

URGENT ACTION

ARKANSAS EXECUTION SET DESPITE TRIAL CONCERN

Marcel Wayne Williams, a 40-year-old African American man, is scheduled to be executed in the US state of Arkansas on 12 July. He was sentenced to death in 1997 for a murder in 1994. The jury never heard compelling mitigating evidence about his background of severe abuse.

On 5 December 1994, police found the body of Stacy Errickson, a 22-year-old woman, in a shallow grave near Little Rock, Arkansas. Marcel Williams, at the time aged 24, was charged with abducting, raping and killing the victim, who had disappeared on 20 November 1994. He was tried in January 1997. His lawyers did not contest his guilt, as part of their strategy to persuade the jury to pass a sentence of life imprisonment without the possibility of parole rather than a death sentence. However, at the sentencing phase they then effectively provided no mitigating evidence. The only witness they presented was an inmate whose death sentence had been reduced to life imprisonment without parole and who testified that, in his opinion, conditions on death row were better than in the general prison population. The trial lawyers knew about, but did not present, compelling mitigating evidence relating to Marcel Williams' background of poverty, deprivation and abuse.

In 2007, after the death sentence had been upheld in the state courts, a federal judge ruled that "by clear and convincing evidence" the performance of the trial lawyers had been constitutionally inadequate because of their failure to present this mitigating evidence. After conducting a three-day evidentiary hearing, the US District Court judge summarized this evidence as follows: "Marcel Wayne Williams was subject to every category of traumatic experience that is generally used to describe childhood trauma. He was sexually abused by multiple perpetrators. He was physically abused by his mother and stepfather, who were his primary care[givers]. He was psychologically abused by both of his primary care[givers]. He was subjected to gross neglect in all categories of neglect: medical, nutritional, educational. He was a witness to violence in the home and in his neighbourhood throughout his childhood. As an adolescent, he was violently gang-raped in prison". The judge concluded that had the jurors heard such evidence it was likely that they would have returned a life rather than a death sentence. He ordered the state to give Marcel Williams a new sentencing hearing or change his sentence to life imprisonment without parole.

The state appealed, and in 2009 a three-judge panel of the US Court of Appeals for the Eighth Circuit reversed the District Court's ruling on procedural grounds, concluding that Marcel Williams had not been entitled to the federal evidentiary hearing. The Eighth Circuit therefore itself disregarded the evidence introduced at that hearing and upheld the death sentence. In 2010, the US Supreme Court declined to take the case, over the dissent of two Justices, who argued that the Eighth Circuit's opinion came "at an unacceptable cost to the interests of justice".

PLEASE WRITE IMMEDIATELY in your own words:

- Acknowledge the seriousness of the crime of which Marcel Williams was convicted and explaining that you are not seeking to downplay the crime or the suffering caused;
- Express concern that the jury never heard the mitigating evidence about the defendant's background of severe poverty, deprivation and abuse and the effects of this upon him, noting that the only judge to have heard this evidence said that the death sentence should not stand;
- Note that the power of executive clemency is not constrained by law in the way appeal courts may be;
- Calling on the governor to commute this death sentence.

PLEASE SEND APPEALS – FROM INSIDE THE USA ONLY, NO NON-US APPEALS – BEFORE 14 JULY 2011 TO:

Governor Mike Beebe, State Capitol Room 250, Little Rock, AR 72201

Fax: 501 682 3597

Email: <http://governor.arkansas.gov/contact/index.php>

Salutation: Dear Governor

Please check with your section office if sending appeals after the above date.

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ADDITIONAL INFORMATION

Marcel Williams came into conflict with the law at an early age. According to the Eighth Circuit's summary of the evidentiary hearing held by US District Court Judge Leon Holmes in December 2006, "living in poverty and neglect, Williams began stealing and shoplifting to support his siblings", and spent time in juvenile facilities when he was between 12 and 14. "He resumed stealing shortly after his release and was convicted of aggravated robbery as an adult in 1986, when he was sixteen. He was sentenced to eight years in prison, where he allegedly was raped by three fellow inmates".

