

PUBLIC

AI Index: AMR 51/049/2009

08 April 2009

Further information UA 76/09 (AMR 51/037/2009, 13 March 2009) – Death penalty/Legal concern

USA (Ohio)                      **Brett Xavier Hartman (m), white, aged 34**

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Brett Hartman received a stay of execution from the US Court of Appeals for the Sixth Circuit on 31 March. He was due to be put to death in Ohio on 7 April for the murder of Winda Snipes in 1997.

Lawyers for Brett Hartman had appealed to the Sixth Circuit to stay the execution and allow them to file a new habeas corpus petition on the grounds that there was new evidence supporting Brett Hartman's claim of innocence. The court has stayed the execution but has not at this time allowed the petition to go ahead under the stringent rules that apply in US federal law to filing successive habeas corpus petitions. The Sixth Circuit panel of three judges granted the stay on the grounds that "the harm in executing Hartman, if he is indeed innocent, would be irreversible, and temporarily staying the execution would not cause substantial harm to others". In addition, it said, "while the state has an important interest in enforcing its criminal judgments, executing an innocent man would not be in the state's interest, and could undermine the public's confidence in Ohio's criminal justice system".

Brett Hartman's lawyers have said that the evidence they want to put before the courts shows that one of the state's key witnesses, a jailhouse informant, may have committed perjury when he testified at the trial that Hartman had confessed to the murder. The lawyers are also seeking access to crime scene evidence for DNA testing. In its 31 March decision, the Sixth Circuit noted that the US Supreme Court is considering in another case the question of the state's obligation relating to DNA testing of evidence that could be relevant to a prisoner's claim of innocence, and that "depending on the scope of the Supreme Court's holding, its decision could create a constitutional right entitling Hartman access to the crime scene evidence he currently seeks". The Sixth Circuit would then be "in a better position" to consider whether Hartman could make the necessary showing for the court to authorize a new habeas corpus petition challenging his conviction and death sentence.

The Ohio authorities did not appeal the Sixth Circuit stay to the US Supreme Court.

The Ohio Parole Board had recommended that Governor Ted Strickland not intervene to stop the execution. The governor, who is not bound by this recommendation, had not made a decision on the case by the time the judicial stay was handed down.

**No further appeals by the UA Network are requested at present. Many thanks to all who sent appeals.**