

PUBLIC

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Further information on UA 25/02 (AMR 51/018/2002, 25 January 2002) - Death penalty / Legal concern

USA (Texas) Thomas Joe Miller-El (m), black, aged 50

On 15 February, the US Supreme Court announced that it would hear the appeal of Thomas Miller-El. His execution, scheduled for 21 February, is stayed pending the Court's ruling on the case.

Among those appealing for the execution to be halted was the Inter-American Commission on Human Rights, which issued "precautionary measures" calling for a stay of execution until the Commission had issued its decision on the case.

Thomas Miller-El was convicted in Dallas County in 1986 of the 1985 murder of a white man, Douglas Walker, during a robbery of a Holiday Inn in Irving, near Dallas. His appeal to the US Supreme Court centered on evidence that the prosecutors at his trial acted with intentional racial discrimination in dismissing blacks from his jury (see original UA).

In *Batson v Kentucky* in 1986, the Supreme Court established a three-stage framework for evaluating allegations that peremptory challenges (the right to dismiss prospective jurors without giving a reason) had been used in a racially discriminatory manner. Firstly, the defendant has to show that the prosecution used its peremptory challenges in such a way as to suggest that it was acting with purposeful discrimination. Secondly the prosecution has "to come forward with a (racially) neutral explanation for challenging black jurors". Thirdly, the Supreme Court said, the trial court must evaluate the evidence "to determine if the defendant has established purposeful discrimination".

It is this third step which the Miller-El appeal has asked the US Supreme Court to examine, that is, to clarify how judges should reach their decisions on this issue. For example, should the judge consider evidence of discrimination in other cases by the same prosecution, or is the judge simply limited to deciding the credibility of the prosecutors' alleged race-neutral reasons in the present case? This issue has not been examined by the US Supreme Court since the *Batson* decision was handed down.

Thomas Miller-El's case will be argued in front of the US Supreme Court in October or November, and a decision issued next year.

No further action by the UA Network is requested. Many thanks to all who sent appeals.

Correction. Please note that the fourth paragraph in the original UA contained an error. The sentence, "His jury consisted of 11 whites and one black, after the prosecution used peremptory challenges to exclude 10 of the 11 African Americans qualified to serve.", should have read: "His jury consisted of nine whites and one black, after the prosecution used peremptory challenges to exclude 10 of the 11 African Americans qualified to serve." Apologies for this error.

