

USA (Texas) James Lee Beathard, white, aged 42

James Beathard is scheduled to be executed in Texas on 9 December 1999. He was sentenced to death in 1985 for the murder of Marcus Lee Hathorn. There are serious concerns surrounding his conviction.

Marcus Hathorn's half-brother, Gene Hathorn, developed a plan to kill his family to inherit money his father had received in compensation for an injury. He needed an alibi, and allegedly discussed his plan with several people, including James Beathard. On 9 October 1984 Gene Hathorn drove with Beathard to the trailer where his father, step-mother and half-brother lived. At the trailer the three were shot dead.

James Beathard was tried first. Gene Hathorn testified against him, claiming that he, Hathorn, had fired one shot from outside the trailer, but that Beathard had entered the trailer and shot the victims. The prosecutor supported Hathorn's version, saying that there "has not been one piece of evidence that says Gene Hathorn is a liar... he is telling the truth." Beathard testified that he was innocent of murder, and that Hathorn had convinced him that they were going to a drug deal which would give Beathard the money he needed to pay off his child support debts. Beathard was convicted of Marcus Hathorn's murder and sentenced to death.

At his own trial, Gene Hathorn repeated his version of events. This time, however, the same prosecutor said that if Hathorn had "told the truth, I'm a one-eyed hunting dog", and argued that Hathorn had entered the trailer and killed his family while Beathard had remained outside. Hathorn was sentenced to death for the murder of his father and remains on death row.

Several months later, James Beathard filed a motion for a new trial. At a court hearing, Gene Hathorn, who had voluntarily contacted Beathard's lawyer to say that he wanted to recant, testified that he had lied at both trials. He said that Beathard had no role in planning the murders and did not shoot any of the victims. When asked why he had changed his testimony, he said, "because James Beathard is an innocent man". He testified that his earlier version was the result of threats from law enforcement officials and the prospect of a sentence less than death. The motion for a new trial was denied, because it had been filed too late. The court made no findings of fact or conclusions of law. The merits of Hathorn's new testimony have never been considered by any court.

James Beathard had initially been represented by a lawyer who was also acting for Gene Hathorn in other cases, an obvious conflict of interest. Although he withdrew as Beathard's lawyer prior to the trial, by then he had already represented Beathard during a crucial post-arrest period. He has since conceded that he was wrong to have taken Beathard's case at all.

James Beathard had no prior record of violence. At his trial, more than 20 people testified to his non-aggressive nature. They included the director and a psychologist at the mental hospital where Beathard had worked as an orderly (and where he had first met Gene Hathorn, who was doing the same job). Friends and relatives testified about his devotion to his children, and his distress at the breakup of his marriage, and the ensuing battle with his wife for custody of their children. Several people, including Gene Hathorn at his own trial,

have said that James Beathard had never owned a gun, and barely knew how to use one. Gene Hathorn had a reputation for violence, was a skilled marksman, supplied the guns that were used in the killings, and was said to harbour a bitter hatred of his violent father.

On 26 June 1998, Governor Bush granted clemency to Henry Lee Lucas, and commuted his death sentence to life imprisonment, on grounds of doubts of his guilt (see update to EXTRA 41/98, AMR 51/42/98, 30 June). Governor Bush said: "The first question I ask in every case is whether there is any doubt about the individual's guilt or innocence... In this case, at the time it made its decision, the jury did not know and could not have known that Henry Lee Lucas had a pattern of lying and confessing to crimes that evidence later proved he did not commit."

The jury at James Beathard's trial could not have known that within months of their verdict and sentence, the only eyewitness to the murders would have recanted his version of events and asserted Beathard's innocence. Moreover, the jury were unaware that the state prosecutor would present a totally contradictory version of events at Beathard's co-defendant's trial. At the very least Governor Bush should grant a 30-day reprieve so that a full hearing can be held into this case.

RECOMMENDED ACTION: Please send telegrams/faxes/express/airmail letters in English or your own language:

- expressing deep concern that James Lee Beathard is scheduled for execution despite doubts over his guilt in the murder of three members of the Hathorn family in 1984;
- noting that the jurors at his trial cannot have known that within months of their verdict the only other eyewitness to the murders would have reversed his testimony and stated James Beathard's innocence;
- noting that the jurors cannot have known that the state prosecutor would present two contradictory versions of events at the two trials;
- recalling Governor Bush's commutation of Henry Lucas' death sentence;
- expressing concern that James Beathard was initially represented by a lawyer with a serious conflict of interest;
- urging that the Governor grant clemency to James Beathard and commute his sentence, or that at the very least he grant a 30-day reprieve so that a full hearing can be held into this disturbing case.

APPEALS TO:

The Honourable George W. Bush
 PO Box 12428, Austin, TX 78711-2428, USA
Fax: +1 512 463 1849
Telegrams: Governor Bush, Austin, Texas, USA
Salutation: Dear Governor

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

You may also send letters of concern (not more than 250 words) to:

Letters to the Editor, *Dallas Morning News*, PO Box 655237, Dallas, TX 75265, USA. **Fax: +1 972 263 0456. E-mail: letterstoeditor@dallasnews.com**

PLEASE SEND APPEALS IMMEDIATELY.