

PUBLIC

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Further information on UA 195/08 (AMR 51/073/2008, 8 July 2008) – Death penalty/Legal concern

USA (Alabama) Thomas Douglas Arthur (m), white, aged 66

Thomas Arthur was granted a stay of execution on 30 July, the day before he was scheduled to be put to death. The Alabama Supreme Court issued the stay by five votes to four.

Thomas Arthur was sentenced to death for the murder of Troy Wicker in Muscle Shoals, Colbert County, northern Alabama, in 1982. The victim's wife, Judy Wicker, was also convicted and sentenced to life imprisonment for the murder. She was released on parole after testifying at Thomas Arthur's 1991 retrial. This testimony, given by an admitted perjurer who had an incentive to lie at Arthur's retrial, forms the basis of Arthur's conviction, in addition to disputed circumstantial evidence. Thomas Arthur has always maintained his innocence of the murder (see original UA referenced above and earlier UA on Thomas Arthur's case, UA 225/07, 30 August 2007, <http://www.amnesty.org/en/library/info/AMR51/137/2007/en>).

On 28 July, Thomas Arthur's lawyers obtained an affidavit from another Alabama prisoner, Bobby Ray Gilbert, serving a life sentence, who said that he had killed Troy Wicker. He said that he had been having an affair with Judy Wicker in 1982, and that she had asked him to kill her abusive husband. He said that he shot Troy Wicker with a sawn-off .22 rifle which he had been given by his grandfather when he was seven years old. He said that after the murder, while still at the crime scene, he and Judy Wicker had had sex. About two or three weeks after the murder, he said, Judy Wicker had paid him \$2,000 for the killing. In his affidavit Gilbert claimed that he wanted "to set the record straight," and was "no longer afraid since the US Supreme Court ruled that a minor cannot receive the death penalty" (he stated that he was 17 years old at the time of the murder). On 29 July, Arthur's lawyers filed an emergency motion for a stay of execution.

The Alabama authorities obtained an affidavit from Judy Wicker who stated that "none of Gilbert's allegations are true. I do not know anyone named Bobby Gilbert... I hired and paid money to Thomas Arthur, not Bobby Gilbert, to kill Troy Wicker." The state opposed Tommy Arthur being allowed back into the courts, arguing that "Bobby Gilbert's affidavit is wholly without credibility because: (1) Gilbert's extensive list of convictions that include a murder and a capital murder, among other convictions, establishes that he is a despicable human being who has no credibility; (2) the time of Gilbert's 11th hour affidavit makes it suspect; and (3) Gilbert's affidavit [is] inconsistent with the overwhelming evidence that convinced three separate juries to convict Arthur for capital murder" (his first two convictions were overturned on technicalities). The state has also maintained that Bobby Gilbert lied about his birth date and that prison records indicate that he would have been 15 years old at the time of the Wicker murder.

At her own trial, Judy Wicker had testified that Thomas Arthur was not involved in the murder, but that a stranger had killed her husband, and had also raped her. This was the same version of events that she had given the police at the time of the murder. However, at Arthur's 1991 retrial, she testified that on the day of the murder she and Thomas Arthur had gone to the house together, and that she had agreed to tell the police that her husband had been murdered by an African-American burglar. In support of his argument that he should be allowed back into court for a hearing on his innocence claim, Thomas Arthur has sought to have modern DNA testing conducted on various pieces of evidence related to the crime, including Judy Wicker's bloodstained clothing, the rape evidence, and hair samples. Such testing, it is argued, could establish that someone other than him was at the crime scene, thereby discrediting Judy Wicker's trial testimony against

Arthur. The State of Alabama has not granted his request to be allowed to conduct DNA testing of evidence relating to the crime.

In their 30 July brief opposing a stay of execution, the Alabama prosecuting authorities revealed that their "efforts to determine whether the rape kit performed on Judy Wicker is still available for DNA testing" had been unsuccessful. In a 29 July affidavit filed with their brief, an Assistant Attorney General stated that "within the last six months, I contacted individuals with the Muscle Shoals Police Department, the Colbert County District Attorney's Office, and the Alabama Department of Forensic Sciences, who told me that they do not have possession of a rape kit performed on Judy Wicker." Thomas Arthur's lawyers described the apparent loss of the evidence of the rape kit as "astounding."

The Alabama Supreme Court issued its narrow decision in favour of a stay on 31 July, stating that Thomas Arthur's execution was to be "stayed pending further orders of this Court."

No further action by the UA Network is requested at present. Many thanks to all who sent appeals.