

2 June 2000

Further information on EXTRA 118/99 (AMR 51/137/99, 27 August 1999) and follow-up (AMR 51/158/99, 27 September) - Death penalty / Legal concern

USA (Florida) Thomas Harrison Provenzano, aged 50

Thomas Provenzano is scheduled to be executed in Florida at 6pm local time on 20 June 2000. He was sentenced to death for killing a bailiff, Arnie Wilkerson, in Orange County Courthouse, Orlando, in 1984. The shooting left two other bailiffs paralyzed, one of whom died in 1991.

Thomas Provenzano has a history of serious mental illness, including paranoid schizophrenia, dating back to before the crime. In December 1999, following extensive hearings, a circuit judge ruled that according to the law, Thomas Provenzano was competent to be executed in that he had "failed to establish by clear and convincing evidence that he lacks the capacity to understand the fact of his impending execution and the reason for it."

Judge Bentley found that Thomas Provenzano has a "factual and rational understanding" of the fact that he was tried, sentenced and convicted for the murder of Arnie Wilkerson, and that he will die upon execution. However, the judge also found that "clear and convincing evidence that Provenzano has a delusional belief that the real reason he is being executed is because he is Jesus Christ." The judge noted that Thomas Provenzano has held the belief that he is Jesus Christ for over 20 years.

This would seem to lead to the conclusion that Provenzano does not truly understand the real reason for his punishment, and that his execution would therefore violate US law. However, Judge Bentley continued: "Provenzano's delusional belief that his conviction and sentence of death are not the real reasons for his impending execution does not impair his factual and rational understanding of the fact that he is facing pending execution for his conviction and sentence of death for murdering Bailiff Arnie Wilkerson during a shoot-out at the Orange County Courthouse."

Judge Bentley's disquiet in reaching this conclusion was clear. He stated that the present standard for competency is "a minimal standard"; that his ruling "should not be misinterpreted as a finding that Thomas Provenzano is a normal human being without serious mental health problems, because he most certainly is not"; and that "if the burden were on the State to prove beyond a reasonable doubt that Provenzano is competent to be executed, the Court would conclude that there is reasonable doubt. The Court understands that this is not the standard, and that the State does not have the burden to prove anything. Nevertheless, given the nature of the penalty, the Court cannot help but be troubled by this fact."

On 25 May 2000, the Florida Supreme Court upheld the competency ruling. Two of the seven judges dissented, saying: "It is impossible to conclude in this case that Provenzano has a rational understanding of the reason he is to be executed when we have a judicial finding based upon clear and convincing evidence that Provenzano genuinely believes as a matter of fact that he 'really will be executed because he is Jesus Christ'".

The power of executive clemency exists to act as a safety net to catch those cases in which the courts have been unable, or unwilling, to provide a remedy.

Governor Jeb Bush has the authority to grant clemency on the advice of the Board of Executive Clemency. He also has the power to grant reprieves of up to 60 days.

BACKGROUND INFORMATION

At a Florida House of Representatives Criminal Justice and Corrections Council hearing in October 1999, Representative Howard Futch suggested that because Thomas Provenzano believed he was Jesus Christ, the state should "just crucify him". The legislator continued: "I'd make him a cross, and we could take it out there to Starke [death row] and nail him up." A subsequent editorial in a local newspaper described Howard Futch's comments as "vicious, ill-judged and revealing. In his dim-witted way, Futch has laid bare the truth of the death penalty in Florida: It's not about justice. It's not about deterring crime. It's about vengeance."

In January 2000, the state legislature voted to adopt lethal injection as an alternative to the electric chair. Legislators also voted for procedures to speed up death penalty appeals, despite growing concern about wrongful capital convictions in the USA (Florida has released more wrongfully convicted capital inmates than any other state). The Florida Supreme Court suspended the procedures in February to examine their legality, and in April, it ruled that they were "an unconstitutional encroachment" on the power of the Court. It has made its own proposals for expediting appeals, which are currently the subject of consultation.

RECOMMENDED ACTION: Please send faxes/express/airmail letters in English or your own language, in your own words, using the following as a guide:

- acknowledging the seriousness of Thomas Provenzano's crime and the suffering of his victims and their families;
- noting that Judge Bentley found clear and convincing evidence that Thomas Provenzano believes that he is being executed because he is Jesus Christ;
- noting Judge Bentley's admission to being "troubled" by the "minimal standard" governing competency for execution, and that he would have found Provenzano incompetent if the onus was on the state rather than the defendant, and noting the dissenting opinions on the Florida Supreme Court;
- arguing that the power of executive clemency exists to compensate for the rigidities or failings of the courts, and that this case cries out for such humanitarian intervention;
- noting the view of the National Alliance for the Mentally Ill that "the death penalty is never appropriate for a defendant suffering from schizophrenia or other serious brain disorders", and that in May 1999, the Governor of Virginia commuted the death sentence of Calvin Swann, a paranoid schizophrenic, on humanitarian grounds;
- calling for clemency for Thomas Provenzano.

APPEALS TO:

Board of Executive Clemency
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Salutation: Dear Board Members

The Honourable Jeb Bush
The Capitol, Tallahassee
FL 32399, USA
Tel: +1 850 488 4441
Fax: +1 850 487 0801
Salutation: Dear Governor

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

PLEASE SEND APPEALS IMMEDIATELY.