

PUBLIC

UA 254/07 Death penalty

USA (Nevada) **William Patrick Castillo (m), white, aged 34**

William Castillo is scheduled to be executed on 15 October in Nevada. He was sentenced to death in 1996 for the murder in 1995 of Isabelle Berndt in Las Vegas. William Castillo has given up appeals against his conviction and death sentence. He would be the 12th Nevada death row inmate to be put to death after waiving his appeals, out of a total of 13 executions carried out in the state since 1977.

In November 1995, 22-year-old William Castillo was working as a roofer on the house of Isabelle Berndt, an elderly retired teacher. According to the evidence at trial, William Castillo found a key to the residence and returned on the night of 16/17 December with a friend to burgle the house. During the crime, Isabelle Berndt was bludgeoned in her bed. The two burglars then left the house, but returned later that night to burn it down. An arson investigator concluded that the fire had been set deliberately, and an autopsy determined that Isabelle Berndt had died as a result of head injuries caused by blunt force trauma, consistent with blows from a crowbar or tyre iron. A co-worker of William Castillo contacted the police to tell them that Castillo had said that he had "murdered an 86-year-old lady in her sleep" after he had entered the house to burgle it. Castillo was arrested, waived his right to a lawyer, and subsequently confessed to murder, robbery and arson.

After the jury convicted William Castillo on all counts, the trial moved into a sentencing phase. Evidence of Castillo's troubled childhood was presented. He had begun running away from home at the age of nine. By the age of 15, he had already been charged with attempted murder and arson, and had used marijuana, speed, cocaine and alcohol. A neuro-psychologist testified that William Castillo had been emotionally, mentally and physically abused, and came from a dysfunctional family. His mother testified that her son had a difficult childhood due to the physical and emotional abuse he suffered at the hands of his father and the family's instability. William Castillo testified as to his regret and remorse about his conduct.

The prosecutor urged the jury to pass a death sentence: "The issue is do you, as the trial jury, this afternoon have the resolve and the intestinal fortitude, the sense of commitment to do your legal and moral duty, for whatever your decision is today .you will be imposing a judgment of death and it's just a question of whether it will be an execution sentence for the killer of Mrs Berndt or for a future victim of this defendant". The jury found in mitigation William Castillo's youth at the time of the crime and that the murder was committed when he was "under the influence of extreme emotional distress or disturbance". However, it concluded that the aggravating factors outweighed this and returned a verdict of death.

In 1998, the Nevada Supreme Court concluded that "portions of the prosecutor's future dangerousness argument were improper". The prosecutor's comment about the "future victim" of William Castillo had "improperly suggest[ed] that the jury must decide whether to execute the defendant or bear responsibility for the death of an innocent future victim. Presenting the jury's decision as a choice between killing a guilty person or an innocent person will likely result in a juror's decision to impose the death penalty more often than if the jury's decision had been portrayed in its proper light". However, the Court ruled that this prosecutorial misconduct had not unfairly prejudiced William Castillo "in light of the overwhelming evidence of his guilt". Guilt, however, was not the issue at the sentencing phase. William Castillo, who has been on death row for more than a decade, has waived his federal appeals. He has reportedly stated that he does not want to serve a life sentence in a Nevada prison if he wins an appeal against his death sentence.

BACKGROUND INFORMATION

Over one in 10 of the more than 1,000 men and women put to death in the USA since judicial killing resumed there in 1977 had given up their appeals (see *Prisoner-assisted homicide – more 'volunteer' executions loom*, May 2007, <http://web.amnesty.org/library/Index/ENGAMR510872007>). Any number of factors may contribute to a condemned inmate's decision not to pursue appeals, including mental disorder, physical illness, remorse, bravado, religious belief, a quest for notoriety, the severity of conditions of confinement, including prolonged isolation and lack of physical contact visits, the bleak alternative of life imprisonment without the possibility of parole, or pessimism about appeal prospects. In some cases it appears that the detainee may have committed the crime in order to receive a death sentence. Pre-trial or post-conviction suicidal ideation seems to motivate the decision-making of some such inmates, including some whose abusive childhoods have left them traumatized or suffering mental health problems. With such cases in mind, the execution of "volunteers" is often compared to state-assisted suicide. However, "prisoner-assisted homicide" may be a more appropriate description of this phenomenon. Rational or irrational, an inmate's decision to waive appeals may simply stem from a desire to gain a semblance of control over a situation in which they are otherwise powerless. As the US Supreme Court recognized over a century ago, "when a prisoner sentenced by a court

to death is confined in the penitentiary awaiting the execution of the sentence, one of the most horrible feelings to which he can be subjected during that time is the uncertainty during the whole of it . . . as to the precise time when his execution shall take place." One way for a prisoner to end this cruel uncertainty is to ask to be killed by the state.

Death row conditions in the USA have become increasingly harsh over the years, with inmates spending more time in isolation. Death row inmates are typically confined to their cells for most of the day, and have little or no access to educational or other programs. The sense of isolation may be one reason why 11 out of 12 of the people put to death in Nevada between 1977 and today had given up their appeals. Nevada's death row is based at Ely, in the east of the state. It is situated some 400 kilometres from Las Vegas and over 500 kms from Reno, the two main centres of population in one of the least densely populated US states.

Given the rate of error found in capital cases on appeal, if the more than 120 "volunteers" executed since 1977 had pursued their appeals, there is a significant possibility that a number of them would have had their death sentences overturned to prison terms. To look at it another way, the phenomenon of "volunteers" contributes to the arbitrariness that riddles the use of the death penalty in the USA. A number of recent executions of non-"volunteers" have been stayed following the US Supreme Court's decision to review the constitutionality of lethal injection procedures used in Kentucky (the same as used in most states).

Amnesty International opposes the death penalty in all cases, regardless of the crime, issues of guilt or innocence, or the method used to kill the condemned prisoner. Today, 133 countries are abolitionist in law or practice. In contrast, the USA has carried out 1,099 executions since judicial killing resumed there in 1977.

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

- explaining that you are not seeking to condone the murder of Isabelle Berndt or to downplay the suffering caused, but opposing the execution of William Castillo, and the death penalty in general;
- expressing concern at the high number of death row inmates who have waived their appeals in Nevada, a phenomenon that contributes to the arbitrariness of the death penalty;
- noting the increased national concern about the fairness and reliability of the capital justice system;
- calling for a moratorium on executions in Nevada, with a view to abolition of this punishment.

APPEALS TO:

Governor Jim Gibbons, Office of the Governor, State Capitol,
101 N. Carson Street, Carson City, NV 89701, USA

Fax: +1 775 6845683

Email: http://gov.state.nv.us/Contact_Us_NORTHX.htm.

Salutation: Dear Governor

Attorney General Catherine Cortez Masto, Office of the Attorney General
100 North Carson Street, Carson City, Nevada 89701-4717, USA

Fax: +1 775 684-1108

Salutation: Dear Attorney General

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

PLEASE SEND APPEALS IMMEDIATELY.
