

UA 150/07

Death penalty

USA (South Carolina)

Calvin Alphonso Shuler (m), black, aged 40

Calvin Shuler is scheduled to be executed in South Carolina on 22 June. He was sentenced to death in 1998 for the murder of James Brooks during an armed robbery in 1997.

On 3 December 1997, three guards in an armoured van were collecting and delivering money to banks in the Low County area near Charleston. When they arrived at the First National Bank of Harleyville, a man wearing army fatigues and a camouflage face mask ordered the two guards out of the driver and passenger seat at gunpoint. After the assailant had climbed into the driver's seat, he and the remaining guard, James Brooks, who was in the back of the van, exchanged gunfire through the mesh that separated the cab and the rear of the vehicle. The attacker threw a handgun out of the van window before driving off at speed. The van was found, with James Brooks dead in it and \$1,555,400 in cash still in the vehicle. A search revealed an assault rifle, a box of ammunition and a bloody ski mask hanging on a tree. The handgun thrown from the vehicle was also recovered, and traced to Calvin Shuler's late mother. The rifle, meanwhile, was traced to Demond Jones, the fiancé of Shuler's cousin. Jones had purchased the weapon at Shuler's request.

Calvin Shuler subsequently confessed to the crime. In November 1998, a jury found him guilty of murder, armed robbery and kidnapping and voted for a death sentence.

The claim has been raised on appeal that the trial lawyers were ineffective for failing to present in mitigation evidence of Calvin Shuler's abuse of steroids and cocaine prior to the crime. In a state post-conviction hearing, an expert on the effects of steroid use testified that individuals who use large quantities of anabolic steroids, such as body builders, frequently experience mania and can manifest aggressive behaviour. The doctor concluded that Shuler had been abusing steroids at the time of the crime, and that his capacity to conform his conduct to the requirements of the law was impaired due to this steroid use. The trial lawyers told the post-conviction court that they had considered presenting the evidence, but had decided not to on the grounds that jurors in the conservative county where the trial was to be held would likely consider such evidence aggravating rather than mitigating. The state post-conviction court found that this strategy meant that the trial lawyers' limited investigation into the steroid issue was reasonable. The trial lawyers gave the same reason for not presenting the jury with evidence of Shuler's cocaine use prior to the crime.

The lawyers also stated that they had decided not to present any mental health evidence because they feared that to do so would open the door to the prosecution using testimony that had been presented at a pre-trial competency hearing that Shuler was faking mental health problems. The jury was therefore not presented with evidence that Calvin Shuler had apparently attempted suicide immediately before the crime. An FBI agent involved in the case had filed a report which stated that "as Shuler contemplated the robbery" in bed on the morning of 3 December 1997, "he held the assault rifle that Jones had purchased for [him]; at this time, this rifle was fully loaded .. Shuler placed the barrel of this rifle into his mouth and pulled the trigger". However, he did not realise that the safety catch was on, the rifle did not fire, and he did not try again. The post-conviction court concluded that it was not unreasonable for the trial lawyers not to have presented the jury with this insight into the defendant's state of mind at the time of the crime, in light of their strategy not to present mental health evidence. The court added that, even if it had been unreasonable, Shuler could not prove that at least one juror would have voted for a life sentence after hearing such evidence. In 2006, the US Court of Appeals for the Fourth Circuit said that "while evidence of a suicide attempt would have provided an additional piece of the puzzle", it could not say that the state appeal court's ruling was wrong.

The jury was presented with evidence of Calvin Shuler's reaction to the recent deaths of his parents. Several witnesses testified that he was deeply depressed as a result of this loss. His aunt testified that on one occasion she had found Calvin Shuler in the cemetery, lying between his parents graves. The crime took place on Calvin Shuler's 31st birthday and the anniversary of his mother's burial.

BACKGROUND INFORMATION

Today, 129 countries are abolitionist in law or practice. In contrast, there have been 1,080 executions in the USA since judicial killing resumed there in 1977. South Carolina accounts for 36 of these executions. There have been 23 executions in the USA so far this year.

There are signs that the USA is slowly turning against the death penalty. The 53 executions carried out in 2006 represented the lowest annual total for a decade, and the rate of death sentencing is continuing to drop from its peak in the mid-1990s. The number of people sentenced to death in 2006 was under half of what it was in 1996 and the lowest since 1977. An erosion of the public's belief in the deterrent value of the death penalty, an increased awareness of the frequency of wrongful convictions in capital cases, and a greater confidence that public safety can be guaranteed by life prison terms rather than death sentences have all contributed to the waning of enthusiasm for capital punishment (see *USA: The experiment that failed: A reflection on 30 years of executions*, January 2007, <http://web.amnesty.org/library/index/engamr510112007>). A new report issued by the Death Penalty Information Center in Washington, DC, analyses opinion polling indicating that 58 per cent of the US population believe that it is time for a

moratorium on the death penalty; 60 per cent believe that the death penalty is not a deterrent to murder; 87 per cent believe that an innocent person has been executed in the USA recent years; and 69 per cent believe that reforms will not eliminate all wrongful convictions and executions.

Amnesty International opposes the death penalty unconditionally. The death penalty is a destructive, diversionary and divisive public policy that is not consistent with widely held values. It not only runs the risk of irrevocable error, it is also costly – to the public purse, as well as in social and psychological terms. It tends to be applied discriminatorily on grounds of race and class. It denies the possibility of reconciliation and rehabilitation. It promotes simplistic responses to complex human problems, rather than pursuing explanations that could inform positive strategies. It prolongs the suffering of the murder victim's family, and extends that suffering to the loved ones of the condemned prisoner. It diverts resources that could be better used to work against violent crime and assist those affected by it. It is a symptom of a culture of violence, not a solution to it.

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

- expressing sympathy for the family of James Brooks, explaining that you are not seeking to condone the manner of his death or to downplay the suffering caused;
- opposing the execution of Calvin Shuler, and the death penalty generally;
- noting that the jury did not hear potentially mitigating evidence, and that while the appeal courts have found this to have been the result of trial counsel's strategy, the power of executive clemency is not limited in the way that courts are;
- calling on the governor to grant clemency to Calvin Shuler and to commute his death sentence;
- calling on the governor to support a moratorium on executions in South Carolina.

APPEALS TO:

Governor Mark Sanford, Office of the Governor, PO Box 12267, Columbia, SC 29211, USA

Fax: +1 803 734 5167

Email: via website: <http://www.scgovernor.com/Contact.asp?sitecontentid=33>.

Salutation: Dear Governor

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

PLEASE SEND APPEALS IMMEDIATELY. *****