

PUBLIC

AI Index: AMR 51/144/2003

EXTRA 51/03 Death penalty / Legal concern

27 November 2003

USA (Texas) Kevin Lee Zimmerman (m), white, aged 42

Kevin Zimmerman is scheduled to be executed in Texas on 10 December, Human Rights Day. He was sentenced to death in June 1990 for the murder of Gilbert Hooks, white, in October 1987.

In late September 1987, Kevin Zimmerman was released from prison in his native Louisiana after serving a three-year sentence for possession of drugs. After he returned home to find that his wife was having an affair with his best friend, he embarked on an alcohol and drug binge with other friends. On the fifth day of this spree, 23 October, Kevin Zimmerman and two friends were drinking in a motel room in Beaumont, Texas, when they were joined by fellow motel guest, 33-year-old Gilbert Hooks. Later that night, Zimmerman and Hooks got into an argument, and Hooks stabbed Zimmerman in the arm, causing him to bleed profusely. Their fight continued and ended in Hooks being stabbed to death.

Kevin Zimmerman was charged with murder, not capital murder. He was appointed a succession of lawyers who all withdrew from the case for various reasons, having done little or no work on the case. After a year, Zimmerman wrote letters to the prosecutor and court, in effect daring them to charge him with capital murder. In his letters he falsely claimed involvement in other crimes, and claimed that he had robbed Hooks. Murder during the course of a robbery is a capital offence, unlike plain murder. He was recharged, this time with capital murder. A doctor who recently reviewed the case has stated in an affidavit that the claims in Zimmerman's letters were "patently absurd" and that the records indicate that at the time he was "psychotic", "potentially suicidal and required suicide prevention measures".

In July 1989, Kevin Zimmerman was appointed the lawyer who would represent him at his capital trial, his fifth attorney since he was first charged. She had no experience in capital cases and had never represented anyone charged with murder. She chose co-counsel who had no capital case experience. The lawyers failed to have Zimmerman evaluated for his mental competency to stand trial even though there was evidence that he might not be able to assist in his own defence. They did not investigate his family background, and did not learn that he had a history of mental problems beginning after a serious bicycle accident at the age of 11, as a result of which he had a plate put in his head. There were numerous relatives and neighbours who could have testified that his personality and behaviour changed after the accident. The lawyers failed to present expert psychiatric evidence to support the claim of self-defence or to present as mitigation evidence against the death penalty.

The defence also did not investigate Gilbert Hooks' record of violence, including wife-beating and drunken brawls with strangers. Since the trial, his fifth wife has testified about his violence and drinking, and another wife has confirmed his violent nature. On one occasion he allegedly beat his pregnant wife so severely that she miscarried. Such evidence presented to the jury could have supported the self-defence claim and countered the prosecution's depiction of the victim as non-violent.

In 1997, an expert conducted an evaluation of Kevin Zimmermann, and found that his childhood brain injury had "materially affected his behavioral control, both as an adolescent and at the time of the stabbing". The expert concluded that the combination of his alcohol and drug consumption, his anger at having been stabbed, and fear for his safety "all contributed to his inability to regain control at the time of the crime". In 1995 another doctor had concluded that Zimmerman showed signs of a mental disorder characterized by impaired impulse control and judgment.

In 2003, a psychologist concluded that Kevin Zimmerman had suffered a "traumatic and serious frontal brain injury at the age of eleven which resulted in the development of seizures, personality changes, explosive

outbursts as well as post-explosive amnesia.” She said that “all available information points to Mr Zimmerman’s crime as having been one committed under the influence of an explosive encephalopathic rage during which his impulse control, judgment, and memory were grossly impaired... [I]t should not be considered as a predatory/premeditated crime.” She also concluded that Kevin Zimmerman’s “behaviour at the time of the crime and around the time of his trial raises the strong probability that he was suffering from a separate mental illness or disorder” at those times. Kevin Zimmerman, who does not remember details of the stabbing, has consistently expressed remorse over the death of Gilbert Hooks.

Kevin Zimmerman faces lethal injection with three chemicals: sodium thiopental, a sedative in lethal dose; pancuronium bromide, a muscle relaxant which collapses the diaphragm and lungs; and potassium chloride, which stops the heart. Pancuronium bromide paralyzes the skeletal muscles but does not affect the brain or nerves. A person injected with it remains conscious but cannot move or speak. Legal challenges are being made against its use in executions on the grounds that it may mask suffering. In such a challenge in Tennessee, a woman testified that she had undergone surgery during which the anaesthetic failed. She testified that she was able to hear, perceive and feel everything that was going on in her surgery, but was unable to move or speak because of an injection of pancuronium bromide. She has described the experience as “worse than death”. The use of this chemical for pet euthanasia is not acceptable under American Veterinary Medical Association guidelines, and its use has been banned in several states. On 1 September 2003, a new law reportedly came into force in Texas banning its use in the euthanasia of cats and dogs.

Kevin Zimmerman is due to be executed on the 55th anniversary of the 1948 adoption of the Universal Declaration of Human Rights, with its vision of a world in which the right to life and the right not to be subjected to cruel, inhuman or degrading punishments would be respected. Today, 112 countries have abolished the death penalty in law or practice. In contrast, the USA has executed more than 880 people since it resumed judicial killing in 1977. Texas accounts for more than 330 of these executions. The UN Commission on Human Rights has repeatedly expressed its conviction that “abolition of the death penalty contributes to the enhancement of human dignity and to the progressive development of human rights”, and has also called for an end to the execution of anyone suffering from mental disorders. The UN Safeguards Guaranteeing Protection of the Rights of Those Facing the Death Penalty require capital defendants to be provided “adequate legal assistance at all stages of the proceedings.”

RECOMMENDED ACTION:

Please send appeals to arrive as quickly as possible, in English or your own language, opposing the execution of Kevin Zimmerman, in your own words, using any of the above information as you see fit. Please include Kevin Zimmerman’s prisoner number #977 in your appeals

APPEALS TO:

Gerald Garrett, Chairperson, Texas Board of Pardons and Paroles
P.O. Box 13401, Austin, Texas 78711-3401, USA

Fax: + 1 512 463 8120

Salutation: Dear Mr Chairperson

The Honorable Rick Perry, Governor of Texas, State Capitol, PO Box 12428, Austin, TX 78711, USA

Fax: +1 512 463 1849 / 0039 / 1932

Salutation: Dear Governor

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

You may also write brief letters (not more than 250 words) to: Letters to the Editor, *Austin-American Statesman*, P.O. Box 670, Austin, Texas 78767, USA. **Fax:** +1 512 912 5927. **Email:** <http://www.statesman.com/search/content/standing/letters.html>

PLEASE SEND APPEALS IMMEDIATELY.