A key witness at the District Court evidentiary hearing was Dr David Lisak, an expert in psychological trauma, child abuse, and the relationship between abuse and violence. The summary of his testimony provided by Judge Holmes includes the following: "The physical abuse that Mr Williams endured was unrelenting. He was beaten by his stepfather, and by his mother. His mother was probably the major perpetrator simply because she was around for a longer period of time. The abuse was really hideous. They both beat him with their fists. They used belt buckles. They used extension cords. On two occasions, his mother deliberately burned him, once with boiling water and the other time with an electric coil... There were many occasions in which Mr Williams was left with welts, cuts, bleeding cuts... There is no meaningful way to quantify the severity of the physical abuse inflicted on Mr Williams, but if you were to divide it up into mild, moderate, and severe, there is no question that this is extremely severe". Dr Lisak also described the sexual abuse to which the young boy was subjected between the ages of nine and 14, and "by the time he was twelve years old, his mother was routinely pimping him". In addition, the psychological abuse "was constant".

Dr Lisak addressed the possible effects of such abuse. The summary of his testimony at the hearing continues: "It should be fairly obvious that, for somebody who has been subjected to that kind of unrelenting trauma up to the point of his incarceration at the age of fifteen, who then gets raped in prison and then spends essentially ten years in prison, there's not going to be a good outcome to this. Where would he learn anything that he needs to know in order to function in society?... During the six months that he was out before these terrible crimes, his life rapidly spirals out of control. I don't know how anybody would have bet very much money that he was going to be able to make it without a lot of external support, and he didn't."

The jury that sentenced Marcel Williams to death heard nothing about his background or its possible impact on his conduct. Judge Holmes found that this was because "his lawyers, all of whom were fairly inexperienced at the time, did not know how to present the mitigation evidence.... Had they known that they could present the evidence through a professional, they would have done so." The lawyer appointed to represent Marcel Williams after his trial for his state-level appeals also failed to investigate or present the mitigating evidence – or to seek funds and expert help to do such an investigation – so the first time the evidence was presented was at the federal evidentiary hearing held by Judge Holmes. Under US law, this has proved to have been too late.

The Eighth Circuit panel emphasised that because the Arkansas courts had reviewed the claim of inadequate legal representation, "we must apply the deferential standards for reviewing state court determinations mandated by AEDPA", referring to the Anti-Terrorism and Effective Death Penalty Act, passed by US Congress and signed into law by President Bill Clinton in 1996. This law placed unprecedented restrictions on state prisoners raising claims in federal court of constitutional violations, in part in a bid to facilitate executions. Under the strictures of the AEDPA, the Eighth Circuit ruled, the District Court had been wrong to grant an evidentiary hearing in the Marcel Williams case, and so "we must decline to consider the evidence presented at that hearing". The Eighth Circuit said that the District Court had overturned the death sentence "on an evidentiary record never presented to the state courts", and that, based on the record in state court, the upholding of the death sentence by the state courts had not been unreasonable.

A clemency petition now before the Arkansas Board of Parole requests that the death sentence be commuted to life imprisonment without parole. It concludes: "Mr Williams's tragic life history does not mean that he should not pay for his crimes, but it does call for a degree of mercy. The jury never heard the case for mercy, and the judicial system was unable to correct the problems in Mr Williams's case because they came to light too late. But this Board has the power to intervene". The state Governor has independent clemency authority even without a clemency recommendation from the parole board.

Amnesty International opposes the death penalty in all cases, regardless of the crime, the offender, or the method of execution. There have been 1,254 executions in the USA since judicial killing resumed there in 1977. Arkansas accounts for 27 of these executions, with the last of them conducted in 2005. There have been 20 executions in the USA this year.

UA: 182/11 Index: AMR 51/054/2011 Issue Date: 15 June 2011

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