

**PUBLIC**

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**10 July 2003**

**EXTRA 35/03**

**Death penalty / Legal concern**

**USA (Indiana)**

**Darnell Williams (m), black, aged 36**

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Darnell Williams is due to be executed in Indiana on 1 August 2003. He is one of two men sentenced to death in 1987 for a double murder committed during the course of a robbery in 1986. As well as seeking commutation of his death sentence, Darnell Williams will ask the Governor for a reprieve for the purposes of DNA testing. Both the trial prosecutor and jury foreman support this request.

An African American couple, 59-year-old Henrietta Rease and her 74-year-old husband John Rease, were shot dead in their home in Gary, Indiana, on 12 August 1986. Darnell Williams and Gregory Rouster were tried together for the crime, with each claiming that the other had fired the fatal shots. The murdered couple were Gregory Rouster's ex-foster parents. According to the trial record, Rouster had learned that the couple received a clothing allowance of about five dollars per month on his behalf. Rouster and Williams, then aged 19 and 20 respectively, had gone to the house to take the money. Both were sentenced to death for the murders. There were two other defendants in the case. One was acquitted, and the case against the other was dropped after he testified for the state.

Darnell Williams has maintained that while he was involved in the crime, he was not present when the shooting occurred. His defence at trial was based on his lawyers' belief that no blood had been found on his clothing. For the prosecution, however, a serologist (blood expert) had found three blood spots on Williams' shorts which were consistent with that of the murder victims, Gregory Rouster, and 45 per cent of the population. The serologist's report had been given to the defence before the trial, but the lawyers had failed to notice that the expert had found blood on the shorts. The prosecutor argued to the jury that the blood was key evidence pointing to the participation of Darnell Williams in the murders. As the defence lawyers were taken by surprise by the revelation about the blood midway through the trial, and had not hired their own experts, they were limited in what they could effectively present to the jury to undermine the importance that the state placed on the blood evidence.

Appeal courts have agreed that the lawyers' performance on this issue was deficient, but have held that it did not affect the trial's outcome. One court stated: "We conclude that evidence of who actually fired which shots does not make a difference under the facts of this case. [Williams] joined his co-defendant in a double homicide in the perpetration of a robbery. He was an "equal partner" in the crimes, and his participation in the killings – the true extent of which may never be known – was found by the Supreme Court to justify the death sentence." Under US Supreme Court precedent, the death sentence may be imposed upon a defendant who did not kill or have a specific intent to kill, but who participated in a "major way" in a crime that resulted in murder and acted with "reckless indifference" to the value of human life. However, even if a defendant is eligible for the death penalty under the law, such eligibility does not automatically mean that a prosecutor will seek a death sentence or that a jury will vote for one. Residual doubt about a defendant's culpability has been shown to be a strong mitigating factor in the minds of jurors, showing the need for rigorous defence representation.

Information newly discovered from the state serologist's notes suggest that the blood on the shorts may not have come from the victims and therefore could support Darnell Williams' claim that he was not present at the shootings. His appeal lawyers have sought to have the blood subjected to modern DNA testing techniques. The trial prosecutor has supported this request, stating in a 2003 affidavit that "in light of this new information, DNA testing should be utilized to determine the truth about the scientific evidence that played a key role in this capital case". He concluded that "if DNA testing shows that the blood on Williams' shorts is not that of the victims, the issues of the degree of Mr Williams' participation in the murders and his

culpability for capital murder should be reassessed". The Northwestern Law School's renowned Center on Wrongful Convictions in Illinois also supports DNA testing in this case, as does the foreman from the jury that sentenced Williams to death. However, the courts have denied the request. The courts have also been unwilling to consider evidence from a witness who says that Darnell Williams left the victims' house at the time of the murders. This witness was interviewed by the prosecution before the trial, but the defence lawyers did not listen to the interview tape despite knowing of its existence. The witness did not therefore testify at the trial.

In June 2003, a judge ruled that Gregory Rouster, now known as Gamba Rastafari, could not be executed on the grounds that he has mental retardation. This follows the US Supreme Court's 2002 decision that it was unconstitutional to execute people with mental retardation. While Darnell Williams does not have such a claim, he was brain damaged at birth and at school was placed in special education classes for the "educable mentally retarded." Appeals against Williams's death sentence on the grounds of his trial lawyer's failure to prepare for the sentencing phase and to present the jury with evidence of his traumatic birth, his hyperactivity, his special education needs, his violent and abusive father, and his chaotic and impoverished upbringing have been unsuccessful.

Amnesty International opposes the death penalty in all cases, regardless of issues of guilt or innocence. The USA has put 864 prisoners to death since resuming judicial killing in 1977, including 44 this year.

**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 and friends of Henrietta and John Rease, stating that you are not seeking to condone the manner of their deaths or to minimize the suffering they will have caused;
- opposing the execution of Darnell Williams;
- expressing concern at the failure of the trial lawyers to note the state's blood evidence, seen by the prosecution as key to its case, or to investigate and present available mitigating evidence to the jury;
- noting that the trial prosecutor and the jury foreman support DNA testing, and urging the governor, as a minimum, to grant a reprieve so that this testing can be conducted;
- welcoming the ruling in co-defendant Gregory Rouster's case, but noting that the doubts about the extent of Darnell Williams's involvement in the actual shootings, together with the evidence of his own mental impairment and impoverished upbringing, about which the jury were not told, are compelling factors for executive clemency;
- noting that the power of executive clemency exists to compensate for the rigidity of the judiciary;
- calling for clemency for Darnell Williams in the interests of justice and decency.

**APPEALS TO:**

Governor Frank O'Bannon  
Office of the Governor, State House Room 206  
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**Email: fobannon@state.in.us**  
**Salutation: Dear Governor**

**COPIES TO:** Diplomatic representatives of USA accredited to your country.

You may also send brief letters (not more than 250 words) to:  
Letters to the Editor, *Indianapolis Star*, PO Box 145, Indianapolis, IN 46206-0145, USA  
**Fax: +1 317 444 6800.**  
**Email via website: <http://www.indystar.com/help/contact/letters.html>**

**PLEASE SEND APPEALS IMMEDIATELY.**