

URGENT ACTION

CLEMENCY SOUGHT AS TEXAS EXECUTION NEARS

Robert Ladd is scheduled to be executed in Texas on 29 January. He was sentenced to death in 1997 for a murder committed in 1996. The claim that he has an intellectual disability that would render his execution unconstitutional was rejected by the courts.

The body of Vicki Ann Garner was found in her home in Tyler, Texas on 25 September 1996. The cause of death was determined to have been strangulation. **Robert Charles Ladd**, who is now 57 years old, was charged with capital murder on the grounds that the murder had taken place during the commission of a burglary, sexual assault and arson. He was sentenced to death on 27 August 1997.

In 2001, a federal District Court denied a claim that the trial lawyer had been constitutionally ineffective for failing to present evidence at the sentencing of Robert Ladd's "mental retardation". In 2002, the US Supreme Court, in *Atkins v. Virginia*, prohibited the execution of people with "mental retardation". The Court did not define retardation (now usually known as "intellectual disability"), but pointed to definitions under which it is a disability, manifested before the age of 18, characterized by significantly sub-average intellectual functioning (generally indicated by an IQ under 70), with limitations in two or more adaptive skill areas. In 2005, a US District Court judge held an *Atkins* evidentiary hearing in Robert Ladd's case. For the defence, an expert testified that in his opinion, based on interviews, tests, observations and a review of medical, juvenile, and other records, Robert Ladd had significantly sub-average intellectual functioning, that his IQ had been assessed at 67 when he was 13 years old, and that he had significant adaptive deficits, including in work, money, social and communication skill areas. Robert Ladd's sister testified about his developmental difficulties as a child. For the state, a psychologist agreed that Ladd had shown deficits in adaptive behaviour in a number of areas, but concluded that he did not have intellectual disability.

The District Court judge found that "by a preponderance of the evidence", Robert Ladd has "significantly sub-average intellectual functioning" and that it had manifested before he was 18. However, the judge found that it had not been proven that his deficits in adaptive functioning were "significant". Both experts agreed that Robert Ladd had an anti-social personality disorder. The defence expert testified that the adaptive deficits should be attributed to the intellectual disability rather than this personality disorder. The state expert said the opposite. Although stating that the state expert's approach was "not beyond debate", the judge found it more persuasive than the defence expert's opinion and upheld the death sentence. The US Court of Appeals affirmed this decision in April 2014.

Please write immediately in English or your own language, including reference to prisoner number #999237,

- Opposing the execution of Robert Ladd and calling for his sentence to be commuted;
- Expressing concern that the jury did not hear anything about his sub-average intellectual functioning, and that a federal judge found the question of whether he fell under the *Atkins* exemption to be a close call;
- Noting that the power of executive clemency is not constrained in the same way as courts can be;
- Acknowledging the seriousness of the crime and the suffering caused by violent crime.

PLEASE SEND APPEALS BEFORE 29 JANUARY 2015 TO:

Clemency Section, Board of Pardons
and Paroles

8610 Shoal Creek Blvd.
Austin, Texas 78757-6814, USA
Fax: +1 512 467 0945
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Salutation: Dear Board members

Governor Greg Abbott

Office of the Governor
PO Box 12428
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ADDITIONAL INFORMATION

Robert Ladd's trial lawyer, who was a former prosecutor, did no independent investigation of his client's records for the purposes of finding mitigating evidence to present at the sentencing phase, instead relying on the prosecution to share with him whatever medical, criminal and disciplinary records it obtained. However, the prosecution did not obtain Ladd's juvenile records and so his defence lawyer did not receive them either. The defence presented no evidence at the sentencing apart from to argue that because the disciplinary infractions Robert Ladd had committed while previously incarcerated were non-violent, he would not pose a risk of future violence if sentenced to imprisonment for the murder, rather than death. A jury's determination of "future dangerousness" is a prerequisite for a death sentence in Texas – the state expert who would later testify that Robert Ladd did not have intellectual disability had testified for the prosecution at trial that Ladd would likely pose a future danger.

Robert Ladd's post-conviction lawyer did obtain the juvenile records that the trial lawyer had failed to get, however, and found that after an arson incident when Robert Ladd was 13 years old, he had had a psychiatric evaluation. The doctor had noted that the boy's IQ had been assessed at 67 and that he was "rather obviously retarded". The juvenile records had also included information about the inadequate supervision, emotional nurturing and guidance in his home environment.

The federal District Court found that the trial lawyer's conduct had been "objectively unreasonable". However, he also ruled under the US legal standard that it would have made no difference to the outcome of the trial if the defence lawyer had obtained and presented the mitigating evidence available in these juvenile records.

Texas accounts for more than a third of all executions in the USA since judicial killing resumed there in 1977 under revised capital statutes approved in 1976. There have been 1,397 executions since then, 518 of them in Texas.

There have been three executions in the USA so far this year, one in Georgia, one in Oklahoma and one in Florida. The national total of 35 executions in 2014 was the lowest since 1994 (when the total was 31). Eighty per cent of these executions were carried out in three states – Missouri (10), Texas (10) and Florida (eight).

Amnesty International opposes the death penalty in all cases, unconditionally.

Name: Robert Charles Ladd

Gender m/f: m

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