

URGENT ACTION

TEXAS EXECUTION RESET FOR 7 JANUARY 2010

Kenneth Mosley, who received a stay of execution in September from the US Supreme Court 24 hours before he was due to be put to death, is now scheduled for execution on 7 January 2010. Mosley, a 51-year-old African American man, has spent 12 years on death row for the murder of a white police officer, David Moore.

Kenneth Mosley entered a bank in Garland, Texas, on 15 February 1997, wearing bulky clothes that were inappropriate for the warm weather. His appearance raised a staff member's suspicion – she recognized him as the person who had robbed the bank the previous month – and the police were called. Officer David Moore arrived and confronted Mosley, who was waiting in the queue. The two men fought, and crashed through a plate glass window; Moore was shot and fatally wounded. Mosley was arrested at the scene with a note saying "This is a hold up, I have a gun, put money in bag." At the trial, Kenneth Mosley said that he had gone to the bank to rob it to buy drugs. He testified that he had not intended to kill the officer, and there was varying witness testimony about the incident, including whether the shooting had appeared intentional. Kenneth Mosley was convicted of capital murder. At the sentencing phase of the trial, the defence presented only two witnesses. Mosley himself testified, and was removed from the courtroom after he swore in graphic terms at the jurors. He was sentenced to death.

Evidence not heard by the jury has been presented to the appeal courts describing Mosley's poverty-stricken and abusive upbringing in a family of poor farm-workers, his exposure to toxic pesticides as a child, his possible brain damage, his depression, and his use of cocaine to self-medicate (see overleaf). The appeal courts have upheld Kenneth Mosley's death sentence, rejecting the claim that he had received inadequate representation at trial. On 23 September, the US Supreme Court stayed the execution of Kenneth Mosley, scheduled for the following day. On 20 October, without comment, it announced that it was not taking the case.

Texas continues to account for a large proportion of the USA's executions. Of the 1,184 people put to death nationwide since 1977 when executions resumed in the USA, 446 have been in Texas. There have been 48 executions in the USA this year, 23 of which have been carried out in Texas.

PLEASE WRITE IMMEDIATELY in English or your own language and cite Kenneth Mosley's prisoner number (#999243) in your appeals:

- Expressing concern that Kenneth Mosley's jury was not presented with a full picture of the man they were sentencing, including his background of poverty and abuse, his possible brain impairment, and his depression;
- urging the Board of Pardons and Paroles and Governor Perry to stop the execution of Kenneth Mosley and to grant him clemency;
- expressing concern at the continuing use of the death penalty in Texas, and calling on members of the Board and Governor Perry to work with members of the Texas legislature with a view to abolishing this punishment;
- explaining that you are not seeking to excuse violent crime or to downplay the suffering caused to its victims.

PLEASE SEND APPEALS BEFORE 06 January 2010 TO:

Rissie L. Owens, Presiding Officer, Board of Pardons and Paroles, Executive Clemency Section
8610 Shoal Creek Boulevard, Austin, TX 78757, USA
Fax: + 1 512 467 0945
Salutation: Dear Ms Owens

Governor Rick Perry
Office of the Governor, P.O. Box 12428
Austin, Texas 78711-2428, USA
Fax: + 1 512 463 1849
Salutation: Dear Governor

Also send copies to diplomatic representatives of the USA accredited to your country. Please check with your section office if sending appeals after the above date. This is the second update of UA 240/09 (AMR 51/099/2009).

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ADDITIONAL INFORMATION

Kenneth Mosley's family lived on several farms in Arkansas between 1961 and 1971 (when he was aged three to 13) and the whole family had continued to work as labourers until 1979. In an affidavit presented to the appeal courts in Kenneth Mosley's case, one of his brothers recalled that the family was very poor. He also recalled the violence of their father towards their mother: "He would become angry over the least little thing and hit Mom with his hands, his fists, and kick her when she was on the floor." The children, the brother said, were all scared of their father: "When one of us kids did something wrong, our father would punish all of us. We each had to take a turn in getting beat. One time the violence got so bad that me and two of my brothers ran away from home. We did not get very far; the police found us the same night. When we were returned home, we were all whipped by our father."

The brother also recalled that the children would play around drums and barrels of pesticides on the farms and that the pesticide residue would remain on the cotton fields where they worked. Kenneth Mosley's mother and another older brother recalled that both their house and the crops would be sprayed from the air with pesticides.

A psychologist who examined Kenneth Mosley in 2000 concluded that he suffered from frontal lobe dysfunction. Another psychologist, who reviewed this finding, concluded that the evidence supported this assessment, and that such a brain impairment would help to explain Kenneth Mosley's poor impulse control, his problems with attention and concentration, and his difficulty in inhibiting inappropriate behaviour. In her affidavit, she asserted that it was "exceedingly difficult for Kenneth Mosley to conform his behaviour to societal standards, particularly in the midst of stressful situations." A third expert concluded that Kenneth Mosley had "generalized brain impairment, as well as damage to specific areas in both the right and left sides of his brain." She concluded that the "primary cause" of his "neuro-cognitive deficits" was "his lengthy and varied exposures to toxic chemicals at a vulnerable developmental stage." In her affidavit, she added that current research and science indicated that such exposure could cause "severe health problems, particularly in terms of neurological damage."

Evidence that Kenneth Mosley has long suffered from major depression, and that this had led him to self-medicate with cocaine, has also been presented on appeal. However, the courts have rejected the claim that Mosley's trial lawyers failed to adequately investigate and present mitigating evidence to challenge the state's pursuit of the death penalty at the sentencing phase of the trial. In a recent appeal brief to the US Supreme Court, his current lawyers wrote: "Mosley's numerous inpatient drug and alcohol treatments support that Mosley had debilitating addiction and depression issues. Had [trial] counsel followed the leads that these un-obtained medical records revealed, they would have learned that much of Mosley's conduct was motivated by his desire to self-medicate his severe depression. In addition, Mosley has brain impairment due to chemical exposure as a child. There was a plethora of mitigating evidence that was never uncovered and, thus, never evaluated for introduction at the penalty proceedings."

Amnesty International opposes the death penalty in all cases, unconditionally. To end the death penalty is to abandon 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 has not been proved to have a special deterrent effect. It tends to be applied in a discriminatory way, 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.

Further information on UA: 240/09 Index: AMR 51/122/2009 Issue date: 30 November 2009

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