

PUBLIC

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UA 191/06 Death penalty / Legal concern

USA (Ohio) Rocky Barton (m), white, aged 49

Rocky Barton is scheduled to be executed in Ohio on 12 July 2006. He was sentenced to death for the murder of his wife, Kimbirli Barton. He has given up his appeals against his conviction and sentence.

Rocky Barton shot and killed Kimbirli Barton on 16 January 2003. He then shot himself in the head with his shotgun, but survived. At his trial for the murder, his defence was that the killing had not been premeditated. A jury rejected this and the trial went into its sentencing phase. Rocky Barton refused to have any mitigating evidence presented to the jury. Instead, he made the following statement to the jury: "At this time my attorneys have advised me to beg for my life. I can't do that. I strongly believe in the death penalty. And for the ruthless, cold-blooded act that I committed, if I was sitting over there, I'd hold out for the death penalty...Life in prison would be a burden to all the citizens of Ohio. It would be at their cost. I wouldn't have nothing to worry about. I'd get fed every day, have a roof over my head, free medical, you people pay for it, I'd have a stress-free life. That's not much of a punishment. Punishment would be to wake up every day and have a date with death. That's the only punishment for this crime. That's all I've got to say".

In its 2006 affirmation of the death sentence on mandatory appeal, the Ohio Supreme Court rejected the argument that the trial judge should have inquired whether Rocky Barton was mentally competent to waive his right to present any mitigating evidence. It reached this conclusion by deciding that Barton's statement to the jury asking for the death penalty was mitigating evidence. Two of the Justices dissented. Justice Pfeifer wrote: "Our country's most creative writers of fiction would be hard-pressed to spin Barton's statement as evidence offered in mitigation. Yet a majority of this court unquestioningly accepts that it was." He also wrote: "I do not believe that the facts of this case justify imposing a sentence of death. The murder that Barton committed was heinous, and his guilt is undeniable, but Barton's crime is not deathworthy... This case involves a hot-blooded domestic killing".

Chief Justice Moyer wrote: "It is difficult to imagine more compelling indicia of incompetence" than a defendant asking to be executed, and accused the majority of applying "inverse logic" to interpret the statement as mitigating. He added: "I do not know whether Barton was competent to waive the presentation of mitigation evidence during the penalty phase of the trial. I do not know whether he understood the ramifications of his statements to the jury suggesting that he deserved the death penalty. On the record before us, no one can be certain of Barton's competence when he urged the jury to sentence him to death". In a recent interview, in contrast to his assertion to the jury that it was a "ruthless, cold-blooded" murder, Rocky Barton recalled that the shooting was done on the "spur of the moment", and "was not planned, calculated, designed". He said that he had planned to kill himself in front of Kimbirli, but had then turned the gun on her: "I don't know why I did. Can't tell you what was going through my mind at the time". Rocky Barton is reported to have been diagnosed on death row as suffering from a major depressive illness and schizo-affective disorder, for which he has received medication. On 5 July 2006, a judge found him competent to waive his appeals, despite refusing to allow a psychiatric evaluation to determine competence.

BACKGROUND INFORMATION

In 1972, the US Supreme Court overturned the USA's capital laws after finding that the death penalty was being applied in an arbitrary manner (*Furman v. Georgia*). Four years later, in *Gregg v. Georgia*, the Court approved new laws passed by state legislatures. Executions resumed in January 1977 after almost a decade without them. There have been some 500,000 murders in the USA since 1977. In the same period about 7,000 people have been sentenced to death, just over 1,000 of whom have been executed and about 3,300 of whom remain on death row. The capital justice system, which attempts to select the "worst of the worst"

crimes and offenders for execution, is marked by arbitrariness, discrimination and error. As the UN Special Rapporteur on extrajudicial, summary or arbitrary executions concluded in 1998, “race, ethnic origin and economic status appear to be key determinants of who will, and who will not, receive a sentence of death” in the USA. In 2000, the findings of a long-term study were released which concluded that US death sentences are “persistently and systematically fraught with error” that had required judicial remedy from the appeal courts.

About one in 10 of the people executed since 1977 have been so-called “volunteers”, prisoners who had dropped their appeals and “consented” to execution. Any number of factors may lead a prisoner not to pursue appeals against his or her death sentence, including mental disorder, physical illness, remorse, bravado, religious belief, the severity of conditions of confinement, including prolonged isolation and lack of physical contact visits, the bleak alternative of life imprisonment without the possibility of parole, pessimism about appeal prospects, a quest for notoriety, or simply a desire to gain a semblance of control over a situation in which the prisoner is otherwise powerless. Rational or irrational, a decision taken by someone who is under threat of death at the hands of others cannot be consensual. What is more, it cannot disguise the fact that the state is involved in a premeditated killing – part of a culture of violence, not a solution to it. Whether or not prisoners who “ask” to be executed are deluding themselves about the level of control they have gained over their fate – after all, they are merely assisting their government in what it has set out to do anyway – the state is guilty of a far greater deception. It is peddling its own illusion of control: that, by killing a selection of those it convicts of murder, it can offer a constructive contribution to efforts to defeat violent crime. In reality, the state is taking to refined, calculated heights what it seeks to condemn – the deliberate taking of human life. While such executions are sometimes referred to as a form of state-assisted suicide, “prisoner-assisted homicide” would be a more accurate label. For if a death row inmate seeks to commit actual suicide, the state will make every effort to prevent it.

The phenomenon of prisoners “volunteering” for execution contributes to the lottery of the death penalty. To put it another way, given the rate of reversible error found in capital cases, if the approximately 120 “volunteers” executed since 1977 had pursued their appeals, there is a significant possibility that a number of them would have had their death sentences overturned to prison terms by the appeal courts. (See also: *USA: Blind faith*, [http://web.amnesty.org/library/pdf/AMR511002006ENGLISH/\\$File/AMR5110006.pdf](http://web.amnesty.org/library/pdf/AMR511002006ENGLISH/$File/AMR5110006.pdf); and *The illusion of control*, [http://web.amnesty.org/library/pdf/AMR510532001ENGLISH/\\$File/AMR5105301.pdf](http://web.amnesty.org/library/pdf/AMR510532001ENGLISH/$File/AMR5105301.pdf)).

RECOMMENDED ACTION: Please send appeals to arrive as quickly as possible, in English or your own language:

- expressing sympathy for those affected by the shooting of Kimbiri Barton and explaining that you are not seeking to downplay the seriousness of the crime or the suffering caused;
- opposing the execution of Rocky Barton, noting his major depressive illness, the questions about his mental competency that have been raised, the dissenting opinion from the Chief Justice and another Justice of the Ohio Supreme Court, and your opposition to the death penalty in general;
- calling on the Governor to stop this execution and to grant clemency to Rocky Barton.

APPEALS TO:

Governor Bob Taft, 30th Floor, 77 South High Street, Columbus, Ohio 43215-6117, USA

Faxes: +1 614 466 9354

Email, via: <http://governor.ohio.gov/contactinfopage.asp>

Salutation: Dear Governor

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

PLEASE SEND APPEALS IMMEDIATELY.