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Further information on EXTRA 19/03 (AMR 51/049/2003, 27 March 2003) and updates (AMR 51/055/2003, 4 April 2003 and AMR 51/091/2003, 24 June 2003) – Death penalty / Legal concern

USA (Ohio) Lewis Williams (m), black, aged 44

Lewis Williams is scheduled to be executed in Ohio on 14 January 2004. He was sentenced to death for the murder of an elderly white woman, Leoma Chmielewski, in 1983. His previous execution date was delayed after a claim was raised that Williams has mental retardation, and that his execution would therefore violate the US Supreme Court's 2002 decision prohibiting the use of the death penalty against people with this disability (*Atkins v Virginia*). A judge subsequently dismissed the claim, and a new execution date was set.

At Lewis Williams's 1983 trial, after the jury convicted him of the crime, the proceedings moved into the sentencing phase. At this stage of a US capital trial, the prosecution presents "aggravating" evidence for execution and the defence presents mitigating evidence for leniency. Jurors took three days to reach a death verdict, despite being presented with minimal evidence by the defence to weigh in mitigation against the state's argument for the death penalty. The trial lawyers presented only three witnesses at the sentencing – the mother of a childhood friend of Lewis Williams, Williams's younger sister and his biological father. The lawyers had failed to prepare even these witnesses for their testimony at the sentencing hearing. For example, the defendant's sister later said that the lawyers had spoken to her for only five minutes immediately before she testified.

A federal district judge upheld Williams's death sentence despite agreeing that the trial lawyers had "presented little (if any) relevant mitigating evidence to the jury". In 2001, a panel of the US Court of Appeals for the Sixth Circuit affirmed the decision. The panel rejected the claim that Williams had been denied adequate representation by his lawyers' failure to fully investigate his troubled background of abuse and neglect to present at the sentencing stage. The appeal courts applied the 1984 US Supreme Court decision, *Strickland v Washington*, which held that errors by defence lawyers do not merit the reversal of conviction or sentence, unless the defendant can prove that such errors had prejudiced the outcome of the case, a standard of proof that is very difficult to meet. Under this rule, the appeal courts must be "highly deferential" to a lawyer's performance, and must "indulge a strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance."

Even under this stringent standard, one of the three judges on the Sixth Circuit issued a strong dissent on the Williams case. She wrote that his trial lawyers' preparation for the sentencing phase had been "wholly inadequate", and that if they had "simply discussed Williams's life with core family members" they would likely have discovered mitigating evidence of his dysfunctional and abusive family background. This included the sexual molestation by a cousin at the age of five; physical abuse – whippings three to four times a week, including with extension cords – that Williams was subjected to as a child by his father; his witnessing of the physical abuse of his mother by his stepfather; his father's drug abuse and Lewis Williams's own resort to illegal drugs, including cocaine, by the age of 13, and Lewis Williams's low IQ (at the age of 11, his IQ was assessed as 76).

The federal judge also wrote that if the trial lawyers "had taken the time to obtain Williams's school, juvenile, and treatment records", they would have discovered that his mother had sought psychological treatment for him at the age of 11. The boy had begun running away from home around the age of eight or nine. The jury heard extensive evidence that Williams had been in trouble with the law as a juvenile, but were given none of the mitigating background that could help to explain it. The Sixth Circuit judge wrote that if the trial lawyers had investigated fully, they would have found evidence that the juvenile justice system had failed to meet his

psychological and emotional needs. She concluded that: “Given the wealth of information that the attorneys could have presented regarding Williams's troubled life, and the ease with which the attorneys could have obtained such information, it is difficult to imagine how the attorneys’ failure to conduct a proper investigation and then present meaningful mitigating evidence did not prejudice Williams.”

As in this case, the *Strickland v Washington* decision has been a severe barrier to a successful appeal on the grounds of inadequate legal representation. Since 1984, the Supreme Court has only overturned two death sentences on the basis of a violation of *Strickland*. The first, *Williams v Taylor*, was in 2000, involving Terry Williams, a Virginia death row inmate. In Lewis Williams’s case the dissenting Sixth Circuit judge noted the similarity to the case of Terry Williams: “Like the six-justice majority in *Williams v Taylor*, I believe that a description of Lewis Williams’s childhood, filled with sexual abuse and drug use and exposure to drugs at a young age, and parental neglect might well have influenced the jury’s appraisal of Williams’s moral culpability.”

Then, on 26 June 2003, in *Wiggins v Smith*, the Supreme Court overturned the death sentence of a Maryland death row prisoner, Kevin Wiggins, on the basis that he had received inadequate legal representation. Wiggins’s lawyers failed to investigate his social history and therefore, the Court said, could not justify their decision not to present the compelling mitigating evidence that was available. The *Wiggins* decision provides reason to hope for greater judicial scrutiny of the performances of capital trial lawyers. However, Lewis Williams remains scheduled for execution despite the similarities between his and the *Wiggins* and *Williams* cases in which those death sentences were overturned.

International standards require that capital defendants receive such assistance “at all stages of proceedings”. The United Nations Special Rapporteur on extrajudicial, summary or arbitrary executions has emphasised that “all mitigating factors must be taken into account” in capital cases.

FURTHER 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 of Leoma Chmielewski, explaining that you are not seeking to excuse the manner of her death or to minimize the suffering it will have caused;
- expressing concern that the jury heard minimal evidence of the defendant’s dysfunctional and abusive background on which to base their sentencing decision;
- noting that even without this information they evidently had trouble reaching a verdict, suggesting that the mitigating evidence that was available could have persuaded one or more jurors to vote for life;
- noting that the federal district judge agreed that the trial lawyers had “presented little (if any) relevant mitigating evidence to the jury”, and that a Sixth Circuit judge has said that Lewis Williams’s trial representation had been “wholly inadequate” at the sentencing phase;
- noting the very high threshold for a successful appeal on inadequate legal representation, but that the US Supreme Court has recently indicated in *Wiggins v Maryland* greater judicial scrutiny of trial lawyers’ conduct, scrutiny that might have allowed Lewis Williams a successful appeal;
- opposing the execution of Lewis Williams and urging clemency.

APPEALS TO:
Governor Bob Taft, 30th Floor, 77 South High Street, Columbus, Ohio 43215-6117, USA
Fax: +1 614 466 9354
Email: Governor.Taft@das.state.oh.us
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, *The Plain Dealer*, 1801 Superior Ave., Cleveland 44114, USA.
Fax: + 1 216 999 6209
Email: letters@plaind.com

PLEASE SEND APPEALS IMMEDIATELY.