allen's competency to stand trial, that is, about his ability to appreciate the nature of the charges against him or to consult with his lawyer and to assist in his defence. After a hearing, the trial court found him incompetent to stand trial but capable of achieving competence. He was committed to Eastern State Hospital where he remained for the next four months and was treated, including with anti-psychotic medication. At competency proceedings in October 1987, a jury heard evidence of the brain damage Allen had suffered as a result of the gunshot wound, and evidence from an Eastern State Hospital psychiatrist who testified that although Allen suffered long-term depression, with an associated history of substance abuse, and some short-term and long-term memory loss, he was competent to stand trial. The jury found that Garry Allen had not met the burden of proving his incompetence by clear and convincing evidence, thus finding him competent to stand trial.

Less than a month later, on 10 November 1987, Garry Allen entered a "blind plea" of guilty to first degree murder. Under a blind plea, no sentence is negotiated with the prosecution, and the court is free to impose any sentence up to the maximum. A blind plea abandons all defences, including a conviction on a lesser offence that does not carry the death penalty. It abandoned a jury sentencing at which all 12 jurors would have had to agree to a death sentence before one could be imposed. The court found him competent to make such a plea. At a later post-conviction evidentiary hearing, his trial lawyer testified that, in her view, Gary Allen was incompetent to make such a plea and had not fully understood what he was giving up by so pleading. Allen was sentenced to death, but this first sentencing hearing was overturned because the available option of life imprisonment without the possibility of parole had not been considered. A second sentencing hearing was held, and he was again sentenced to death.

At this second sentencing hearing before a judge, Garry Allen explained his decision to plead guilty. He said that he had already put his and Gail Titsworth's family through enough suffering: "I just thought, you know, that if I committed the crime and admitted committing the crime that that would end it for everybody because to stretch things out does nobody any good... I just didn't want to put people through this. I just didn't want to do that. Man, the people might look at my family and they might associate that my family has been in some way responsible for what happened, but it was solely my actions. It was something that I did and I don't want people to have misconceptions about my family, you know... It just didn't seem to me to be necessary to be dragging other people in because I am the one responsible for this crime."

The defence presented an expert to detail mitigating evidence. Dr Nelda Ferguson testified that Garry Allen had been raised in poverty in an unstable family environment, that he had been rejected by his alcoholic mother, and that he himself had suffered debilitating mood swings which resulted in numerous suicide attempts. In his late teens Garry Allen began to abuse alcohol and drugs. He was treated for psychological problems, including while serving in the Navy. The mitigation expert concluded that Garry Allen had a personality disorder related to schizophrenia. At the sentencing, his parents also appeared as witnesses, testifying that there was mental illness on both sides of the family. The defendant himself testified that he drank as much alcohol as he could as often as he could. He testified that around the time of the murder, he was “drinking a lot” and “drinking just about every day at that point”.

Garry Allen has epilepsy, which has apparently worsened during his time on death row. He has frequent seizures and doctors have said that he is so confused for periods after these seizures that he would not understand the reality of or reason for his impending execution. In 1993, Garry Allen’s IQ was measured at 111, above average. By 1999, it had dropped to 75. Doctors have reportedly put this down to his ongoing epileptic seizures combined with head injuries.

After having been presented with such evidence at a clemency hearing on 20 April 2005, the Oklahoma Pardon and Parole Board recommended by four votes to one that Governor Brad Henry commute Garry Allen’s death sentence to life imprisonment. An Assistant Attorney General, pursuing the execution for the state, was quoted as saying that he believed that Garry Allen was faking his mental impairments: “It is easier to act stupider than you are. It’s impossible to act smarter than you are. This guy now knows, play up my seizures, play down my IQ.”

BACKGROUND INFORMATION

Oklahoma has the highest rate of execution per capita of its population of all the US death penalty states. It ranks 27th of the 50 US states in terms of population and third in the number of executions carried out since the USA resumed judicial killing in 1977. It accounts for 76 of the nationwide total of 962 executions since that year. Oklahoma has violated international law and standards in its pursuit of judicial killing and its prosecutors have earned a reputation for misconduct in capital cases (see AI report *Old habits die hard: The death penalty in Oklahoma*, AMR 51/055/2001, April 2001).

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 and friends of Gail Titsworth, and explaining that you are not seeking to excuse the manner of her death or to downplay the suffering that it will have caused;
- opposing the execution of Garry Allen;
- welcoming the recommendation for clemency by the Oklahoma Pardon and Parole Board;
- urging the Governor to accept the recommendation and to commute Garry Allen’s death sentence.

APPEALS TO:

Governor Brad Henry

State Capitol Building, 2300 N. Lincoln Blvd., Room 212 , Oklahoma City, OK 73105, USA

Fax: +1 405 521 3353

Salutation: Dear Governor

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

PLEASE SEND APPEALS IMMEDIATELY.