

EXTRA 45/02

Death pen**USA (Texas) Gary Wayne Etheridge, white, aged 38**

Gary Etheridge is scheduled to be executed in Texas on 27 June 2002. He was sentenced to death in November 1990 for the murder of Christi Chauvierre in February of that year.

Fifteen-year-old Christi Chauvierre was sexually assaulted and stabbed to death during a robbery of her home in Brazoria County. Her mother, Gail Chauvierre, was also stabbed during the crime, but survived.

Gary Etheridge was convicted of the murder. At the sentencing phase of the trial, his court-appointed lawyer called no mitigation witnesses, and Etheridge was sentenced to death.

In December 1996, Gary Etheridge was appointed another lawyer for his state *habeas corpus* appeals. This lawyer had only graduated from law school two years earlier and had been licenced by the Texas Bar in May 1995. He had never represented a capital defendant at trial, and had never filed a state or federal *habeas* appeal in any case, capital or non-capital.

Within weeks of this lawyer being appointed, Gary Etheridge repeatedly attempted to have him removed from the case, fearing that he was not sufficiently experienced or resourced to handle such an appeal. Etheridge himself filed a motion seeking the appointment of another lawyer. The Texas Court of Criminal Appeals denied the motion.

The lawyer subsequently filed the appeal. He had discovered that there was substantial mitigation evidence which the trial lawyer could have presented at the sentencing phase for the jury to set against the aggravating evidence of Gary Etheridge's criminal record and involvement with illegal drugs which the state had presented as reasons for his execution. The mitigating factors included evidence of Gary Etheridge severely abusive upbringing. He was allegedly physically abused by his father, who was often drunk; his mother suffered mental illness and made repeated suicide attempts, one of which Gary Etheridge had witnessed as a child. Gary Etheridge was allegedly raped by an older brother when he was six years old, as a result of which he had to be hospitalized. He was also allegedly raped when he was in prison prior to the murder of Christi Chauvierre.

The appeal lawyer nevertheless failed to raise a claim that Gary Etheridge's trial representation had been inadequate at the sentencing phase of the 1990 trial. His failure apparently stemmed from his incorrect understanding of the law in this area as it related to Texas capital cases.

After the Texas Court of Criminal Appeals denied the appeal in April 1998, the case moved into the federal courts. A new lawyer raised a claim that Gary Etheridge's trial lawyer had been ineffective at the sentencing phase of the trial. The federal courts have dismissed the claim on the grounds that it had been "procedurally defaulted", that is, unavailable for federal review because it was not properly raised in the state courts.

BACKGROUND INFORMATION

Amnesty International opposes the death penalty in all cases, regardless of questions of guilt or innocence, the seriousness of the crime, the existence or absence of mitigating evidence, or the method used by the state to kill the prisoner. The organization believes that every death sentence is an affront to human dignity, and every execution a symptom of a culture of violence rather than a solution to it. The victims of violent crime and their families are deserving of respect, compassion and justice; retributive killing is surely not the way to achieve these goals.

A clear majority of countries - currently 111 - have abolished the death penalty in law or practice. The international community has ruled out the death penalty as a sentencing option in international courts for even the worst crimes - genocide, war crimes, and crimes against humanity. The USA's continuing resort to this punishment, often in ways and cases which violate international minimum safeguards, starkly gives the lie to its claims to be a progressive force for human rights in the world. Since resuming executions in 1977, 780 men and women have been put to death across the United States. Texas accounts for 271 of these executions. Fifteen of the 31 prisoners executed in the USA this year have been killed in Texas.

Texas has regularly violated international law or safeguards in its pursuit of judicial killing. One such safeguard requires that capital defendants receive adequate legal representation "at all stages of proceedings", above and beyond that provided in non-capital cases.

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 of Christi Chauvierre, and explaining that you are not seeking to condone the manner of her death or the suffering it will have caused;
- opposing the execution of Gary Etheridge;
- expressing concern that Gary Etheridge's trial lawyer failed to present the jury with compelling mitigating evidence relating to Gary Etheridge's background, and that his state habeas lawyer failed to raise a claim of ineffective trial representation, thereby causing the issue to be procedurally barred from federal judicial review;
- arguing that the State of Texas must take responsibility for the competency of the lawyers it provides for indigent defendants, adding that the failings of Gary Etheridge's state-appointed counsel have meant that his case has not been fully heard in the courts;
- calling for clemency for Gary Etheridge.

APPEALS TO:

Gerald Garrett, Chairperson, Texas Board of Pardons and Paroles
P.O. Box 13401, Austin, Texas 78711-3401, USA

Fax: +1 512 463 8120

Salutation: Dear Mr Chairperson

COPIES TO:

The Honourable Rick Perry, Governor of Texas
State Capitol, PO Box 12428, Austin, TX 78711, USA

Fax: +1 512 463 1849; or + 1 512 463 0039; or +1 512 463 1932

and to diplomatic representatives of the USA accredited to your country.

You may copy appeals to the following newspaper, and/or send brief letters to its editor (not more than 250 words):

Viewpoints, c/o *Houston Chronicle*, PO Box 4260, Houston, Texas 77210, USA **Fax:**
+ 1 713 220 3575. E-mail: viewpoints@chron.com

PLEASE SEND APPEALS IMMEDIATELY.