

PUBLIC

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**Further information on EXTRA 14/03 (AMR 51/027/2003, 18 February 2003) – Legal concern
USA (Florida) Lionel Tate (m), black, aged 16**

On 10 December, Human Rights Day, a Florida court overturned the conviction of Lionel Tate. In 2001, he was sentenced to life imprisonment without the possibility of parole for the 1999 murder of six-year-old Tiffany Eunick committed when Lionel Tate was 12 years old. The state has until 25 December to appeal against the decision.

Article 37(a) of the United Nations Convention on the Rights of the Child (CRC) states: "Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below eighteen years of age". One hundred and ninety two countries have ratified this treaty. The USA has not ratified it, but has signed it, thereby binding itself under international law not to do anything which would defeat the object and purpose of the treaty, pending its decision on whether to ratify.

On 10 December 2003, a three-judge panel of the Fourth District Court of Appeal of the State of Florida ruled that because of Lionel Tate's "extremely young age and lack of previous exposure to the judicial system" the trial court should have ordered a pre-trial hearing into his competency to stand trial, or at least not denied the defence's request for a post-trial competency hearing after it presented testimony from a neuropsychologist and two attorneys raising doubts about Tate's competency. The state has 15 days from the date of the decision in which to appeal for a rehearing by the panel or a rehearing in front of the whole Fourth District Court. Lionel Tate will be kept in prison pending that decision. If the state does appeal, his incarceration may continue for several months. The state could also seek discretionary review by the Florida Supreme Court, which could keep him in prison for much of next year.

Amnesty International regrets that the Fourth Circuit rejected the claim that a life sentence without the possibility of parole against someone so young is unconstitutional. The court reiterated an earlier decision that "the responsibility for this choice [of punishment] rests with the legislature and is entitled to substantial deference." The court noted that "the trial and sentence, in light of Tate's age, has been the focus of considerable public interest".

BACKGROUND INFORMATION

Lionel Tate's sentence contravenes the principle that the state's treatment of children who commit crimes, however serious, must focus on the possibility of the child's rehabilitation and successful reintegration into society. Indeed, under international standards, maximizing this possibility should be one of the primary guiding principles motivating the state's response. Article 37(b) of the CRC calls upon states to use imprisonment against a child "only as a measure of last resort and for the shortest appropriate period of time". Article 40 calls upon states to treat children found to have violated the law in a way that "takes into account the child's age and the desirability of promoting the child's reintegration and the child's assuming a constructive role in society". Article 14(4) of the International Covenant on Civil and Political Rights, which the USA ratified in 1992, states: "In the case of juvenile persons, the procedure shall be such as will take account of their age and the desirability of promoting their rehabilitation". The UN Rules for the Protection of Juveniles deprived of their Liberty furthermore state that any such deprivation should only be under conditions that guarantee "meaningful activities and programmes which would serve to promote and sustain [the juveniles'] health and self-respect, to foster their sense of responsibility and encourage those attitudes and skills that will assist them in developing their potential as members of society".

There are many people in the USA – possibly hundreds – serving life imprisonment without the possibility of parole for crimes committed when they were under 18. Amnesty International knows of none who was as

young as Lionel Tate at the time of the offence. In a statement on 6 June 2001, although rejecting consideration of clemency for Lionel Tate at that time (he also rejected clemency again earlier this year), Governor Jeb Bush said: "As I have previously expressed, I am also concerned about the law which can require a life sentence – without any possibility of parole – for a crime committed by a 12-year-old child. I am not sure it is right to consign such a young child to a life without any hope... This is a concern that I know is shared by many Floridians". Lionel Tate's case was also the subject of UA 133/2001 (AMR 51/077/2001, 1 June 2001).

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 Tiffany Eunick's family, explaining that you are not seeking to belittle her tragic death or the suffering it has caused;
- noting that international law prohibits life imprisonment without the possibility of parole for someone under 18 at the time of the crime, and specifies that the imprisonment of children must only be a measure of last resort and for the shortest appropriate period of time;
- welcoming the Fourth District Court of Appeal's decision that Lionel Tate should receive a new trial;
- urging the state not to appeal the decision, and not to pursue a sentence of life without the possibility of parole in any new proceedings;
- urging that the state's response be aimed at maximizing Lionel Tate's potential for successful reintegration into society, in line with international standards recognized around the world.

APPEALS TO:

The Honorable Charlie Crist
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Salutation: Dear Attorney General

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COPIES TO:

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

PLEASE SEND APPEALS IMMEDIATELY. Check with the International Secretariat, or your section office, if sending appeals after 27 January 2004.