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Death penalty/imminent execution/legal concern

USA (Georgia)

Robert Karl Hicks (m), white, aged 47

Robert Hicks is scheduled to be executed in Georgia on 30 June 2004. He was convicted on 16 January 1986 of the murder of a 28-year-old woman, Toni Strickland Rivers, on 13 July 1985. The jury found three aggravating factors, including the fact that the murder was committed by a person with a prior conviction for rape, and Hicks was sentenced to death the next day.

Because Robert Hicks could not afford his own lawyer, the trial court appointed one – an attorney who had no experience in murder cases. After several weeks, he had to ask for co-counsel and the judge appointed a lawyer who had tried a capital case.

In September 1985, a court-ordered mental examination had been conducted by a state psychologist who found Hicks competent to stand trial. Given that the identity of Hicks as the person who stabbed Toni Rivers to death was not disputed, it was apparent that the only viable defences and mitigating factors would be based on Hicks's mental state. In February 1985, the US Supreme Court had handed down a decision, *Ake v. Oklahoma*, in which it ruled that the denial of expert psychiatric assistance to an indigent defendant where that defendant's sanity was a significant factor at both the guilt and sentencing phases of the trial constituted a denial of due process.

Hicks's co-counsel, who knew about the *Ake* decision (unlike the lead lawyer) filed a motion requesting an independent psychiatric expert for the defence. The judge authorized \$500 for an independent evaluation. The defence attempted to find someone who could do an evaluation for that sum, but were unable to retain anyone for less than \$1525. Rather than authorizing additional funds, the trial judge responded that he would inquire whether a doctor at the state hospital could perform the evaluation. The psychologist who had performed the initial examination of Hicks for the court explained that having another doctor employed by the state to evaluate Hicks for the defence would create a conflict of interest. Nevertheless, the trial judge insisted that he would find an expert for the defence.

The judge decided upon a psychiatrist at the state hospital to conduct the evaluation. On 16 December, less than a month before the trial was due to begin, the hospital informed the defence lawyers that its staff did not "do *Ake* cases". The trial judge nevertheless insisted that he wanted a state-paid psychiatrist in order to save money. The state psychiatrist he had chosen continued to make it clear that he would not do an *Ake* evaluation. On 30 December 1985, the judge relented and authorized the defence lawyers to find a mental health expert subject to his approval of any expenditure and fees.

The defence lawyers were unable to locate, gain court approval for, and retain an expert until 9 January 1986. This psychiatrist, Dr Andrea Bradford, met with Hicks on 10 January, three days before the trial was due to begin. On 11 January, the psychiatrist informed the lawyers that she would not be able to reach an authoritative diagnosis without the assistance of a neurologist. She made a preliminary diagnosis of neurological damage and a mental disorder called "intermittent explosive disorder". One of the defence lawyers later explained that they had had "no idea how to formulate [a mental health] defense, or whether we even could honorably formulate one until Dr Bradford had come back with her diagnosis." They asked for the trial to be postponed so that they could arrange for a neurological examination. The judge refused.

The trial proceeded. On the stand, Dr Bradford admitted that what she had found did not amount to a defence under Georgia's insanity law. The defence's closing argument to the jury was desperate: "We are asking you and begging you and imploring you... that you deliberate, that you concentrate and that you then

vote for a verdict of not guilty by reason of insanity". The jury took less than an hour and a half to reject their plea.

During appeal proceedings, new lawyers had Hicks examined by a neurologist, Dr Jonathan Pincus, who concluded that "there is no question that Robbie Hicks is neurologically impaired". He recommended further tests, but further funding was denied by the appeal court. Dr Bradford signed an affidavit in which she stated: "The preliminary evaluation performed by Dr Pincus is precisely the type of preliminary neurological examination that I believed was needed in order to begin the process of determining whether [Hicks] was suffering from an organic brain impairment or some neurological dysfunction at the time of the crime."

In September 2000, a federal district court found that Hicks's right to expert assistance at trial under *Ake v Oklahoma* had been violated by the trial court's prolonged delay in appointing a defence psychiatrist and by the denial of a postponement of the trial to allow more time for the defence to prepare. However, the federal court found that this constitutional violation was "harmless". In June 2003, the US Court of Appeals for the 11th Circuit affirmed the district court's decision.

Amnesty International opposes the death penalty in all cases. Every death sentence is an affront to human dignity, every execution a symptom of a culture of violence. Today, 117 countries are abolitionist in law or practice. In the USA, where the capital justice system is marked by arbitrariness, discrimination and error, 915 people have been put to death since executions resumed in 1977.

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 Toni Rivers, and explaining that you are not seeking to condone the manner of her death or to minimize the suffering caused;
- opposing the execution of Robert Hicks;
- expressing concern at the violation of constitutional law (*Ake v Oklahoma*) in this case, and at the federal courts' holding that such an error was harmless;
- noting post-conviction evidence that Robert Hicks has a neurological disorder, evidence that the defence was unable fully to present to the jury because the trial judge had left them no time to prepare their mental health case;
- urging clemency for Robert Hicks.

APPEALS TO:

Georgia Board of Pardons and Paroles
2 Martin Luther King, Jr. Drive, SE, Suite 458, Balcony Level, East Tower
Atlanta, Georgia 30334-4909, USA

Fax: +1 404 651 8502

Email: Webmaster1@pap.state.ga.us

Salutation: Dear Board Members

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

You may also copy your appeals or write a brief letter (not more than 250 words) to:

Letters to the Editor, *Atlanta Journal Constitution*, PO Box 4689, Atlanta, GA 30302, USA.

Fax: +1 404 526 5611

E-mail: www.accessatlanta.com/partners/ajc/letters

PLEASE SEND APPEALS IMMEDIATELY.