

PUBLIC

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Death penalty

USA (Arizona) Robert Charles Comer (m), white, aged 50

Robert Comer is scheduled to be executed in Arizona on 22 May. He has been on death row for nearly 20 years. He has given up his appeals. An execution has not been carried out in Arizona since November 2000.

Robert Comer was convicted in 1988 of the first-degree murder of Larry Pritchard who was shot and stabbed on 3 February 1987 at a campsite in Apache Lake, Arizona. In the case of two other campers, Jane Jones and Richard Smith, he was also convicted on charges of kidnapping, assault and sexual assault. Robert Comer's co-defendant Juneva Willis faced the same charges. After providing testimony against him, she pleaded guilty to one count of kidnapping and the remaining charges were dropped.

Robert Comer appeared briefly in court at the beginning of his trial in 1988. He then waived his right to be present at the rest of the proceedings. After seven days of evidence being presented, the jury found him guilty on all counts. While presenting the closing argument the prosecutor repeatedly referred to him as a "monster", "filth" and a "reincarnation of the devil" and compared the crimes to a horror film. On the day of his sentencing, Robert Comer barricaded himself in his cell. He was forcibly brought out for the court appearance. At the sentencing Robert Comer was shackled to a wheelchair and, except for a towel around his waist, he was naked. He was slumped to one side and he had visible abrasions on his body. After asking officials in the court whether Robert Comer was conscious, the judge sentenced him to death.

Robert Comer's state appeals were exhausted in 1994 and then in 1997 a District Court denied his first federal appeal. Robert Comer wrote to the state authorities in 1998 stating that he no longer wanted to pursue his appeals. In 2000 the US Court of Appeals for the Ninth Circuit noted its "grave concerns that a mentally disabled man may be seeking this court's assistance in ending his life" and so referred the case back to the District Court. The requested hearing was to assess the question of Comer's competence in waiving his appeal rights, including consideration of his history of irrational behaviour and an assessment of the impact that his conditions of confinement may have had on his decision.

At the evidentiary hearing before District Court Judge Roslyn Silver, a psychiatrist for the defence testified that in his opinion Comer was suffering from a major depressive disorder, post-traumatic stress disorder and SHU (Segregated Housing Unit) syndrome. Judge Silver reviewed Comer's past and current conditions of confinement. Between 1979 and 1984, Comer had been incarcerated in California, including some two and a half years in various SHUs. During this time, class action litigation had established that conditions in these SHUs were appalling, with debilitating effects on the physical and psychological health of the inmates. Judge Silver found that it was "undisputed that Mr Comer endured most, if not all and possibly worse, of these deplorable conditions" while he was confined in the Californian facilities.

After his arrest Robert Comer was held in Maricopa County Jail, where he was kept in a single cell 24 hours a day. A few months after he was sent to death row, Robert Comer was placed in administrative segregation for disciplinary infractions. He has since been held in isolation in Special Management Units (SMUs). Judge Silver stated "Undeniably, some people do not have the mental health and the adaptive skills to tolerate segregated housing and will immediately or inevitably develop psychiatric illnesses when housed in these units. Mr Comer, however, has developed the means to cope with the conditions, and he exercises the initiative to ensure that he maintains his mental health while housed in them". The Judge stated that despite "his conditions [having] had some effect on his decision, they have not had a substantial effect nor have they rendered his decision involuntary." She ruled that his conditions of confinement had left him with no mental disorder.

She agreed with the court-appointed expert who “confirmed that Mr. Comer’s decision was a mature one that has come from introspection. He testified that he regrets what he did; he realizes that he has hurt many people in his life; and he’s made the decision that the punishment awarded for the crime is just and he’s ready to participate in it.” Judge Silver stated that “It is now clear to the Court that his decision is a rational one.” She emphasized that “what is most important to Mr. Comer is that he has the opportunity to choose. He has made a competent and free choice, which is merely an example of doing what you want to do, embodied in the word liberty. He should be afforded that choice.”

In 2006, two judges in a three-judge panel from the Ninth Circuit ruled that Comer’s treatment during his 1988 sentencing “shocks the conscience and warrants reversal of his sentence.” They stated that: “The appearance of this naked, bleeding, shackled man was a severe affront to the dignity and decorum of the judicial proceedings. We have never before read of a man being sentenced to death, or even presented to a court, under such circumstances... Comer is entitled to a new sentencing hearing”. One of the three judges dissented saying that Comer had already given up his appeals and the appeals court “had no right to reach the merits” of Comer’s case. In March 2007, the full Ninth Circuit court overturned the panel decision and upheld Judge Silver’s ruling that Comer was competent to waive his appeals.

The phenomenon of prisoners giving up their appeals and “volunteering” for execution contributes to the arbitrariness of the death penalty in the USA. If the more than 120 “volunteers” executed since 1977 had pursued their appeals there is a significant possibility, given the rate of reversible error found in capital cases, that a number of them would have had their death sentences commuted by the appeal courts to prison terms.

Various factors may contribute to a prisoner’s decision not to pursue appeals against their death sentence, including mental disorder, physical illness, remorse, bravado, religious belief, a quest for notoriety, the severity of conditions of confinement, prolonged isolation, lack of visits, the alternative of life imprisonment without parole, pessimistic appeal prospects, despair generated by winning and then losing appeals, or the desire to gain a semblance of control over a situation in which the prisoner is otherwise powerless.

Amnesty International questions whether a decision taken by someone who is under threat of death at the hands of others can be truly voluntary. Even if it were, there is no disguising the fact that the state is pursuing a killing that is at least as calculated, and in all likelihood more so, as any murder for which the condemned inmate is being punished. Amnesty International opposes the death penalty in all cases, unconditionally. There have been 1,074 executions in the USA since 1977, 22 of them in Arizona.

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 victims of violent crime and acknowledging the suffering it causes;
- expressing concern that Arizona is set to carry out the execution of Robert Comer;
- voicing your unconditional opposition to the death penalty, in this and all cases;
- urging the state of Arizona not to take the backward step of resuming executions after seven years;
- calling on the authorities below to support a moratorium on executions in Arizona, with a view to abolition of a punishment that a clear majority of countries have abandoned.

APPEALS TO:

Arizona Board of Executive Clemency, 1645 W. Jefferson Street, Suite 101, Phoenix, Arizona 85007, USA

Fax: +1 602 542-5680

Email: inquiries@aboec.az.state.us

Salutation: Dear Board Members

The Honorable Janet Napolitano, Governor, 1700 West Washington, Phoenix, Arizona 85007, USA

Fax+ 1 602 542 1381

Email via: <http://azgovernor.gov/Contact.asp>

Salutation: Dear Governor

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

PLEASE SEND APPEALS IMMEDIATELY. Check with the International Secretariat, or your section office, if sending appeals after 22 May.