

USA (Tennessee) Daryl Keith Holton (m), white, aged 45

Daryl Holton is scheduled to be executed in Tennessee on 12 September. He was sentenced to death in 1999 for the murder of his three young sons and their half-sister in 1997. He has effectively waived his appeals, although he has characterized his approach as one of "selective procedural default".

On 30 November 1997, former soldier Daryl Holton walked into a police station in Shelbyville, Tennessee, to report a "homicide times four". He said that he had shot his children in his uncle's car repair garage. The police went to the garage and found the bodies of Stephen Edward Holton (12), Brent Holton (10), Eric Holton (6) and Kayla Marie Holton (4).

At his trial, three mental health experts – two for the defence and one for the prosecution – all agreed that Daryl Holton had been suffering from a major depressive disorder when he killed the children. One of the defence experts, a psychiatrist, testified that filicide (the murder of one's own child) is closely associated with the occurrence of major depression, and in such cases the parent is "on the sickest end of the spectrum. They have very severe major depression. It is often one with psychotic features [where] the individual's grasp of reality is severely lacking." The psychiatrist testified that Holton had a family history of suicide, and had himself experienced previous episodes of major depression, dating back to high school and continuing through his military career. The prosecution's expert agreed that "Mr Holton at the time of this crime suffered from major depression". He also agreed "absolutely" that severe depression can "affect one's judgment and thought processes" and cause delusions. However, he concluded that Daryl Holton could tell right from wrong at the time of the crime.

After 50 minutes of deliberation, the jury rejected the defence of not guilty by reason of insanity and convicted Holton on four counts of first-degree murder. Against the advice of his lawyers, Holton decided to largely forego the presentation of mitigating evidence at the sentencing phase, except testimony that he was a cooperative inmate in the jail who received visits from relatives. The jury voted that he should be executed.

There has been a degree of dispute about whether Daryl Holton intended to waive the entirety of his appeals after the Tennessee Supreme Court affirmed his convictions and death sentence in 2004. In any event, the effect has been that he has waived his appeals, and he has been found competent to do so.

In April 2005, Holton's lawyers filed an appeal in state court, signed by them but not by Holton, adding that he had refused to meet with them. The lawyers raised concerns about Holton's mental competency, claimed that he was "quite possibly operating under suicidal motivations", and requested a competency hearing. The trial-level court ordered Holton to meet with his lawyers and a court-appointed mental health expert, and allowed additional time for the filing of "a completed post-conviction petition". The state appealed, and in May 2006 the Tennessee Supreme Court found that the trial-level court had lacked the authority to consider the petition filed on behalf of Daryl Holton because he had not signed it and the lawyers had failed to establish a "next friend" basis on which to proceed. It also found that the petition had been filed too late.

The state asked the Tennessee Supreme Court to set a new execution date and Holton himself filed a response stating that he "does not oppose the State's motion to reset an execution date". Execution was set for 19 September 2006. Meanwhile, Holton's lawyers petitioned the federal courts, filing evidence that raised questions about his competence. In an affidavit, the psychiatrist who had testified at the trial suggested that Holton's major depression had probably recurred and that "any decision to volunteer for execution would fit the depressive pattern of thinking characteristic with [this illness]". An affidavit was also provided by a psychiatrist who had recently interviewed Daryl Holton and reviewed his records. He formed a "preliminary opinion" that Holton was suffering from "complex Post Traumatic Stress Disorder and Depression", and concluded that there was reasonable cause to doubt that he was competent to waive his appeals.

The state sought to dismiss the petition, and Daryl Holton stated that he had not authorized the petition and did not wish to proceed with it. The federal District Court appointed a psychologist to evaluate Holton's competence to waive his appeals. On 5 September 2006, this psychologist testified that, in his opinion, Daryl Holton was "fully rational" and "especially informed of his legal options". The District Court judge ruled that there was no reasonable cause to believe that the prisoner was incompetent and so there was no reason to have a full competency hearing. He dismissed the petition filed by the lawyers as unauthorized.

The day before his execution, the US Court of Appeals for the Sixth Circuit issued a stay. It stated that this was an "appropriate" course of action, because an appeal written by Daryl Holton himself had just been filed in the US Supreme Court, seeking a stay of execution and raising a claim of ineffective trial and appellate counsel. In his petition, Daryl Holton said that he did not oppose the death penalty for crimes such as those of which he had been convicted, but that if his claims of his "unconstitutional convictions" were successful, it was his "understanding" that "the resulting death sentences must also be set aside". The Supreme Court, without comment, refused to lift the Sixth Circuit's stay of execution.

In its order issuing the stay, the Sixth Circuit had instructed Daryl Holton to inform it personally whether he intended to pursue his appeal, and if so, whether he intended to do that himself or through his lawyers. Holton responded in a handwritten letter to the court, dated 21 September 2006, that he could not "at this time, in good faith" pursue the appeal filed by his lawyers as it challenged his own competency to waive federal review of the claims they were raising. On 9 January 2007, the Sixth Circuit affirmed the District Court's dismissal of the lawyer-filed petition. The state moved to have a new execution date set, and on 22 January, Daryl Holton wrote to the Tennessee Supreme Court that his position had been one of "consistent, calculated, deliberate, and selective procedural default rather than one of wholesale waiver [of appeals]." He ended by stating that he did not oppose the state's motion to reset an execution date. The following week, the state Supreme Court set 28 February 2007 as the date on which Holton would be killed.

Daryl Holton's execution was again stayed after the Governor imposed a moratorium in order that a review of execution procedures could be conducted. On 30 April, the Governor announced that the review had been completed and that the moratorium on executions would expire on 2 May. On 4 May, the Attorney General asked the Tennessee Supreme Court to set a new execution date for Daryl Holton, and on 14 May his handwritten response was filed in the Court stating that he "does not oppose the state's latest motion to reset an execution date". The state Supreme Court set 12 September 2007 as the date for the execution.

Amnesty International opposes the death penalty in all cases. There have been 1,095 executions in the USA since judicial killing resumed there in 1977, three of them in Tennessee. More than 100 people have been executed after giving up appeals (for further information on this phenomenon and on Daryl Holton's case, see *USA: Prisoner-assisted homicide - more 'volunteer' executions loom*, AMR 51/087/2007, May 2007, <http://web.amnesty.org/library/Index/ENGAMR510872007>).

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

- opposing the execution of Daryl Holton and the use of the death penalty in general;
- noting evidence that Daryl Holton was suffering from severe depression at the time of his crime, and that his decisions that have effectively waived his appeals may have been influenced by depression;
- calling on the governor to stop this execution and to support a moratorium on executions in Tennessee.

APPEALS TO:

Governor Phil Bredesen, Office of the Governor, State Capitol, Nashville, TN 37243-0001, USA.

Fax: +1 615 532 9711

Email: Phil.Bredesen@state.tn.us

Salutation: Dear Governor

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

PLEASE SEND APPEALS IMMEDIATELY. *****