

EXTRA 84/02

Death penalty/Legal concern

19 November 2002

USA (North Carolina)

Ernest West Basden (m), white, aged 50

Ernest Basden is scheduled to be executed in North Carolina on 6 December. He was sentenced to death in 1993 for the murder of Billy Carlyle White, who was shot dead in January 1992.

The plot to murder Billy White was devised by Sylvia White, his wife. The North Carolina Supreme Court's 1994 decision to affirm Ernest Basden's death sentence states that Sylvia White had wanted to kill her husband "for at least a year. She unsuccessfully tried to poison him with wild berries and poisonous plants. She also enlisted the help of Lynwood Taylor, [Basden's] nephew. Taylor then approached [Basden] and told him he needed a hit man and asked [him] if he wanted the job. [Basden] initially thought the idea was crazy and refused." Meanwhile, Lynwood Taylor suggested ideas for Sylvia White, including that she make the murder look like suicide. She rejected that idea because she had already had one husband who had been found to have committed suicide and another "would look too suspicious" (that husband had reportedly suffered arsenic poisoning for a year before being found dead with a gunshot wound to the head).

Ernest Basden became involved in the plot after he became unable to work due to illness and ran into financial difficulties. According to his appeal lawyers, his vulnerable state meant that he was easily pressured into becoming involved by his nephew. As Basden's drug supplier, Lynwood Taylor also knew that Basden had a drug and alcohol problem. He allegedly lied to his uncle that Billy White was violent towards Sylvia White.

It was Ernest Basden who actually shot Billy White, with a gun reportedly provided by Lynwood Taylor. Taylor also planned specific details of the crime. Not long after the murder, Ernest Basden voluntarily went to the police, and gave a detailed confession, saying that he had shot Billy White because he needed the money. He also said that his nephew had plied him with marijuana, alcohol, cocaine and Valium on the day of the murder.

Ernest Basden was the first of the three defendants to be tried. He was appointed a lawyer who was dying from leukemia. Despite his illness, which required repeated spells in hospital, the lawyer refused to step down. For almost a year, no significant pre-trial motions were filed in the case. Six weeks before the trial, the lawyer withdrew from the case (he died a few months later). The court refused to postpone the trial to allow his replacement more time to prepare. In 2002, the Fourth Circuit Court of Appeals acknowledged that at least one of the several claims of ineffective assistance of counsel raised on appeal was "particularly troubling". The Court also found "troubling" the prosecution's withholding of certain evidence from the defence until the first morning of the trial.

The jury sentenced Ernest Basden to death, after a long deliberation, despite finding several mitigating factors. These included the fact that he was under the influence of a mental or emotional disturbance at the time of the crime, was remorseful, had accepted responsibility, was cooperative with the police, and that his character and prior conduct was inconsistent with the crime. The

Fourth Circuit Court of Appeals noted that the jury's finding that Basden was under the domination of Taylor and affected by alcohol and drugs at the time of the killing meant that "at least one of the jurors... accepted, in sum, that he was an intoxicated, manipulated, rube [bumpkin]".

One of the original trial jurors recently expressed the "sincere hope that the governor will stop the killing of Mr Basden as he does not deserve to be killed." Another juror recently recalled that "throughout the majority of the deliberations, nine of the 12 jurors wanted to give Ernest life instead of death". The juror explained that two of the other jurors convinced the rest that Ernest Basden would be released within a few years if they voted for life. The juror stated that the two jurors "also convinced the remainder of the jurors that, if they sentenced Basden to death, he would never actually be executed but would simply serve a longer prison sentence than if he was given life."

In 1993, Sylvia White was convicted of the first-degree murder of her four-year-old stepson. The state did not seek the death penalty. In 1996, she was offered a plea bargain to second-degree murder for her involvement in the murder of Billy White. Lynwood Taylor was offered a plea bargain and had his sentencing postponed for three years. Sylvia White and Lynwood Taylor received prison terms for their role in the Billy White murder and will be eligible for parole in 2005 and 2013 respectively.

BACKGROUND INFORMATION

Amnesty International opposes the death penalty unconditionally. Every death sentence is an affront to human dignity, every execution a symptom of a culture of violence, not a solution to it. Moreover, the US death penalty, supposedly reserved for the "worst of the worst", is characterized by arbitrariness, discrimination and error. Today, 111 countries are abolitionist in law or practice. Fifty-eight people have been put to death in the USA this year, bringing to 807 the number of executions since 1977.

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

- explaining that you are not seeking to excuse the manner of Billy White's death, or to minimize the suffering it will have caused;
- noting the range of mitigating factors in the case, including Ernest Basden's long-held remorse and his domination by his co-defendant, Lynwood Taylor;
- noting evidence that the jury had not wanted to sentence Ernest Basden to death, and noting the state's more lenient approach to his co-conspirators, who will be eligible for parole within the next few years;
- noting that the Fourth Circuit Court of Appeals has described the case as "troubling", and expressing concern that Ernest Basden was represented until shortly before his trial by a lawyer whose terminal illness can only have impaired his preparation, and that the trial court refused to delay the trial to allow the replacement counsel more time to prepare;
- pointing out that the power of executive clemency exists to compensate for the rigidity of the judiciary;
- urging the Governor to grant clemency to Ernest Basden.

APPEALS TO:

Governor Michael F. Easley

Office of the Governor

20301 Mail Service Center, Raleigh, NC 27699-0301, USA

Fax: + 1 919 715 3175 / 733 2120

Email, via website: www.governor.state.nc.us (Click on Acontact us@)

Salutation: Dear Governor

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

You may also copy your appeals or write a brief letter (not more than 250 words) to:

Letters to the Editor, *The News-Observer*, PO Box 191, Raleigh, NC 27602, USA.

Fax: + 1 919 829 4872. E-mail: forum@newsobserver.com

PLEASE SEND APPEALS IMMEDIATELY.