

EXTERNAL

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EXTRA 94/95

Death Penalty

11 August 1995

USA (Arkansas)

Barry FAIRCHILD

Barry Fairchild, black, is scheduled to be executed in Arkansas on 31 August 1995, for a murder where judges recognise he was not the killer.

Barry Fairchild was sentenced to death in August 1983 for the kidnap, rape and shooting death of 2nd Lt. Marjorie "Greta" Mason, a white Air Force nurse in February 1983.

Two Federal Court judges, while upholding Fairchild's death sentence, have ruled that he was not the actual killer. In June 1991 US District Judge G Thomas Eisele said "...the court is convinced on the evidence before it that he (Fairchild) was not the one who shot and killed Ms Mason". According to newspaper reports, in a further ruling in November 1992 from a three-judge panel of the 8th US Circuit Court of Appeals, chief judge Richard S Arnold said, "He (Fairchild) probably did not kill Ms Mason" and that "The actual killing was probably done by his confederate and Fairchild may not have intended or even expected this to happen".

However, in upholding the death sentence, the court pointed out that Fairchild stated in his confession that he had kidnapped and raped Mason and was going through her purse when his accomplice shot her. According to the court these actions showed Fairchild "was an active and major participant in the underlying felonies."

At Fairchild's trial the prosecution said that he may not have been the one who carried out the murder. However, under Arkansas law an accomplice to murder can be sentenced to death.

Fairchild was convicted largely on two videotaped confessions in which he recanted during the trial. According to his lawyers, apart from his confessions, there was insufficient evidence to convict him. They also claim that these confessions - obtained in police custody before Fairchild was allowed to consult a lawyer - were made under duress, and that the County Sheriff's office also abused and coerced a number of other black suspects to obtain confessions in the crime. It is also alleged that while in custody, Fairchild was beaten by the police and badly bitten in the head by a police dog.

Fairchild has maintained his innocence and states that the accomplice shot the victim and that he was not present when the shooting occurred. Fairchild's accomplice was never apprehended.

According to Fairchild's current lawyers, he is mentally retarded. They claim that an early pre-trial mental evaluation of Fairchild which found that he was not mentally ill or mentally retarded was inadequate. They allege that substantial evidence was discovered later which showed that Fairchild is mentally retarded and has been for many years. This evidence was not presented to the jury. His lawyers maintain that if the jury had known of his mental retardation, they might have doubted the accuracy and reliability of his confessions, and his actual role in the crime.

Newspaper reports have given the result of one mental evaluation of Fairchild as an IQ level of 60-63 (an average person would score 100), while another specialist found him to have an IQ of 75-78. Appeals to the Federal Courts

that Fairchild is mentally incompetent have consistently been denied.

Amnesty International is concerned that the execution of Barry Fairchild may be in contravention of United Nations Economic and Social Council (ECOSOC) resolution 1989/64, adopted in May 1989, which recommends "eliminating the death penalty for persons suffering from mental retardation or extremely limited competence".

BACKGROUND INFORMATION

As of 30 April 1995 there were 39 people under sentence of death in Arkansas. The most recent execution was that of Richard Wayne Snell on 19 April 1995.

Amnesty International opposes the death penalty in all cases as a violation of the right to life and the right not to be subjected to cruel, inhuman or degrading punishment, as proclaimed in the Universal Declaration of Human Rights.

(Barry Fairchild was also the subject of EXTRA 76/93, AMR 51/29/93, 8 September 1993)

RECOMMENDED ACTION: Please telephone or send faxes/telegrams/express/airmail letters in English, if possible:

- urging that Governor Tucker grant clemency to Barry Fairchild and commute his sentence of death;
- expressing concern that evidence relating to Barry Fairchild's mental retardation was not presented to the jury responsible for sentencing Barry Fairchild to death;
- citing the ECOSOC resolution;
- noting that Barry Fairchild was probably not the actual killer and that there are serious doubts about his role in the murder;
- expressing your opposition to the death penalty in all cases; at the same time expressing sympathy for the victims of violent crime and their relatives.

APPEALS TO:

The Honorable Jim Guy Tucker
Governor of Arkansas
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Telegrams: Governor Tucker, Little Rock, Arkansas, USA
Salutation: Dear Governor

COPIES TO:

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and to diplomatic representatives of the USA in your country.

PLEASE SEND APPEALS IMMEDIATELY.