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Death penalty / Legal concern

USA (Georgia)

Timothy Don Carr (m), white, aged 34

Timothy Carr is scheduled to be executed in Georgia at 7pm local time on 25 January. He was sentenced to death in 1994 for his role in the murder of 17-year-old Keith Patrick Young in Monroe County in 1992.

According to the trial evidence, the murder occurred in the early hours of 8 October 1992 following a party at which Timothy Carr and others consumed large amounts of alcohol, marijuana and hallucinogenic mushrooms. Timothy Carr, Melissa Burgeson, Keith Young, and two 16-year-olds, left the party in the victim=s car. Keith Young=s body was found the next day.

The two teenagers were tried in juvenile court in 1992 on murder and theft charges. One was found guilty on all counts, and sentenced to 18 months in juvenile detention. The other was convicted on the theft charge only and was ordered to receive counselling. Of the two adults, Melissa Burgeson was tried first. Timothy Carr was advised by his lawyer to give a full confession to the Monroe County prosecutor and to testify at Burgeson=s trial. The lawyer said he had obtained a verbal assurance from the prosecutor that if Carr "helped" him, he would "help" Carr. The lawyer said that he understood this to mean that Carr would receive an offer of life imprisonment in return for a guilty plea.

At Burgeson=s trial in 1994, at which the prosecutor sought a death sentence, Carr testified that he was very intoxicated at the time of the murder and had been compelled by Burgeson to stab Young. The prosecutor urged the jury to believe Carr=s testimony, and described Burgeson as the least intoxicated of the suspects, and the "moving force" behind the crime, also arguing that Melissa Burgeson had herself stabbed the victim. The prosecutor referred to Timothy Carr as Burgeson=s "puppet". The jury found Burgeson guilty of murder, and sentenced her to life imprisonment. In 1999, an investigator from Monroe County Sheriff=s Department stated that "as far as Keith Young=s death, I think [Burgeson] played just as much a part in it as anybody...I think she instigated it, planned it and everything". He agreed with the prosecutor=s characterization of Carr as Burgeson=s "puppet".

Timothy Carr was tried two months after his co-defendant, and repeated his testimony from her trial. This time the prosecutor described Carr as the prime mover in the crime. He urged the jury to discredit Carr=s "feeble" defence and to disbelieve his account of having been intoxicated by alcohol and drugs and being influenced by Burgeson. Having argued at Melissa Burgeson=s trial that she had stabbed the victim, the prosecutor argued at Timothy Carr=s trial that Burgeson had not inflicted a single cut on Keith Young. The jury, without knowing about Burgeson=s life sentence and her reported history of violence and intimidation, including against Carr, sentenced Timothy Carr to death.

In June 2000, a state court judge overturned Carr=s death sentence. The court had found that his trial lawyer had "committed serious errors which prejudiced the defense", including his failure to present "a significant amount of mitigating information about [Carr=s] life history and the circumstances of the crime", including "details of [Carr=s] extremely difficult childhood, evidence of physical and sexual abuse suffered by [Carr] at the hands of his father, the history of alcoholism and mental illness in his family, evidence of a brain injury suffered at [Carr=s] birth, as well as good character evidence".

Having heard such evidence since the trial, one of the jurors has stated that it "would have been powerful evidence that Mr Carr was not the bad, irredeemable person the prosecutor wanted us to see." She continued: "Having finally heard about the story of Tim Carr=s life, I dearly wish that this information had

been presented at trial. It would have made a big difference. If I had had the information summarized here before me at the trial, I would have voted for a life sentence." A Georgia jury must be unanimous before it can pass a death sentence.

Nevertheless, in March 2001 the Georgia Supreme Court reinstated Timothy Carr=s death sentence. On the mitigating evidence issue, the Georgia Supreme Court ruled that the jury had heard enough to make their sentencing verdict reliable. In July 2002, Timothy Carr received a stay of execution after the US Court of Appeals for the 11th Circuit agreed to consider his case (see EXTRA 53/02, AMR 51/108/2002, 12 July 2002, and follow-up, AMR 51/120/2002, 19 July 2002). The Court rejected the appeal in March 2004 and in December the US Supreme Court declined to take the case.

International safeguards require adequate legal representation for capital defendants "at all stages of proceedings", above and beyond that provided in non-capital cases. In 1996, the UN Special Rapporteur on extrajudicial, summary or arbitrary executions emphasized that in capital cases "all mitigating factors must be taken into account". The UN Guidelines on the Role of Prosecutors require prosecutors to "at all times maintain the honour and integrity of their profession", and to "perform their duties fairly, consistently and expeditiously...thus contributing to ensuring due process and the smooth functioning of the criminal justice system". The Monroe County prosecutor contravened such principles in his effort to achieve at least one death sentence.

Amnesty International opposes the death penalty in all cases. Today, 118 countries are abolitionist in law or practice. The USA has carried out 945 executions since resuming judicial killing in 1977. Georgia accounts for 36 of these executions.

RECOMMENDED ACTION: Please send appeals to arrive as quickly as possible, in English or your own language, in your own words:

- expressing sympathy for the family and friends of Keith Patrick Young, and explaining that you are not seeking to excuse the manner of his death;
- questioning the disparity in sentencing between Melissa Burgeson and Timothy Carr, given that at Burgeson's trial, the prosecutor had argued that Burgeson was a "prime mover" in the crime, who had planned, directed and physically participated in the murder;
- expressing concern at the prosecutor's conduct in this case, noting that he appears to have violated his duty to perform his duties fairly and consistently;
- noting the state court=s finding, after an evidentiary hearing, that Timothy Carr had been denied adequate representation at trial, including in failing to provide the jury with the full picture of the defendant=s appalling background of abuse and troubled family history;
- noting that at least one of the jurors has said that she would have voted for a life sentence if presented with such evidence;
- calling on the Board of Pardons and Paroles to grant clemency.

APPEALS TO:

State Board of Pardons and Paroles
Floyd Veterans Memorial Building
Balcony Level, East Tower
2 Martin Luther King Jr Drive, S.E.
Atlanta, GA 30334, USA

Fax: + 1 404 651 8502
Email: webmaster1@pap.state.ga.us
Salutation: Dear Board members

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

PLEASE SEND APPEALS IMMEDIATELY.