

PUBLIC

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Further information on EXTRA 81/00 (AMR 51/157/00, 25 October 2000) - Death penalty / Legal concern

USA (Texas) John Paul Penry, aged 44

On 16 November, the US Supreme Court blocked the execution of John Paul Penry less than four hours before it was due to be carried out. However, the Court has not yet announced whether it will consider the merits of John Penry's appeal.

John Penry was sentenced to death in 1980, and again at a retrial in 1990, for the murder of Pamela Moseley Carpenter in 1979. He has serious mental impairment and suffered a childhood of appalling torture and abuse.

This is the second time that the US Supreme Court has stopped John Penry's execution. The first time was in 1988, when the Court issued a stay 13 hours before John Penry was due to be put to death. After hearing legal arguments in the case, the Court overturned the death sentence in the landmark decision, *Penry v Lynaugh*, in 1989.

In that decision, the Court ruled that it was not unconstitutional to execute an individual with mental retardation as long as the jury had been able to consider the mitigating value of such impairment. The Court ruled that Penry's 1980 jury had not been able to do so because of the rigid format of the Texas capital sentencing scheme. As a result, the Texas legislature amended the scheme, but this change had not come into force by the time of Penry's 1990 retrial, at which he was again sentenced to death. The claim that Penry's second jury had been restricted like his first was rejected by the US Court of Appeals for the Fifth Circuit in June 2000.

This issue is now before the US Supreme Court, which is likely to announce whether it will consider the merits's of Penry's appeal before the end of the year.

If the Court rejects the appeal without considering its merits, the stay of execution will automatically be lifted. Texas would then be free to set another execution date. If the Court decides to examine the case, oral arguments would be scheduled, probably for some time next year.

The Texas Board of Pardons and Paroles had already rejected clemency when the US Supreme Court stay was announced. Governor George Bush had not announced whether he would block the execution, using his power of 30-day reprieve. John Penry's lawyers had made a special appeal to Governor Bush to grant such a reprieve, citing the governor's preoccupation with the unresolved presidential election.

There has been widespread opposition to the looming execution, including from the American Bar Association and the Council of Europe. In a letter to Governor Bush, the Deputy Secretary General of the Council of Europe described the planned execution as "particularly abhorrent" given John Penry's mental impairment. On 8 November, the Inter-American Commission on Human Rights called on the US Government to "take all the necessary measures to stay Mr Penry's execution".

For further information on this case, see *Beyond Reason: The imminent execution of John Paul Penry* (AMR 51/195/99, December 1999), available at www.amnesty.org.

See also *An open letter to Governor Bush of Texas on the planned killing of John Paul Penry* (15 November 2000, AMR 51/170/00).

John Penry was scheduled to become the 150th person to be put to death since Governor Bush took office in January 1995. He also would have been the 38th prisoner executed in Texas this year, the state's highest annual total since executions resumed in the USA in 1977.

Three more people are scheduled to be executed in Texas on 5,6 and 7 December (see EXTRA 51/179/00, 21 November 2000).

No further action by the UA Network is requested at present. Many thanks to all who sent appeals.