

EXTERNAL (for general distribution)

AI Index: AMR 51/62/91

Distr: UA/SC

PRIORITY

Please seek appeals from parliamentarians, judges, lawyers or other influential people in your country.

EXTRA 84/91

Death penalty: imminent execution

22 November 1991

USA (Texas):

Justin Lee MAY

Justin Lee May is scheduled to be executed in Texas on 26 November 1991. May is white and aged 44. He was convicted of the murder of Jeanetta Murdaugh, a white woman, who was shot dead during a shop robbery in Freeport, Texas, in 1978. The crime went unsolved for more than five years. In 1983 Justin May and Richard Miles were arrested for the murder. Richard Miles accepted a "plea bargain" from the state whereby he plead guilty to nonaggravated noncapital murder after he testified that May had committed the murder.

In their petition for executive clemency, Justin May's lawyers present new evidence which casts doubt on his guilt. They contend that the prosecution's case rested on "fabricated corroboration" and is fundamentally unsafe.

The only two witnesses who claimed to identify May as the killer have since admitted that they lied at his trial. One was co-accused Richard Miles, the owner of the murder weapon. In exchange for his testimony that May had shot the victim, Miles' own capital indictment was dismissed. The other witness was in prison with May and Miles following their arrest. He testified that they talked about the crime and that May was identified as the killer. He has recanted his testimony in a lengthy affidavit. No fingerprints or other physical evidence found at the crime scene linked May to the murder.

Justin May suffers from brain damage and mental impairments stemming from the physical abuse he suffered as a child. A majority of the federal judges who heard his case on appeal considered his death sentence to be unconstitutional and unjust on the grounds of his mental impairment. His conviction and death sentence were, nevertheless, upheld on appeal. At his trial the jury did not learn that May suffered multiple illnesses as a child and endured regular, severe beatings from his father. On at least one occasion he was beaten to unconsciousness. May suffered numerous head injuries in early adulthood. In 1986 a medical examination revealed significant neurological brain damage and psychological abnormalities.

At the time of May's trial the sentencing instructions to juries in Texas capital trials did not allow them to consider whether to spare the defendant's life on the basis of mental impairment. But in the case of Penry v Lynaugh (1989), the US Supreme Court held that "evidence about a defendant's background and character is relevant because of the belief, long held by this society, that defendants who commit criminal acts that are attributable to a disadvantaged background, or to emotional and mental problems, may be less culpable than defendants who have no such excuse." In Penry v Lynaugh the Court recognized the need for a special instruction to enable juries in Texas to express the view that death is too severe a penalty for a crime committed as a result of mental impairment. This instruction was not available at the time of Justin May's trial.

Justin May has a good behavioural record in prison. Prison officials as well as family and friends urge that he not be executed. His supervisors

in the prison factory describe him as cooperative, respectful and productive. In an affidavit to the clemency petition they state, "we do not believe he would be a threat to the prison society if he were given a life sentence instead of being executed."

BACKGROUND INFORMATION

As of 23 August 1991 there were 343 prisoners under sentence of death in Texas. Five Texas prisoners have been executed this year, the most recent being G W Green on 11 November 1991. Texas has the largest death row in the country and, since 1976, has executed more prisoners than any other state (43 to date).

Amnesty International opposes the death penalty in all cases as a violation of the right to life and the right not to be subjected to cruel, inhuman and degrading treatment or punishment, as proclaimed in the Universal Declaration of Human Rights.

RECOMMENDED ACTION: Telegrams/telephone calls/telexes and faxes:

Appeals to the Texas Board of Pardons and Paroles:

- urging the Board to recommend that the Governor grant clemency to Justin Lee May by commuting his death sentence;
- expressing concern at the failure of the courts to take into account evidence pointing to the unfairness of the conviction, including the apparent unreliability of the testimony given by the state's two main witnesses;
- expressing concern that the jury was not told about Justin May's mental health problems, brain damage and severe childhood abuse.

Appeals to the Governor:

- urging Governor Richards to grant clemency to Justin Lee May by commuting his death sentence;
- requesting that she give this case her most careful review in light of the apparent unreliable evidence used to convict Mr. May, and the jury's ignorance of important mitigating evidence which might have persuaded them not to impose the death penalty.

APPEALS TO:

Texas Board of Pardons and Paroles
8610 Shoal Creek Blvd.
PO Box 13401, Capitol Station
Austin, TX 78711
USA

Telegrams: Texas Board Pardons/Paroles, Austin, Texas 78711, USA

Telephone: +(512) 459 2782

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Salutation: Dear Board Members

The Honorable Ann Richards
Governor of Texas
Office of the Governor

PO Box 12428
Austin, TX 78711
USA

Telegrams: Governor Richards, Austin, Texas 78711, USA

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Salutation: Dear Governor

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diplomatic representatives of the USA in your country.

PLEASE SEND APPEALS IMMEDIATELY TO ARRIVE BY MIDNIGHT 25 NOVEMBER 1991 (U.S. TIME).