

URGENT ACTION

ANOTHER TEXAS EXECUTION SET FOR CRIME AT 19

Forty-year-old Bobby Hines is due to be executed in Texas on 24 October for a murder committed when he was 19. The jury that sentenced him to death heard no expert mitigation evidence about the impacts of his severely abusive childhood.

On 20 October 1991, the body of 26-year-old Michelle Haupt was found in her apartment in Dallas. She had been stabbed and strangled. **Bobby Hines**, aged 19, was charged with her murder committed during a burglary. He was convicted in March 1992 and after a sentencing phase that lasted one day, the jury voted for the death penalty. In 2002, the US Supreme Court banned the execution of people with "mental retardation". Evidence was put before the courts that Bobby Hines had such an intellectual disability, but the claim was rejected. In 2005, the Supreme Court banned the execution of anyone under 18 at the time of the crime, recognizing the immaturity, impulsiveness, and poor judgment associated with youth. While this does not exempt an individual who was 19 at the time of the crime, the ruling noted 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, the Supreme Court wrote in the case of a 19-year-old offender that youth is "a time and condition of life when a person may be most susceptible to influence and to psychological damage." Bobby Hines' childhood was marked by severe abuse, poverty and neglect. A mitigation expert who has reviewed his case describes this childhood as "a nightmarish hell, full of fear, pain and despair", particularly due to the violence inflicted by the alcoholic father (who is now serving a life sentence for the aggravated sexual assault of a child). The mother took the brunt of the violence, witnessed by the children, with Bobby "a close second" due to the father's apparent belief that the boy was not his biological son. The children experienced frequent hunger and homelessness as the father used much of the family's money on alcohol. From about the age of 13, Bobby Hines began using marijuana, amphetamines, alcohol and inhalants (substance abuse is one common emotional pain-numbing response to severe childhood abuse).

His jury heard some information about this background, but no expert testimony was presented by the defence as to how it had affected his conduct. This facilitated the state's portrayal of him as a dangerous and "incurable" individual in order to persuade the jury that he would be a future risk to society if allowed to live, a pre-requisite for a death sentence in Texas. The claim of inadequate assistance of trial counsel was not raised in state appeals, and so was barred from federal review. Bobby Hines' current lawyer is seeking to get back into court on this issue.

Please write immediately, in English or your own language, citing Bobby Hines' Inmate No. #999025:

- Explaining that you do not seek to downplay the seriousness of the crime or the suffering caused;
- Noting that Bobby Hines was only 19 at the time of the crime and has spent 20 years on death row;
- Expressing concern that the jury heard no expert mitigation testimony about the impact on the defendant of his childhood of severe abuse, poverty, deprivation and neglect;
- Opposing this execution and calling for Bobby Hines to be granted clemency.

PLEASE SEND APPEALS BEFORE 24 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-pio@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 check with your section office if sending appeals after the above date.

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ADDITIONAL INFORMATION

According to his clemency petition, when Bobby Hines was four, his mother left her alcoholic husband – with whom she had lived since the age of 15 and married at 16 – in order to escape his abuse (she fled with the children after he came home one night, cut off her clothes with a knife and threatened to kill her). For a while she lived in a parked car with three of her four children, including Bobby. They later went to a refuge, but after a short time she decided that she could not care for the children and they were returned to the custody of their father. Bobby Hines' older brother has said that he does not know "how we survived" once they were living back with their father. In addition to physical and emotional abuse, he frequently used to abandon them, without food or money, from Fridays to Mondays while he went drinking in the neighbouring state of Oklahoma.

The children's home life was "chaotic", and Bobby Hines' elementary school records note that his address changed seven times and he switched schools five times. The state Child Protective Services became involved with the family given the evidence of sexual and physical abuse. The clemency petition recalls an incident when Bobby Hines was 12 years old when his father knocked him and his brothers down, and kicked and threatened to kill Bobby. His sister has recalled that Bobby witnessed their father's sexual assault on her, but was powerless to stop it, taking refuge on the roof of the house. He and his sister told the authorities they "couldn't take it any more" and their father was arrested. He pled guilty to assault and was placed on a year's probation. Bobby Hines was placed in foster care, but during this time was allegedly subjected to further physical abuse. He tried again to live with his mother at the age of 13, but this lasted only a matter of weeks, and he was returned to live with his father. Over time, Bobby Hines came into conflict with the law, and took to alcohol and drug abuse.

On death row, after his ordinary appeals were exhausted, Bobby Hines was scheduled for execution in 2003. This was stayed while the question of whether he had "mental retardation" was decided. In 2002, the US Supreme Court had ruled in *Atkins v. Virginia* that the execution of people with "mental retardation" was unconstitutional. In support of his "Atkins claim", his lawyers submitted school and other records indicating that he had significant limitations in intellectual functioning, and statements from teachers, an employer and family members attesting to his mental and adaptive deficits. Two experts, one of whom had assessed his IQ at 69, concluded that he had mental retardation while a third concluded that he did not. The state court, without holding a hearing, decided that Bobby Hines did not qualify for *Atkins* relief. A federal court then held an evidentiary hearing at which his lawyers introduced the results of two recently administered tests which had put his IQ at 70 and 71. However, the judge concluded that an IQ score of 96 achieved when he was 13 (the reliability of which has been questioned by Bobby Hines' current lawyer), along with other evidence, supported the state court's finding that his intellectual functioning was not "significantly sub-average" before the age of 18.

The mitigation expert who has reviewed the case has concluded that the mitigating factors "are numerous and complex", including youth, low intellectual functioning, impaired adaptive functioning, and issues of "complex trauma" relating to abuse, abandonment, rejection, poverty and neglect. She adds that the failure of the trial lawyers to present expert testimony deprived the jurors of "critical mitigating factors that could have impacted their decision whether to sentence Bobby to life or death".

There have been 1,308 executions in the USA since 1977, with Texas accounting for 487 of these, and 10 of the 31 executions in the USA so far this year. Since 1986, Texas has executed more than 70 people who were aged 17, 18 or 19 at the time of the crimes. It has conducted two executions this year of prisoners who were 19 at the time of the crime, and Bobby Hines is one of two such inmates due to be executed this month (see <http://www.amnesty.org/en/library/info/AMR51/084/2012/en> and <http://www.amnesty.org/en/library/info/AMR51/042/2012/en>). The execution of Bobby Hines is set to be the 250th under the current Texas Governor (since 2001). Amnesty International opposes the death penalty in all cases.

Name: Bobby Hines

Gender m/f: m

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