

**USA (Oklahoma) Dion Athanasius Smallwood, Native American/Hispanic, 31**

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Dion Smallwood is scheduled to be executed in Oklahoma on 18 January 2001. He was sentenced to death for the 1992 murder of Lois Frederick. His clemency hearing before the state Pardon and Parole Board is due to take place on 4 December.

The body of Lois Frederick was found in a burned-out car in Oklahoma City on 5 February 1992. She was the adoptive mother of Smallwood's girlfriend. Smallwood said he had struck Lois Frederick on the head with a croquet mallet during a violent domestic dispute. Thinking he had killed her, he then put her body in the car and after driving around, set fire to the vehicle. It is not known whether the victim was ever conscious in the car.

Dion Smallwood, who has a history of mental illness, was initially found incompetent to stand trial on the grounds that he was unable to consult with his lawyer or rationally assist in the preparation of his defence. He was sent to a psychiatric hospital where he received treatment. After nearly three months, the hospital determined that he could stand trial, although it noted that he remained "a danger to himself and others", the standard in Oklahoma for commitment to a psychiatric facility.

At the time, Oklahoma law presumed that a criminal defendant was competent to stand trial unless he or she proved their incompetence by "clear and convincing" evidence. In 1996, the US Supreme Court found that this burden of proof was unconstitutionally high, and that the standard must be a "preponderance" of the evidence. However, the appeal courts have rejected the claim that Dion Smallwood was found competent to stand trial under an unconstitutional standard of proof.

At the 1993 trial, the defence lawyer called a psychologist as an expert witness. However, the prosecution objected on the grounds that the lawyer had said that he would not be presenting such testimony at the first stage of the trial. The lawyer explained that the psychologist would be unable to appear at the sentencing phase, and that his testimony was relevant to whether the defendant could have formed the intent to kill. However, the court upheld the state's objection and the jury never heard any expert mental health testimony from the defence at either stage of the trial.

Dion Smallwood had sought psychiatric help shortly before the murder of Lois Frederick because his condition was deteriorating. On 10 January 1992 he went to a mental health facility, stating that he was having "a crisis". The relevant counsellor was busy and asked him to come back in two hours. Although she noted that he was "obviously in relapse", she did not follow up on his whereabouts when he did not return.

A clinical psychologist, who assessed Smallwood after his conviction, found that he suffered from bipolar disorder (manic depression): "This psychiatric disturbance when of the severity of that of Dion, disrupts all areas of functioning, relationships, occupational, social, and often requires hospitalization to prevent harm to self or others. Dion never had this necessary treatment". She said that had he received such treatment, "it is unlikely that his situation would have created the intense symptoms he experienced that culminated in the death of Mrs Fredericks". She also noted that Smallwood

"clearly suffers from the additional severe complicating array of problems of his unfortunate life circumstances". His childhood was marked by poverty, violence, abuse, deprivation and parental abandonment. His father (Native American) and mother (Hispanic) suffered from mental problems, and his oldest brother has been diagnosed with paranoid schizophrenia and manic depression.

Dion Smallwood has said: "Not a day goes by that I do not think of what I did and the pain I've caused... I wish I had never gotten up that day, but I cannot change that. I have asked God's forgiveness and I have asked Lois to forgive me. I only hope that she has done that".

#### **BACKGROUND INFORMATION**

According to the US National Alliance for the Mentally Ill (NAMI): "After accurate diagnosis, most people with bipolar disorder can be successfully treated with medication in 80 percent to 90 percent of all cases". NAMI opposes the death penalty against persons with severe mental illnesses. The widely held belief that the execution of the mentally impaired flouts basic standards of decency is reflected in a resolution adopted in April 2000 by the UN Commission on Human Rights urging all retentionist countries "not to impose the death penalty on a person suffering from any form of mental disorder or to execute any such person".

#### **RECOMMENDED ACTION: Please send faxes/express/airmail letters in English or your own language, in your own words, using the following guide:**

- expressing sympathy for relatives and friends of Lois Frederick, and explaining that you are not seeking to excuse her murder;
- expressing concern that Dion Smallwood was condemned by a jury that never heard any testimony from a mental health expert, despite suffering from a serious mental illness at the time of the crime;
- noting that the National Alliance for the Mentally Ill opposes the use of the death penalty against those with serious mental disorders, a view reflected in international standards of justice;
- noting that the power of executive clemency exists to compensate for the rigidities of the law, and that this is a compelling case for compassion;
- noting expert opinion that if Smallwood had received the psychiatric help he sought shortly before the crime, this tragedy might have been avoided;
- (before 4 December) urging the Board not to compound society's failure, but to recommend that the governor grant clemency;
- (after 4 December) appealing to the governor to do all in his power and influence to stop this execution.

#### **APPEALS TO:**

##### **Before 4 December:**

Pardon and Parole Board  
4040 North Lincoln, Suite 219, Oklahoma City, OK 73105, USA

**Fax: + 1 405 427 6648**

**Salutation: Dear Board Members**

Please send copies of appeals sent to the Board (ie those sent before 4 December, but not after) to Dion Smallwood's appeal lawyer for use in her clemency efforts: K.L. Delk, PO Box 5676, Norman, Oklahoma 73070, USA.

**Fax: + 1 405 344 6697**

**E-mail: kldelk@juno.com**

**After 4 December:**

Governor Frank Keating  
Capitol Building, Oklahoma City, OK 73105, USA

**Fax: + 1 405 521 3353**

**E-mail: [governor@oklaosf.state.ok.us](mailto:governor@oklaosf.state.ok.us)**

**Salutation:Dear Governor**

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

**PLEASE SEND APPEALS IMMEDIATELY.**