

# URGENT ACTION

## ONE MAN FACES EXECUTION FOR MURDER BY THREE

**Jason McGehee is scheduled to be executed in Arkansas on 27 April for a murder committed in 1996. He had just turned 20 at the time of the crime, and is now 40. One of three main participants in the murder, he is the only one facing execution.**

In the summer of 1996, John Melbourne, aged 15, was one of a group of friends living in a house in Harrison, Arkansas and using forged or stolen cheques. According to the trial records, on 19 August 1996, believing that John Melbourne had “snitched” to the police, five of the group – Candace Campbell (17), Robert Diemart (27), Christopher Epps (19), Ben McFarland (17), and **Jason McGehee** (20) – drove him to Omaha about 30 kilometres from Harrison. There John Melbourne was subjected to a prolonged beating after which Christopher Epps, Ben McFarland and Jason McGehee took him into a wooded area where the three took turns strangling him. In a statement to the police, Ben McFarland said that it had been he who was strangling John Melbourne when he died.

Candace Campbell was sentenced to 20 years in prison and Robert Diemart to 10 years. The prosecutor sought the death penalty against the other three, and during their trials called the crime “murder by committee” and a “group activity”. Christopher Epps and Ben McFarland were sentenced to life in prison without parole. Jason McGehee was tried last, in January 1998. The trial took four days, with the sentencing lasting only a few hours. The jury voted for the death penalty. In 2008, the US District Court ruled that the trial judge had been wrong to block the presentation by the defence of certain “evidence of repeated patterns of physical and emotional abuse, negligent parenting and traumatic events” which occurred during the defendant’s “formative years as a child, adolescent, teenager and impacted, if not formed, the person he became”. The District Court judge ruled the evidence could have led the jury to vote against death and he ordered a resentencing. However, in 2009, the Court of Appeals reversed the order, on the basis that procedural rules prevented the federal courts from considering the evidence.

The same judge presided over all three trials. Now retired, he has called for commutation of Jason McGehee’s death sentence. In a letter dated 15 March 2017, he wrote that the death of John Melbourne was “the tragic result of a group-dynamic gone wrong” and that this dynamic “escalated the events into something that Jason individually never would have done”. Given that in January 2017 Ben McFarland’s sentence was reduced from life without parole to 40 years, making him eligible for parole from 2025, and Jason McGehee’s “extraordinary adjustment to prison”, the judge now considers the death sentence “excessive”. Also supporting commutation is a former head of the Arkansas Department of Correction, who has written of Jason McGehee’s “exemplary” conduct on death row and his “remarkable” disciplinary record. He said that during his 40 years of working in prisons, he had “not seen any inmate record that compares to Jason’s”. He concluded that he “could function very well in general population”.

### **Please write immediately in English or your own language, in your own words:**

- Calling for clemency for Jason McGehee and for his death sentence to be commuted;
- Noting the defendant’s young age at the time of the crime, the evidence of his development since then and the fact that the jury did not hear certain compelling mitigating evidence about the defendant’s childhood;
- Noting that the judge who presided over all three trials believes that Jason McGehee’s death sentence is disproportionate, and that he and a former head of the Department of Corrections support clemency.

### **PLEASE SEND APPEALS BEFORE 27 APRIL 2017 TO:**

The Honorable Asa Hutchinson, Governor of the State of Arkansas  
State Capitol, Suite 250, 500 Woodlane St, Little Rock, AR 72201, USA  
Fax: +1 501 682 3597

Email: <http://governor.arkansas.gov/contact-info/> (use US detail); or [info@governor.arkansas.gov](mailto:info@governor.arkansas.gov) (asking for email to be forwarded to governor)

**Salutation: Dear Governor**

**Also send copies to diplomatic representatives accredited to your country. Please insert local diplomatic addresses below.**

