

PUBLIC

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17 October 2006

Further information on UA 189/06 (AMR 51/105/2006, 06 July 2006) and update (AMR 51/112/2006, 13 July 2006) – Death penalty / Legal concern

USA (Mississippi)

Bobby Glen Wilcher (m), white, aged 44

Bobby Wilcher, who suffers from mental illness, is scheduled for execution in Mississippi at 6pm local time on 18 October 2006. On 16 October, his lawyer filed an appeal in the US Court of Appeals for the Fifth Circuit seeking a stay of execution in order that he can pursue appeals which Bobby Wilcher had previously decided to give up after more than two decades on death row. So far the courts have denied Wilcher's request to retract the waiver of his appeals.

Bobby Wilcher was sentenced to death in 1984 for the murder of Katie Belle Moore and Velma Odell Noblin who were stabbed to death in Bienville National Forest in central Mississippi in March 1982. He was 19 years old at the time of the crime. He is now 44. Bobby Wilcher suffers from bipolar disorder, a serious mental illness, and he also has a long history of psychological problems, including suicide attempts.

On 24 May 2006, Bobby Wilcher filed a motion in court seeking to drop all his remaining appeals and to allow the state to execute him. On 14 June, a federal District Court judge found Wilcher competent to waive his appeals, after a hearing held at short notice and without expert testimony presented.

On 7 July, Bobby Wilcher contacted his lawyer and told him that he had changed his mind and wished to pursue his appeals. His lawyer filed a motion in the Fifth Circuit Court of Appeals to reinstate Wilcher's appeals, accompanied by an affidavit signed by the condemned man. The affidavit read: "I previously submitted a motion to this Court asking that I be permitted to abandon all appeals in my case. After a hearing on June 8, 2006, the Court granted my request. Upon further reflection, I now wish to withdraw that motion and proceed with all appeals and other remedies available to me under the law. I do not want to be executed, and I have instructed my attorneys to do everything in their power to help me avoid execution."

On 10 July, a three-judge panel of the Fifth Circuit court dismissed Wilcher's request to reinstate his appeals and refused to stay the execution. In a shocking opinion, the court stated that "this sudden about-face strikes us as nothing more than an eleventh-hour death row plea for mercy finally elicited from Wilcher by Counsel; the accompanying affidavit states only a conclusional flip-flop by Wilcher..." Other Circuit Courts of Appeal have reinstated appeals in such cases, including of inmates who have changed their minds on numerous occasions on whether or not to drop their appeals. In a case in 2000, the Seventh Circuit Court of Appeals stated that "not only the defendant but society as a whole has a particularly strong interest in the regularity of proceedings that are followed; there is no un-doing a sentence of death once it is carried out".

Bobby Wilcher's lawyer appealed to the US Supreme Court, presenting the Justices with the question of whether the Fifth Circuit had been right to refuse to reinstate Wilcher's appeals due to the "eleventh hour" nature of the filing. Half an hour before Wilcher was due to be executed on 11 July, the Supreme Court order that the execution be delayed in order that it could consider the motion, and an hour later granted the stay to allow it to consider whether to take the case and consider the merits of the question raised.

On 2 October, the US Supreme Court dismissed the appeal without comment. Two days later, Bobby Wilcher signed another affidavit reiterating that he wished to take up his appeals. On 5 October, his lawyer filed an emergency motion in the District Court seeking reinstatement of the appeals. On 14 October, the judge denied the motion. That ruling is now on appeal to the Fifth Circuit Court of Appeals and the case will again go to the US Supreme Court if the Fifth Circuit does not provide a remedy.

BACKGROUND INFORMATION

Over recent years, conditions on Mississippi's death row have been severely criticized, including in relation to the psychological impact of these conditions and the poor mental health care provided. In May 2003, a federal judge ruled that the conditions in the State Penitentiary offended "contemporary concepts of decency, human dignity and precepts of civilization which we profess to possess". Judge Jerry Davis found that death row inmates were being subjected to "profound isolation, intolerable stench and filth, consistent exposure to human excrement, dangerously high temperatures and humidity, insect infestations, deprivation of basic mental health care, and constant exposure to severely psychotic inmates in adjoining cells." Among other things, the federal judge found that: the filthy conditions impacted on the mental health of inmates; the probability of heat-related illness was high for death row inmates, particularly those suffering from mental illness who either did not take appropriate steps to deal with the heat or whose medications interfere with the human body's temperature regulation; the exposure to the severely psychotic individuals was intolerable; the mental health care provided to inmates was "grossly inadequate"; and the isolation of death row, combined with the conditions on it and the fact that its population are awaiting execution, would weaken even the strongest individual. In 2004, the US Court of Appeals "agree[d] that the conditions of inadequate mental health care... do present a risk of serious harm to the inmates' mental and physical health. Again, the obvious and pervasive nature of these conditions supports the... conclusion that [Mississippi Department of Correction] officials displayed a deliberate indifference to these conditions." While the authorities have recently improved the environmental conditions on death row following the lawsuit brought against them, there has been an ongoing struggle to ensure adequate medical and mental health care.

Over the past decade, the UN Commission on Human Rights repeatedly adopted resolutions calling for an end to the use of the death penalty against anyone suffering from any form of mental disorder. Scores of prisoners with histories of mental illness have been executed in the USA since 1977 (see AI report *USA: The execution of mentally ill offenders*, <http://web.amnesty.org/library/Index/ENGAMR510032006>).

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

- expressing sympathy for those affected by the murders of Katie Belle Moore and Velma Odell Noblin and explaining that you are not seeking to downplay the seriousness of these crimes or the suffering caused;
- opposing the execution of Bobby Wilcher, noting his mental illness, and stating your opposition to the death penalty in general;
- calling on the Governor to stop this execution in the event that the courts do not do so, and to grant clemency to Bobby Wilcher.

APPEALS TO:

Haley Barbour, Governor of Mississippi. P.O. Box 139, Jackson. Mississippi 39205, USA

Fax: +1 601 576 2791

Salutation: Dear Governor

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

You may also send a brief letter of concern (not more than 250 words) to:

Letters to the Editor, *c/o The Clarion-Ledger*, P. O. Box 40, Jackson, MS 39205-0040, USA

Fax: +1 601 961 7211

Email: <http://www.clarionledger.com/apps/pbcs.dll/article?AID=/99999999/OPINION/40714007#form>

PLEASE SEND APPEALS IMMEDIATELY.