

URGENT ACTION

CLEMENCY SOUGHT ON MENTAL IMPAIRMENT CLAIM

Bobby Wayne Woods, a 44-year-old white man, is due to be executed in Texas on 3 December, his third execution date in two years. He was convicted in 1998 of the murder of a young girl in 1997. His lawyer is appealing for clemency on the grounds that Woods has learning disabilities.

Bobby Woods was sentenced to death for the murder of 11-year-old Sarah Patterson, who was killed after being taken with her nine-year-old brother from the trailer where they lived with their mother, Woods's former girlfriend. His death sentence was upheld on state and federal appeal.

In June 2002, in *Atkins v. Virginia*, the US Supreme Court outlawed the death penalty for people who have "mental retardation" on the grounds that their reduced moral culpability and increased vulnerability rendered excessive a punishment supposedly reserved for the "worst of the worst" crimes and offenders. A new appeal was filed for Bobby Woods raising the claim that he had mental retardation. At a hearing in the state trial court, a clinical psychologist testified for the defence that, in his opinion, Bobby Woods qualified as "mildly mentally retarded", with an IQ of 68 and limitations in adaptive skill areas (see overleaf). He also pointed to an assessment done by another psychologist in 1997 placing Woods's IQ at 70. The state presented evidence to contest this, the court ruled against Woods, and the Texas Court of Criminal Appeals (TCCA) agreed. Appeals to the federal courts were unsuccessful.

Bobby Woods's clemency petition to the Texas Board of Pardons and Paroles appeals for greater flexibility than the courts have been able or willing to apply: "While the law requires aspiring to a bright line rule – those who 'are' or 'are not' mentally retarded – mercy does not. If Mr Woods is not 'mentally retarded' he is without question severely impaired in his intellectual and daily functioning, and *Atkins*' reasoning applies". The petition cites evidence of Woods's mental impairment, as a child struggling to keep up even in special education, and as an adult. It also raises the question of Bobby Woods's legal representation during the appeals process, and in the initial legal challenges under the *Atkins v. Virginia* ruling. The lawyer in question visited Bobby Woods only once in the 10 years he represented him, and filed an ill-prepared petition for the state appeal process. For the legal challenge under the *Atkins* ruling, he presented only one witness, the clinical psychologist, but failed adequately to support him or present other witnesses or evidence to challenge the state. This lawyer became one of only two lawyers to have been removed from the TCCA's list of attorneys deemed qualified to represent death row prisoners in their state appeals. After taking on Bobby Woods's case, his current lawyer found further evidence to support the mental retardation claim, including an IQ score of 60 from his childhood. However, because there had already been a review of the *Atkins* claim, a stricter standard applied to any further review. The courts rejected the appeal.

PLEASE WRITE IMMEDIATELY in English or your own language, in your own words:

- Recognizing the serious crime in this case and the suffering caused;
- Noting evidence that Bobby Woods has mental retardation, and that while the courts may lack flexibility when seeking to determine who is exempted from execution under *Atkins v. Virginia*, the clemency authorities should not;
- Expressing concern that the performance of his initial appeal lawyer may have prejudiced his case;
- Calling for clemency for Bobby Woods and for commutation of his death sentence.

PLEASE SEND APPEALS BEFORE 3 DECEMBER 2009 TO:

Rissie L. Owens, Presiding Officer, Board of Pardons and Paroles, Executive Clemency Section
8610 Shoal Creek Boulevard, Austin, TX 78757, USA
Fax: + 1 512 467 0945
Salutation: Dear Ms Owens

Governor Rick Perry
Office of the Governor, P.O. Box 12428
Austin, Texas 78711-2428, USA
Fax: + 1 512 463 1849
Salutation: Dear Governor

Also send copies to diplomatic representatives of the USA accredited to your country. Please check with your section office if sending appeals after the above date.

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ADDITIONAL INFORMATION

In its *Atkins v Virginia* ruling, outlawing the execution of people with mental retardation, the US Supreme Court did not define mental retardation, although it pointed to definitions used by professional bodies. Under such definitions, mental retardation is a disability, manifested before the age of 18, characterized by significantly sub-average intellectual functioning (generally indicated by an IQ of less than 70) accompanied by limitations in two or more adaptive skill areas such as communication, self-care, work, and functioning in the community. The Court left it to individual states to develop “appropriate ways” to comply with the ruling.

Before the *Atkins* decision, Texas accounted for nine of 44 of the USA’s executions since 1977 of people documented as having mental retardation, more than any other state. More than seven years after the *Atkins* ruling, the Texas legislature has still not enacted a law to comply with the ruling. In the absence of legislation, in 2004 the TCCA took it upon itself to issue guidelines for Texas trial courts in making retardation determinations. In 2007, the TCCA emphasized that its 2004 guidelines were intended only to be temporary pending action by the state legislature. Nearly three years later, the legislature has still not acted on this. Meanwhile, the TCCA guidelines, according to a recent study, “present an array of divergencies from the clinical definitions in applying *Atkins*”.

Amnesty International opposes unconditionally the execution of Bobby Woods, as it does every execution, regardless of the seriousness of the crime or the culpability of the condemned. To end the death penalty is to abandon a destructive, diversionary and divisive public policy that is not consistent with widely held values. It not only runs the risk of irrevocable error, it is also costly, to the public purse as well as in social and psychological terms. It has not been proven to have a special deterrent effect. It tends to be applied in a discriminatory way, on grounds of race and class. It denies the possibility of reconciliation and rehabilitation. It promotes simplistic responses to complex human problems, rather than pursuing explanations that could inform positive strategies. It prolongs the suffering of murder victims’ families, and extends that suffering to the loved ones of the condemned prisoner. It diverts resources that could be better used to work against violent crime and assist those affected by it.

In addition to seeking commutation, Bobby Woods’s lawyer has asked the parole board to grant a 60-day reprieve so that she can make a videotape to present to them. She has told the board that “to fully understand the extent and nature of Mr Woods’ disabilities, it is necessary to meet him, or at a minimum, observe him interacting with other people”. She was denied access by the prison authorities for this purpose (some interview footage of Bobby Woods is available at <http://www.texasobserver.org/enterprise/possibly-retarded-death-row-prisoner-faces-execution>). Her clemency petition also includes examples of the “childlike” letters written by Woods from death row. A letter he wrote in 2000 to his mother includes: “the puzzle books you got me I have did them all can you send me some more as soon as you can ok mom do you see the fun puzzles I would like to get some if you can fine [sic] them”. In a letter in April 2002, he wrote: “can you see if you can fine [sic] me some coloring books anything will do ok mom anything”.

The USA has carried out 1,184 executions since resuming judicial killing in 1977. Texas accounts for 446 of these executions and 23 of the 48 executions carried out in the USA this year. Texas has carried out 207 executions since Governor Rick Perry took office in December 2000 (see Too much cruelty, too little clemency: Texas nears 200th execution under current governor, 30 April 2009, <http://www.amnesty.org/en/library/info/AMR51/057/2009/en>).

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