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

**AMNESTY  
INTERNATIONAL**



# URGENT ACTION

## ONE MAN FACES EXECUTION FOR MURDER BY THREE

### ADDITIONAL INFORMATION

In its 2005 ruling banning the execution of those under 18 at the time of the crime, the US Supreme Court recognized the immaturity, impulsiveness, poor judgment, underdeveloped sense of responsibility and vulnerability to peer pressure often seen in youth, as well as their potential for rehabilitation and reform. The Court also noted that the “qualities that distinguish juveniles from adults do not disappear when an individual turns 18”. Scientific research has continued to show that development of the brain and psychological and emotional maturation continues well past the age of 18 and into a person’s 20s. An independent expert paper issued in 2015 by the National Institute of Justice at the US Department of Justice on young adults and the justice system noted that “Young adults are developmentally distinct from older adults. Recent scientific work suggests that the human brain continues to develop well into the 20s, particularly in the prefrontal cortex region, which regulates impulse control and reasoning. Several studies suggest that people do not develop adult-quality decision-making until the early 20s, and others have shown that psychosocial capacities continue to mature even further into adulthood... Because of [the ‘maturity gap’], young adults are more likely to engage in risk-seeking behaviour, have difficulty moderating their responses in emotionally charged situations, or have not fully developed a future-oriented method of decision-making.”

When Jason McGehee’s trial lawyer attempted to introduce certain evidence about the defendant’s childhood, the prosecution objected and the judge ruled that the evidence was not relevant to mitigation and blocked it. In its 2008 ruling, however, the US District Court found that the evidence “was not remote or tenuous” but “specific to McGehee, his childhood and traumatic events that occurred during his twenty years up to the commission of the crime”. Furthermore, this type of evidence “is routinely included” in capital trials and has been “deemed relevant” by the Arkansas and US Supreme Courts. In this case, all of the traumatic and abusive events in question “occurred either directly to him or in his presence” and “arguably were factors in the outcome of the young man he became”. The fact that the defendant was 20 years old at the time of the crime meant that “these events were not too remote in time” to erode their relevance and “may have served as a basis for mercy” if presented to the jury.

In 2002, the Arkansas Supreme Court rejected the argument that Jason McGehee’s death sentence was disproportionate compared to the life sentences of his two co-defendants. It noted that “comparative proportionality review is not constitutionally mandated”, and that the “statutory check on arbitrariness” was the separate sentencing hearing in which the jury is provided with information on aggravating and mitigating factors. The evidence from the past four decades, however, has made it “increasingly clear that the death penalty is imposed arbitrarily”, that is, “without the reasonable consistency legally necessary to reconcile its use with the Constitution’s commands”, as US Supreme Court Justice Stephen Breyer put it in June 2015.

Like many states, Arkansas has faced problems sourcing chemicals for its lethal injection protocols and implementing protocols that courts find constitutional. On 23 June 2016, the Arkansas Supreme Court upheld the state’s three-drug execution protocol, which uses a barbiturate or midazolam as a sedative, vecuronium bromide as a paralytic agent, and potassium chloride to induce fatal cardiac arrest. After the US Supreme Court declined to intervene in February 2017, Governor Hutchinson set execution dates for the eight men on whose behalf the legal challenge to the protocol had been brought: Bruce Ward and Don Davis on 17 April; Ledelle Lee and Stacey Johnson on 20 April; Marcel Williams and Jack Jones on 24 April, and Jason McGehee and Kenneth Williams on 27 April. See <https://www.amnesty.org/en/documents/amr51/5816/2017/en/>.

There have been six executions in the USA in 2017, bringing the total to 1,448 since judicial killing resumed in the USA in 1977 under capital statutes approved by the US Supreme Court in 1976. The last execution in Arkansas – its 27<sup>th</sup> since 1977 – was carried out in 2005. Amnesty International opposes the death penalty in all countries and all cases, unconditionally.

Name: Jason McGehee

Gender m/f: m

UA: 74/17 Index: AMR 51/5995/2017 Issue Date: 31 March 2017