

PUBLIC

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Death penalty / Legal concern

29 October 2003

USA (Georgia)

James Willie Brown (m), white, aged 55

James Willie Brown is scheduled for execution in Georgia on 4 November. He was sentenced to death at a retrial in 1990 for the rape and murder of Brenda Watson in 1975. He has a clemency hearing in front of the state parole board on 31 October. It is not known when the board will make its decision.

James Brown has a long history of mental illness, which has included repeated diagnoses of schizophrenia. At the age of 15, he was diagnosed as suffering from convulsive disorder and prescribed medication to control his seizures. By the age of 17 he had entered the army but served less than two years before eventually being discharged due to his mental illness. As his situation deteriorated, he began to use illegal drugs, and was arrested for the first time in 1968, when he was about 20 years old. He was deemed incompetent to stand trial; that is, that he lacked the mental capacity to fully understand the proceedings or assist in his defence. He was therefore sent to a state mental facility. Between the time of his first arrest and his 1981 trial for the murder of Brenda Watson, he was in mental facilities for 70 per cent of the time, both on an involuntary and voluntary basis.

His trial for murder was delayed for six years on the grounds of mental incompetence. He was eventually tried and sentenced to death in 1981, but was granted a new trial by a federal court in 1988 due to doubts over his competency to stand trial in 1981. He was retried in 1990, and again sentenced to death.

At the retrial, the defence presented two experts who testified that James Brown suffered from chronic paranoid schizophrenia. In a subsequent affidavit, given in 1994, one of these experts stated: "Mr Brown's medical history establishes that his mental illness was of a long standing nature... From Mr Brown's post-arrest hospitalization in June 1975 until shortly before his original trial in January 1981, Mr Brown was under almost constant supervision by mental health professionals at Central State Hospital." The affidavit continues: "Considering the type of illness, his extensive medical history and my examination of Mr Brown, it was my opinion to a reasonable degree of medical certainty that Mr Brown was psychotic at the time of the alleged offense and that he acted upon delusions and therefore, could not distinguish between right and wrong at the time. Based upon my recent review of the additional materials, I stand by my original diagnosis and this opinion." In addition, two inmates who were in the county jail at the time of James Brown's arrest gave post-conviction affidavits that describe how he was out of touch with reality and psychotic.

The state's position at the 1990 retrial, however, was that James Brown was faking his mental illness. It presented a doctor who stated that, in his opinion, the defendant did not have schizophrenia, but had suffered drug-induced flashbacks. This doctor appears to have ignored James Brown's long history and repeated diagnoses of mental illness (over the years more than 25 mental health experts employed by the state have found James Brown to be mentally ill and not malingering). Moreover, in closing arguments, the prosecutor stated to the jury: "That brings us to the question that [the defence lawyer] wanted you to consider, should we put the mentally ill to death. Well, I don't know the answer to that question... And you don't have to decide that question in this case. Because, ladies and gentlemen, this man isn't mentally ill, he has never been mentally ill, and he is not mentally ill today. He was not mentally ill on the [day of the crime]."

To bolster the state's theory that the defendant was malingering, the prosecution presented a former inmate, Anita Tucker, who said that James Brown had confided in her that he was faking his illness. Anita Tucker has now recanted that testimony, and testified that her earlier testimony was part of a deal with the prosecution in exchange for her early release on her own criminal charges.

Like many on death row in the USA, James Willie Brown comes from a background of poverty, deprivation and serious abuse. According to a 1994 affidavit given by a clinical psychologist, James Brown was born in 1948 to a 15-year-old mother and an alcoholic father. Theirs was one of the poorest families in a low-income neighbourhood. The children were subjected to routine physical abuse, principally by the father. According to the psychologist: "Instruments of abuse included belts, boards, branches, cords, and fists, and the children were also kicked. In addition to beatings of the children, the father also often brutally beat the mother with his fists in front of the children. When [James Brown] attempted to aid his mother while she was being beaten, he only earned himself yet another beating from his father... According to [James Brown], his brothers and his mother, the father's beatings were extremely severe, leaving welts, drawing blood, and even, in [his] case, causing unconsciousness. The father not only beat [him] at home but also did so in public, in front of friends and family, and [James Brown] reports that the father appeared to take great pride and pleasure in humiliating him like this."

The United Nations Commission for Human Rights has repeatedly passed resolutions calling for an end to the use of the death penalty against anyone with any form of mental disorder. Amnesty International opposes the death penalty unconditionally. While 112 countries are abolitionist in law or practice, the USA has put 878 prisoners to death since resuming executions in 1977, including 58 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 Brenda Watson, and explaining that you are not seeking to condone the manner of her death or to minimize the suffering caused;
- noting that James Willie Brown has a long history of serious mental illness stemming long before the crime, and that his illness has been recognized by the state on numerous occasions, including when he was in the military and the state hospital;
- expressing concern that the prosecution argued to the jury that he had never been mentally ill, and noting that the former inmate who testified at trial that James Willie Brown was faking his mental illness has since recanted her testimony;
- urging clemency for James Willie Brown in the interest of decency and the reputation of Georgia.

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

If you wish to address individual Board members, they are: Honorable Milton E. Nix, Jr., Chairman; Mr. J. Michael Light; Mr. Garfield Hammonds, Jr., Dr. Betty Ann Cook, and Dr. Eugene Walker

COPIES TO: diplomatic representatives of 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.