

URGENT ACTION

TEXAS MAN FACES EXECUTION FOR CRIME AT AGE 19

Anthony Haynes is due to be executed in Texas on 18 October for the murder of an off-duty police officer committed when he was 19 years old. Claims of racial discrimination, inadequate legal representation and judicial misconduct have marked the case.

In 1999, **Anthony Haynes** was convicted of the fatal shooting of off-duty police officer Kent Kincaid in Houston, Texas on 22 May 1998. To obtain a death sentence, the state had to persuade the jury that Anthony Haynes would be a continuing threat to society, even in prison. Although the defendant had no prior criminal record that the state could point to, its case was helped by the defence lawyers' failure to present a range of available mitigation evidence. For example, the jury was not told that only two days before the shooting, Anthony Haynes had taken crystal methamphetamine for the first time, which affected his ability to make decisions. Neither was the jury told that he has a history of Attention Deficit Hyperactivity Disorder and other mental health problems, and no expert testimony was provided on the mitigating effects of youth. Numerous people have signed statements since the trial that the crime was far out of character for a person they knew as non-violent and respectful. Many stated that they were willing to testify at the trial but were not contacted by the defence. On death row, Anthony Haynes is said to have been a model inmate, and to have repeatedly expressed his deep remorse for the crime.

After the trial, the failure of the court-appointed habeas corpus lawyer to raise issues in state appeals – including the claim of poor legal representation at trial – meant that such issues were barred from federal judicial review.

Anthony Haynes is black. Kent Kincaid was white. The jury at the 1999 trial had one African-American juror on it, after the prosecution used "peremptory strikes" (dismissals without giving a reason) to dismiss four of the six prospective black jurors during jury selection. In 2009, the Court of Appeals for the Fifth Circuit ruled that Anthony Haynes should get a new trial, but the US Supreme Court overturned this and sent the case back to the Fifth Circuit. This time the Fifth Circuit upheld the death sentence, even while stating that "the circumstantial indications of intentional racial discrimination in this case" had "some persuasive value". It also considered the fact that the judge who oversaw the questioning of prospective jurors had been cleaning two guns while doing this. Although stating that "such behaviour is not commendable", the Fifth Circuit rejected the claim that the judge's conduct should lead to relief.

Please write immediately, in English or your own language, citing Anthony Haynes's Inmate No. #999330:

- Explaining that you do not seek to downplay the seriousness of the crime or the suffering caused;
- Expressing concern that the jury was not given a full picture of the defendant when deciding on the sentence and that the state habeas lawyer failed to raise issues on appeal, causing them to be defaulted;
- Expressing concern at the appearance of racial discrimination during jury selection;
- Noting that Anthony Haynes was only 19 at the time of the crime, and his model conduct on death row;
- Opposing this execution and calling for Anthony Haynes to be granted clemency.

PLEASE SEND APPEALS BEFORE 18 OCTOBER 2012 TO:

Clemency Section, Texas Board of Pardons and Paroles

8610 Shoal Creek Blvd. Austin, TX 78757-6814, USA

Fax: +1 512 467 0945

Email: bpp-clemency@tdcj.state.tx.us

Salutation: **Dear Board members**

Governor Rick Perry

Officer of the Governor, PO BOX 12428

Austin, TX 78711-2428, USA

Fax: + 1 512 463 1849

Salutation: **Dear Governor**

Send copies of appeals to diplomatic representatives accredited to your country. Please insert local diplomatic addresses below:

Name Address 1 Address 2 Address 3 Fax Fax number Email Email address Salutation Salutation

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

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ADDITIONAL INFORMATION

Under the 1986 US Supreme Court decision *Batson v Kentucky*, prospective jurors can only be removed for “race neutral” reasons. If the defence makes a *prima facie* case of discrimination by the prosecution during jury selection, the burden shifts to the state to provide race neutral explanations for its dismissal of black jurors. After the prosecutor in Anthony Haynes’ 1999 trial peremptorily dismissed four of the six prospective black jurors, the defence raised a *Batson* claim. The prosecutor gave his reasons for the dismissals, focussing on what he said was the “demeanour” of the prospective jurors. The judge accepted, without comment, the reasons as “race-neutral”. However, this judge was not the one who had actually overseen the questioning of the jurors (the one who had overseen that part was the judge who in 2000 was reprimanded by the Texas State Commission on Judicial Conduct after finding that he had “disassembled and reassembled two revolvers” during jury selection). The question arose, then, as to how the judge adjudicating the *Batson* claim could assess the state’s reasons when he had not been there to observe the demeanour, body language and attitudes that the prosecutor claimed were the reason the four African Americans had been dismissed. In 2009, the Fifth Circuit decided that no court, including the Fifth Circuit, could “now engage in a proper adjudication of the defendant’s demeanor-based *Batson* challenge” because it would have to rely “solely on a paper record”. It decided that Anthony Haynes should get a new trial or be released. The Supreme Court overturned this decision, saying that if it were allowed to stand, it would have “important implications”.

Since resuming executions in 1982, Texas has killed at least 70 people in its execution chamber who were aged 17, 18 or 19 at the time of the crimes. Over half of these teenagers were African American, of whom 70 per cent were convicted of crimes involving white victims. Anthony Haynes is one of about 40 prisoners now on death row in Texas for crimes committed when they were 18 or 19. More than half of them, like Anthony Haynes, are black. In its 2005 ruling prohibiting the death penalty against anyone who was under 18 at the time of the crime, the US Supreme Court recognized the immaturity, impulsiveness, and poor judgment associated with youth, as well as the susceptibility of young people to “outside pressures, including peer pressure”. The Court also acknowledged that “the qualities that distinguish juveniles from adults do not disappear when an individual turns 18”. Indeed, scientific research shows that brain development continues into a person’s 20s. In 1993, in the case of a Texas death row prisoner who was 19 at the time of the crime, the Supreme Court said that there was “no dispute that a defendant’s youth is a relevant mitigating circumstance” that a capital sentencing jury must be able to consider. The Court emphasised that: “youth is more than a chronological fact. It is a time and condition of life when a person may be most susceptible to influence and to psychological damage. A lack of maturity and an underdeveloped sense of responsibility are found in youth more often than in adults... These qualities often result in impetuous and ill-considered actions and decisions... [T]he signature qualities of youth are transient; as individuals mature, the impetuosity and recklessness that may dominate in younger years can subside.” Among those appealing for clemency for Anthony Haynes is his father, a retired Assistant Chief Investigator with the Houston Fire Department: “The execution of my son, Anthony C. Haynes by the State of Texas will have a devastating effect on my whole life... Since Anthony is my only child, one of my main purposes for living will be taken away from me by his execution... I am asking you to spare my son’s life, because I know the decisions he made as a teenager are not the decisions he has made as a man. My son is a changed person who has a heart of remorse for taking Sgt. Kincaid’s life”.

Anthony Haynes is one of more than 100 inmates now on death row in Texas who were tried in Harris County. Of the 484 people put to death in Texas since the USA resumed executions in 1977, 116 were convicted in Harris County. If Harris County were a state, it would lie second only to the rest of Texas in the number of executions. Texas accounts for some 37 per cent of the national judicial death toll, which currently stands at 1,304 since 1977. There have been 27 executions in the USA in 2012, seven of them in Texas. Amnesty International opposes the death penalty in all cases, unconditionally.

Name: Anthony Haynes

Gender m/f: m

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