

# URGENT ACTION

## INMATE WITH MENTAL DISABILITY FACING EXECUTION

**Holly Wood, a 50-year-old African American man who has significant mental impairments, is due to be executed in Alabama on 9 September. Four federal judges on three courts have concluded that he was denied adequate legal representation at the sentencing stage of his 1994 trial.**

Holly Wood's former girlfriend, Ruby Lois Gosha, the mother of their son, was shot in her home on 1 September 1993. A jury convicted Holly Wood of her murder on 21 October 1994. At the sentencing hearing, Holly Wood was represented by a lawyer who had been admitted to the bar five months earlier, had no trial or criminal law experience, and had never worked on a capital case before. Alabama law required that lawyers appointed to capital cases had at least five years' experience in criminal law. The novice lawyer was appointed to assist the two senior lawyers on the case, but they delegated the penalty phase to him and effectively abandoned him.

The presentation of mitigating evidence at the sentencing was minimal. In particular, there was no evidence at all presented about Holly Wood's mental ability despite the lawyers being in possession of an expert report indicating that Wood operated, "at most, in the borderline range of intellectual functioning". Because of the novice lawyer's inadequate investigation, the fact that as a child Holly Wood had been in special education classes for children with low IQ scores was not investigated or presented to the jury. The US Supreme Court has recognized that "impaired intellectual functioning is inherently mitigating" (2004) and has said that evidence that a capital defendant is "borderline mentally retarded, might well... influence[e] the jury's appraisal of his moral culpability" (2000).

By a vote of 10-2, the jury voted to recommend the death penalty. Another vote against death would have resulted in a life sentence. The vote was split along racial lines, with the two black jurors voting for life imprisonment and the 10 whites voting for execution. Blacks had been disproportionately removed by the prosecution during jury selection. The judge accepted the jury recommendation and sentenced Holly Wood to death on 9 December 1994, finding that there were no mitigating circumstances.

The Alabama courts upheld the death sentence. However, in 2006 Senior US District Court Judge Harold Albritton ruled that Holly Wood had been denied his right to effective assistance of counsel at the sentencing, and ordered that he be resentenced to life in prison, or given a new sentencing hearing. In 2008, the Court of Appeals for the 11<sup>th</sup> Circuit overturned the ruling, citing the "highly deferential standards" to be given to state court decisions by the federal judiciary. One of the three judges dissented, citing the "egregious failures" and "sheer neglect" of the trial lawyers. In 2010, the US Supreme Court upheld the 10<sup>th</sup> Circuit decision. Two Justices dissented, arguing that the failure of the trial lawyers to investigate Wood's mental disability was the product of "inattention and neglect."

### **PLEASE WRITE IMMEDIATELY in English or your own language, in your own words:**

- Explaining that you are not seeking to excuse the killing of Ruby Lois Gosha;
- Expressing concern that Holly Wood was represented at his sentencing by a novice lawyer with no experience, and that the jury was presented no evidence of Holly Wood's significant mental disability;
- Noting the strong opinions of the four federal judges – on the US District Court, the US Court of Appeals, and the US Supreme Court – who argued that the legal representation at his sentencing was constitutionally inadequate;
- Calling on the Governor to grant clemency and to commute Holly Wood's death sentence.

### **PLEASE SEND APPEALS BEFORE 9 SEPTEMBER 2010 TO:**

Governor Bob Riley, State Capitol, 600 Dexter Avenue  
Montgomery, Alabama 36130, USA

**Fax: +1 334 353-0004**

**Salutation: Dear Governor**

#### **Email:**

[http://governor.alabama.gov/contact/contact\\_form.aspx](http://governor.alabama.gov/contact/contact_form.aspx)

**Also send copies to diplomatic representatives of the USA accredited to your country.** Please check with your section office if sending appeals after the above date.

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### ADDITIONAL INFORMATION

At the sentencing phase of Holly Wood's trial, the defence case consisted of testimony from his father and two of his sisters. The novice lawyer met with them for the first time at the courthouse during the guilt phase of the trial (the sentencing phase began a day after the guilt phase ended). According to US District Court Judge Albritton, the mitigation testimony amounted to "little more than a plea for juror sympathy." Substantial mitigating evidence about Holly Wood's background of poverty and deprivation and his upbringing in an environment dominated by alcohol was not presented. Neither was evidence of whippings to which he was subjected by his mother, and after she died when he was about 10 years old, the regular severe beatings with an extension cord he received at the hands of his adult stepsister who became his caregiver. However, it was the utter failure of the defence counsel to present any evidence of his mental impairment that has divided the federal courts on his case.

In 2002, the US Supreme Court ruled, in *Atkins v. Virginia*, that the execution of offenders with "mental retardation" was prohibited. The *Atkins* ruling pointed to professional definitions of such disability, but left it to the individual states to take "appropriate" steps to enforce the ban. In Alabama, in the absence of a legislative response to the *Atkins* ruling, the state Court of Criminal Appeals said in 2006 that for a defendant to be considered to have mental retardation, he or she must have "significantly sub-average intellectual functioning (an IQ of 70 or below), and significant or substantial deficits in adaptive behaviour" (and these problems must have manifested themselves before the individual was 18 years old). Lawyers for Holly Wood raised an *Atkins* claim, but after an evidentiary hearing in 2003, a state court decided that he did not have mental retardation and upheld his death sentence. In their appeal to the federal District Court, Holly Wood's lawyers maintained that it was uncontested that his IQ was below 70 (during post-conviction proceedings, psychologists had assessed his IQ at 64 and 59), that he had significant limitations in one area of adaptive functioning, namely functional academic skills (e.g. reading), and that these deficits had manifested before he was 18 years old. The case therefore turned on whether he had adaptive deficits in more than one area. The state argued successfully during the appeals process that he does not.

The fact that Holly Wood's death sentence has been upheld has relied on federal judicial deference to state court decisions. In this case, the state courts found that the defence counsel had made a strategic choice not to present the mental impairment evidence. In his 2006 decision, Judge Albritton wrote that he had found "nothing in the record to even remotely support a finding that counsel made a strategic decision not to let the jury at the penalty phase know about Wood's mental condition." In overturning this decision, the two 11<sup>th</sup> Circuit judges emphasised that their role under federal law was not to determine anew whether the defence lawyers were ineffective or whether Wood was prejudiced by their ineffectiveness, but whether under the "general framework of substantial deference" for reviewing state court rulings, the latter had been unreasonable. They ruled that they had not. In the 2010 US Supreme Court decision, the two dissenting Justices argued that the "only reasonable factual conclusion" to be drawn from the record was that the defence lawyers' failure to present the evidence "was the result of inattention and neglect," which is "the antithesis of a strategic choice." Indeed, they said, the decision not to carry out any investigation into Wood's mental disability, even though the lawyers were in possession of an expert report that indicated his possible mental retardation, was "so obviously unreasonable that the decision itself is highly persuasive evidence that counsel did not have any strategy in mind when they did so."

Amnesty International unconditionally opposes the death penalty. The USA has carried out 1,224 executions since resuming judicial killing in 1977. Alabama accounts for 47 of these executions. There have been 36 executions in the USA this year, three of them in Alabama.

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