

UA 250/01

Dea

USA (New Mexico) Terry Doug Clark, white, aged 45

Terry Clark is scheduled to be executed in New Mexico on 6 November 2001 for the murder of Dena Lynn Gore in 1986. If the execution goes ahead, it will be the first in New Mexico for 41 years. Terry Clark, one of four men on the state's death row, has dropped his appeals.

Nine-year-old Dena Lynn Gore was abducted on 17 July 1986 in her hometown of Artesia. Her body was found a few days later on a ranch where Terry Clark had been staying. He was arrested and charged with the crime.

In November 1986 outgoing Governor Toney Anaya commuted the death sentences of all five men then on New Mexico's death row because of his opposition to the death penalty. Terry Clark's lawyers advised Clark to plead guilty to Dena Gore's murder, thereby forgoing a trial, because the governor had promised to commute Clark's death sentence if one were handed down before he left office on 31 December 1986. However, the judge refused to set the sentencing hearing until 1987, and Clark was sentenced to death by a jury in May of that year. In 1994, the state Supreme Court ordered a new sentencing because of an error in the instructions given to the jury. In 1996, Terry Clark was again sentenced to death. At this sentencing, the jurors were repeatedly informed that their 1987 predecessors had voted for death.

In September 1999, a month after the state Supreme Court upheld his second death sentence, Terry Clark dropped his appeals and asked to be executed. A few months later, he changed his mind and resumed his appeals. In March this year, he again dropped his appeals and asked for an execution date.

In August 2001, a court found Terry Clark competent to drop his appeals. His lawyers had opposed such a finding, arguing that Clark's decision could not be considered voluntary because he is mentally impaired. Prior to the competency hearing, a neuropsychologist diagnosed Clark as suffering from brain damage (of the right frontal lobe), possibly the result of a number of head injuries during his life. Neither sentencing jury was aware of this mitigating evidence.

In addition, a forensic psychologist concluded that Clark suffers from a major depressive disorder with paranoid features.

The lawyers also argued that Terry Clark was incompetent to drop his appeals because of the psychological effects of his long confinement under sentence of death. In recent years, conditions in the North Unit of the Penitentiary of New Mexico, where he is held, have become more severe, with reduced human contact and restrictions on activities. Inmates are held in their cells for 23 hours a day, with an optional hour for out-of-cell exercise on five days of the week. Reportedly, Terry Clark often does not take this option because of the verbal abuse he receives from other inmates as a result of the nature of the crime of which he was convicted. Over the years he has also been the victim of physical assaults by other prisoners.

BACKGROUND INFORMATION

The last person to be put to death in New Mexico was David Nelson, who was killed in the state's gas chamber in 1960 for the murder of Ralph Rainey in 1956. In 1960, there were about 10 countries which had abolished the death penalty. Today 109 countries are abolitionist in law or practice.

In the past two years there has been growing national concern in the USA about the fairness and reliability of the death penalty, and about its impact on the country's image abroad in a world turning away from judicial killing. The USA resumed executions in 1977. Since then, 733 men and women have been executed in 31 US states, 94 of whom have been put to death after giving up their appeals. This phenomenon contributes to the arbitrariness of the death penalty - if all 94 had pursued their appeals, at least some would likely have been successful, given the rate of error found in capital cases by appeal courts.

There may be any number of factors contributing to an inmate's decision not to pursue appeals, including mental disorder, physical illness, remorse, religious belief, the severity of death row conditions, the bleak alternative of life imprisonment without the possibility of parole, pessimism about appeal prospects, a quest for notoriety, or simply to gain a semblance of control over a situation in which the inmate is otherwise helpless. But rational or irrational, a decision taken by someone under threat of death at the hands of others cannot be regarded as consensual. What is more, it cannot disguise the fact that the state is involved in a premeditated killing, a human rights violation that is a symptom of a culture of violence, not a solution to it (see *The illusion of control: "Consensual" executions, the impending death of Timothy McVeigh, and the brutalizing futility of capital punishment*, AMR 51/053/2001, April 2001).

After Terry Clark dropped his appeals in 1999, two officials from the state Department of Corrections witnessed a Texas execution as part of its preparations to resume executions. This time New Mexico has, at the cost of several thousand dollars, hired two executioners from the Texas prison system to carry out Terry Clark's lethal injection on a freelance basis.

When the state Supreme Court upheld Clark's death sentence in 1999, one of the judges wrote that he was "opposed philosophically and practically to the death penalty. I personally believe it to be a bad public policy. However, public policy is solely within the legislature's domain...". On 10 February 2001, a bill to repeal the death penalty in New Mexico was defeated by one vote in the state Senate.

RECOMMENDED ACTION: Please send appeals to arrive as quickly as possible, in English or your own language:

- expressing sympathy for the family of Dena Lynn Gore;
- in your own words, using the above information as you see fit, voicing opposition to the death penalty and to the execution of Terry Clark;
- urging the governor to offer leadership in line with the aspirations of the international community and not to allow his state to take the backward step of resuming executions after over four decades without them;
- urging him to commute Terry Clark's death sentence and to support a moratorium on executions in New Mexico with a view to abolition.

APPEALS TO:

Governor Gary E. Johnson
 Office of the Governor
 State Capitol Building
 Santa Fe, New Mexico 87503, USA
Fax: +1 505 827 3026
Salutation: Dear Governor

COPIES TO:

Janet Green, Secretary, Department of Tourism, 491 Old Santa Fe Trail, Santa Fe, NM 87503, USA. **Fax: +1 505 827 7402**

Timothy LeMaster, Warden, Penitentiary of New Mexico, PO Box 1059, Santa Fe, NM 87504, USA. **Fax: +1 505 827 8283**

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

You may write (in not more than 250 words) to "Letters to the Editor" at:

The Santa Fe New Mexican, 202 East Marcy St., Santa Fe, NM 87501, USA. **Fax: +1 505 986 9147. E-mail: letters@sfnewmexican.com**

Albuquerque Journal, 7777 Jefferson Street NE, Albuquerque, NM 87109-4360, USA. **Fax: +1 505 823 3994. E-mail: opinion@abqjournal.com**

The Albuquerque Tribune, P.O. Drawer T, 7777 Jefferson NE, Albuquerque, NM 87109, USA. **Fax: +1 505 823 3689. E-mail: letters@abqtrib.com**

(Weekly) *Alibi*, 2118 Central Avenue SE, Suite 151, Albuquerque, NM 87106-4004, USA **Fax: +1 505 256 9651. E-mail: letters@alibi.com**

PLEASE SEND APPEALS IMMEDIATELY.