

UA 220/99

Death pen**USA (Delaware) Willie G. Sullivan, African American, aged 28**

Willie Sullivan is scheduled for lethal injection in Delaware on 24 September 1999. He was sentenced to death in December 1992 for the robbery and murder of 78-year-old Maurice Dodd a year earlier.

After his arrest, Sullivan waived his right to remain silent and to have a lawyer present, and confessed to the crime. He later told his lawyers that he was present at the murder but that another man had carried out the stabbing. The lawyers persuaded him to plead guilty to being an accomplice, a plea which Sullivan, his mother and another defence witness say they were led to understand would serve as a guarantee against a death sentence.

Because he pleaded guilty, the trial consisted only of a sentencing stage. The defence did not pursue Sullivan's claim of being only an accomplice, apparently believing it to be a lie. However, they were not in a position to judge its credibility as they had failed to investigate it. For example, they had not examined the police report, or compared the autopsy report with Sullivan's original confession to look for possible discrepancies between them. To this day, Willie Sullivan denies that he stabbed Maurice Dodd, but accepts responsibility for being present at the murder.

The lawyers relied instead upon presentation of other evidence - including Sullivan's mental problems, his age (20) at the time of the crime, his remorse and lack of criminal record or history of violence - to mitigate against a death sentence. A psychologist testified that Willie Sullivan was "mildly mentally retarded" and had the mental age of a nine-year-old. He also testified that the defendant had limited communication skills, and was easily confused, taken advantage of, and led astray.

Willie Sullivan's mental impairment may be attributable to his mother's alcohol consumption during pregnancy. Heavy alcohol use during pregnancy has been linked to fetal alcohol syndrome (FAS), a condition that can lead to intellectual impairment, hyperactivity and certain physical defects. However, despite being aware of the syndrome and the mother's alcoholism, the lawyers failed to investigate or present any evidence on the issue.

The prosecution, by contrast, was apparently determined to convince the jury that mental impairment was no bar to a death sentence. Its statements, which the defence did not object to, included: "How many people to you think on death row have college degrees, ladies and gentlemen? How many people do you think on death row have high school degrees? If people were smart, they wouldn't kill because they know society's laws frown on that behaviour." The prosecutor failed to note that many on US death rows had been too poor to afford competent counsel, or that international standards state that the death penalty should not be used against the mentally impaired.

The jury voted 9-3 for death. In taking up its recommendation, the judge stated that he was unpersuaded that Willie Sullivan was "mildly mentally retarded".

In 1995, an expert testified that Willie Sullivan met the criteria for FAS and was brain-damaged, with an IQ of 71. In August 1999, the same expert again examined Willie Sullivan and measured his IQ at 70. He concluded that: "Willie Sullivan qualifies for the diagnosis of Mental Retardation. He also qualifies

for the diagnosis of Organic Brain Impairment, as well as Attention Deficit Disorders. It is quite clear that...his low intellectual functioning and mental health problems are due to his mother's long-term ingestion of alcohol during her pregnancy."

The Governor of Delaware has the authority to grant clemency if he receives a favourable recommendation from the Board of Pardons.

BACKGROUND INFORMATION

In resolution 1989/64, adopted in 1989, the UN Economic and Social Council (ECOSOC) recommended that UN member states eliminate the death penalty "for persons suffering from mental retardation or extremely limited mental competence, whether at the stage of sentence or execution".

Also in 1989, the US Supreme Court ruled that it was not unconstitutional to execute mentally retarded inmates after concluding that there was no "national consensus" against such executions. At the time only one US state banned them. A decade later, 12 states - Arkansas, Colorado, Georgia, Indiana, Kansas, Kentucky, Maryland, Nebraska, New Mexico, New York, Tennessee and Washington - now forbid such executions.

RECOMMENDED ACTION: Please send telegrams/faxes/express/airmail letters in English or your own language:

- acknowledging the serious crime for which Willie Sullivan was sentenced to die, and expressing sympathy for the relatives of victims of violence;
- noting that since trial he has been diagnosed as suffering from mental retardation and psychological problems, attributable to fetal alcohol syndrome, an issue not made known to the trial court;
- noting that 12 US states forbid the execution of the mentally retarded;
- noting that it is 10 years since governments formally recognized, via ECOSOC resolution 1989/64, that the death penalty is an inappropriate punishment for the mentally retarded;
- urging the Board of Pardons to recommend to Governor Carper that he commute Willie Sullivan's death sentence to a humane alternative.

APPEALS TO:

The Board of Pardons, 401 Federal Street, Dover, DE 19901, USA

Tel: +1 302 739 4111

Fax: +1 302 739 3811

Telegrams: Pardons Board, 401 Federal Street, Dover, DE, USA

Salutation: Dear Board Members

COPIES TO:

The Honourable Thomas Carper, Governor of Delaware, Tatnall Building, Dover, DE 19901, USA. **Fax: + 1 302 739 2775**

You may also write brief (about 250 words) letters to
The Editor, *Delaware State News*, PO Box 737, Dover, DE 19903, USA. **Fax: + 1 302 741 8252. E-mail: kgrant@newszap.com**

and to diplomatic representatives of the USA accredited to your country.

PLEASE SEND APPEALS IMMEDIATELY.