

PUBLIC

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Further information on UA 187/08 (AMR 51/070/2008, 27 June 2008) – Death penalty

USA (Oklahoma) Kevin Young (m), black, aged 42

On 8 July, the Oklahoma Pardon and Parole Board voted 4-1 to recommend clemency for Kevin Young, who is due to be executed on 22 July. The recommendation goes to Governor Henry, who can accept or reject it. Since taking office in 2003, he has granted clemency once from three previous clemency recommendations.

Kevin Young was sentenced to death in Oklahoma County in 1998 for the murder of Joseph Sutton during an armed robbery. According to the state's evidence, in the early hours of 14 May 1996, two African-American men entered the Charles Steak House in Oklahoma City and walked into the back room where Joseph Sutton ran a gambling operation. The two men pulled out guns and announced that they had come to rob the place. One of the men in the room grabbed the gun of one the attackers and held it in the air while the gunman fired it until it was empty. At the same time, Joseph Sutton pulled out his own gun. One of the two robbers shot at Sutton. Sutton was shot four times, and he died from a gunshot wound to the stomach. The gunmen fled the scene. Shortly thereafter, Kevin Young arrived at a hospital with three gunshot wounds, and was arrested.

Kevin Young and his co-defendant Antwuan Jackson were charged with first-degree murder and brought to trial separately. Jackson was acquitted on all counts. Young was convicted. The appeal courts have rejected arguments that Young's jury should have been able to convict him on charges of less than first-degree murder, although the state Court of Criminal Appeals characterized the crime as one in which "things went amiss when [Young's] intended robbery victim tried to thwart the robbery and defend himself with his own weapon." The Court also found that "the evidence did not conclusively establish which intruder fired the fatal gunshot."

At the 8 July clemency hearing, Kevin Young spoke via a video link from the Oklahoma State Penitentiary. He expressed remorse for his role in the crime, and said that he had never intended to shoot anyone, but that he had fired when he himself was shot by Sutton. He reportedly told the Board: "When I got inside, things didn't go as planned. To tell you the truth, I don't know if it was my bullet that killed Mr Sutton".

Among those who have agreed with the Board's decision to vote for clemency is the pro-death penalty state newspaper, *The Oklahoman*. In a 10 July editorial, it wrote that "We support the death penalty and its application in a narrow range of cases. Young's case appears to be outside that range...Young is guilty of armed robbery...But if he didn't enter the restaurant with the intent of killing Sutton, he isn't guilty of premeditated murder... Young's crime is punishable by the death penalty if the most liberal interpretation of state law is applied. We don't often question the decision of juries, but here we question whether the law was correctly applied." The editorial urges Governor Henry to "give strong weight to the board's recommendation".

The death penalty in the USA is supposed to be reserved for the "worst" crimes and "worst" offenders. Only a small percentage of murders result in a death sentence, and an even smaller percentage in execution. As the US Supreme Court has said, "the culpability of the average murderer is insufficient to justify the most extreme sanction available to the State." Selecting who shall live and who shall die for their crimes is something of a lottery, with issues of race, prosecutorial discretion and conduct, and the quality of legal representation among the factors that determine who receives a death sentence and who does not.

Kevin Young's lawyer attempted to argue to the jury that the death penalty was reserved for the "worst of the worst" murderers, and that Kevin Young was not such a defendant. The prosecutor responded with the argument that there was nothing worse than first-degree murder, and "if this was an inappropriate case for the

death penalty, we wouldn't be here." She urged the jurors to pass a death sentence, arguing that Young did not deserve to live in a "prison environment, not have to go to work every day, get his meals prepared, have a nice clean place to live" while the victim "lies dead in his grave." As Amnesty International found in a report on Oklahoma's death penalty in 2001, encouraging jurors to vote for execution out of a sense of vengeance appeared to be a favoured tactic of Oklahoma County prosecutors. The state Court of Criminal Appeals has repeatedly condemned such inflammatory misconduct, but has routinely failed to provide any remedy. In Kevin Young's case the appeal court once again condemned the prosecution's conduct, saying that "the prosecutor clearly should have known better," but upheld the death sentence.

On appeal, it has been argued unsuccessfully that Young received inadequate representation at trial, from a lawyer who failed to present evidence of the impact on the mental, emotional and moral development of children raised in the inner-city ghetto of south-central Los Angeles in California, where Kevin Young grew up, the youngest of 16 children in his family. The Oklahoma Court of Criminal Appeals found that "trial counsel could well have utilized this evidence and it may have been prudent for him to do so," but that the lawyer had not been ineffective for having failed to present such mitigation evidence. It noted at the same time that there was evidence that "several jurors felt there was little information about [Young's] past and they did not perceive remorse on [his] part", a perception emphasised by the prosecutor in seeking a death sentence. Studies show that perceived lack of remorse is a highly aggravating factor in the minds of US capital jurors.

Under US law, citizens are excluded from capital jury service if they are opposed to the death penalty, rendering capital juries non-representative of the community (and more conviction-prone, studies show). In Kevin Young's case, three potential jurors were removed during jury selection by the prosecution because they were opposed to capital punishment on religious grounds (another two were excluded because they were opposed for other personal or philosophical reasons). While religious beliefs caused the removal of jurors, it has been alleged that religion also played a part in the sentencing deliberations of the jury. At a post-trial hearing, one of the jurors testified that a Bible had been consulted in the jury room. This juror had previously told a defence investigator that she herself had originally wanted a life sentence but that verses read from the New Testament book of Romans during deliberations had swayed her into voting for a death sentence (the text in question included "If thou do that which is evil, be afraid; for he beareth not the sword in vain: for he is the minister of God, a revenger to execute wrath upon him that doeth evil...Render therefore to all their dues."). After the hearing, the judge found that although a New Testament Bible might have been present in one of the jurors' briefcases during the sentencing phase, there was no credible evidence that the Bible had been brought into the jury room or used during the deliberations. The Court of Criminal Appeals upheld the death sentence, saying that although the jurors may have discussed "the Bible in general or even specific Bible verses, four of the five jurors testified no one 'read' from a Bible during sentencing deliberations."

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

- expressing sympathy for any family of Joseph Sutton, and explaining that you are not seeking to excuse the manner of his death or to downplay the suffering caused;
- welcoming the decision of the state Pardon and Parole Board to recommend clemency for Kevin Young;
- noting that the killing took place during a robbery that went "amiss," in the words of the state appeals court;
- noting that Kevin Young is facing execution for a crime committed by two people, that no one else has been convicted, and noting the absence of proof about which of the two attackers actually fired the fatal shot;
- calling on the Governor to accept the Board's recommendation, and commute Kevin Young's death sentence.

APPEALS TO:

Governor Brad Henry, State Capitol Building, 2300 N. Lincoln Blvd., Room 212, Oklahoma City, OK 73105, USA

Fax: +1 405 521 3353
Email, via: <http://www.gov.ok.gov/message.php>
Salutation: Dear Governor

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

PLEASE SEND APPEALS IMMEDIATELY.