

EXTRA 32/00

Death pen**USA (Alabama) Robert Lee Tarver, aged 52, African American**

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Robert Tarver is scheduled to be executed in Alabama's electric chair on 14 April 2000. He was sentenced to death for the 1984 robbery and shooting of 63-year-old Hugh Kite at his grocery store in Russell County.

At the jury selection for the 1985 trial, there were 14 African Americans in the pool of potential jurors. The Russell County prosecutor used 13 of his 16 peremptory strikes (the right to exclude individuals deemed unsuitable without giving a reason) to remove all but one of them. As a result, Robert Tarver was tried by a jury consisting of 11 whites and one black. Russell County has a population which is about 40 per cent African American. Hugh Kite was white.

Appeals for Robert Tarver to be granted a new trial on the grounds of racial discrimination during jury selection have been unsuccessful because his trial lawyer had failed to raise it early enough, thereby causing Tarver to lose it as an appeal issue. In post-conviction proceedings in 1992, the trial court said that, but for this procedural bar, it would have found that the prosecutor had violated the constitutional ban on using peremptory strikes in a racially discriminatory manner.

One witness placed Robert Tarver at the scene of the crime, namely his co-defendant Andrew Lee Richardson, who testified against Tarver at the trial.

In 1999, the 11<sup>th</sup> Circuit Court of Appeals noted that "[d]espite overwhelming evidence that Tarver or his associate, Richardson, actually killed Hugh Kite, very little evidence made Tarver a better candidate than Richardson to be found to be the actual killer."

At the trial, Robert Tarver's lawyer argued that Andrew Richardson testified falsely in exchange for leniency in the capital murder charge he was facing for the same crime. The prosecution denied that there was any such plea agreement, and the trial court agreed. Shortly after Robert Tarver's trial ended, however, Andrew Richardson pled guilty to a single count of robbery and received a 25-year prison sentence.

In post-conviction proceedings the trial court found that "[b]efore Richardson testified, Richardson's attorney had an understanding with the District Attorney that Richardson would not be prosecuted for a capital offense in exchange for Richardson's testimony against Defendant...". However the appeal courts have rejected appeals on this issue. In 1999, the 11<sup>th</sup> Circuit Court said that "whatever exchange may have taken place between [Richardson's attorney] and [the prosecutor] did not ripen into a sufficiently definite agreement before Tarver's trial" to place an obligation on the prosecution to disclose it to the defence.

Robert Tarver has maintained his innocence of capital murder throughout his trial. During the proceedings it was noted that he had passed a lie detector test which supported his denial that he killed the victim.

The jury found Robert Tarver guilty and recommended life imprisonment without parole. However, the trial court judge overrode their recommendation and imposed a death sentence. In post-conviction proceedings, however, the trial judge concluded that Robert Tarver's trial lawyers had been ineffective (for their

minimal presentation of mitigating evidence at the sentencing phase of the trial). The trial judge reversed the death sentence and ordered a sentence of life without parole. The state appealed and the Alabama Court of Criminal Appeals reversed the ruling on ineffective representation and reimposed the death sentence.

Robert Lee Tarver came within three hours of execution on 3 February 2000. The US Supreme Court stayed the execution to decide whether to consider his appeal that execution by electrocution is cruel and unusual punishment in violation of the US Constitution. On 22 February, the Court announced that it would not consider the claim. Four of the justices had voted to hear the appeal, five had voted against; yet up to then an unwritten rule had been that four votes were enough for the Court to decide to hear oral arguments in a case. The Court's rejection of the Tarver appeal 5-4 appears to signal that prisoners will now have to reach five votes to obtain such a hearing in the Court.

Governor Siegelman had already denied clemency for Robert Tarver when the US Supreme Court stay was announced. Amnesty International is urging that he reconsider this decision.

As of 1 January 2000, there were 185 prisoners on death row in Alabama. It has executed 21 prisoners since 1977, including two this year.

**RECOMMENDED ACTION: Please send telegrams/faxes/express/airmail letters in English or your own language:**

- expressing sympathy for the victims of violent crime and their families, and explaining that you do not seek to excuse the killing of Hugh Kite;
- expressing concern that Robert Lee Tarver is facing execution for the murder;
- expressing concern that the state prosecutor acted in a racially discriminatory manner during jury selection when he removed all but one African American from the jury pool;
- noting that the credibility of a key prosecution witness was undermined by the alleged pre-trial plea agreement between him and the state;
- noting that the jury and the trial judge in post-conviction ultimately both reached the conclusion of a sentence of life imprisonment, rather than a death sentence;
- urging that the Governor reconsider his February decision and commute Robert Tarver's death sentence.

**APPEALS TO:**

The Honourable Don Siegelman  
 Governor of Alabama  
 Alabama State Capitol  
 600 Dexter Avenue  
 Room N-104, Montgomery, AL 36130, USA  
**Telegrams:Governor Siegelman, Montgomery, AL, USA**  
**Faxes:+ 1 334 242 0937 or 242 2335**  
**Telephone:+ 1 334 242 7100**  
**Salutation:Dear Governor**

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

You may also write brief letters of concern (not more than 250 words) to:

Letters to the Editor, *Birmingham News*, Fourth Avenue North, Birmingham, AL 35203, USA. **Faxes: + 1 205 325 3345. E-mails:epage@bhamnews.com**

Letters to the Editor, *Mobile Register*, PO Box 2488, Mobile, AL 36652, USA  
**Faxes: + 1 334 434 8667. E-mails:letters@mobileregister.com**

**PLEASE SEND APPEALS IMMEDIATELY.**