

EXTRA 82/02

Death penalty/legal concern

4 November 2002

USA (Georgia) James Willie Brown, white, aged 54

James Willie Brown is facing imminent execution in Georgia. He has been given an execution warrant which is valid from 19 to 26 November 2002. Past experience suggests that the authorities will schedule the execution for the first day of the warrant, 19 November. James Brown was sentenced to death at a retrial in 1990 for the rape and murder of Brenda Watson in 1975.

James Brown has a long history of mental illness, which has included repeated diagnoses of schizophrenia. At the age of 15, he was diagnosed as suffering from convulsive disorder and prescribed medication to control his seizures. By the age of 17 he had entered the army but served less than two years before eventually being discharged due to his mental illness. As his situation deteriorated, he began to use illegal drugs, and was arrested for the first time in 1968, at about the age of 20. He was deemed incompetent to stand trial, that is, that he lacked the mental capacity to fully understand the proceedings or assist in his defence. He was therefore sent to a state mental facility. Between the time of his first arrest and his 1981 trial for the murder of Brenda Watson, he was in mental facilities for 70 per cent of the time, both on an involuntary and voluntary basis.

His trial for murder was delayed for six years on the grounds of mental incompetence. He was eventually tried and sentenced to death in 1981, but was granted a new trial by a federal court in 1988 on the grounds of doubts over his competency to stand trial in 1981. He was retried in 1990, and again sentenced to death.

At the retrial, the defence presented two experts who testified that James Brown suffered from chronic paranoid schizophrenia. In a subsequent affidavit, given in 1994, one of these experts stated: "Mr Brown's medical history establishes that his mental illness was of a long standing nature... From Mr Brown's post-arrest hospitalization in June 1975 until shortly before his original trial in January 1981, Mr Brown was under almost constant supervision by mental health professionals at Central State Hospital." The affidavit continues: "Considering the type of illness, his extensive medical history and my examination of Mr Brown, it was my opinion to a reasonable degree of medical certainty that Mr Brown was psychotic at the time of the alleged offense and that he acted upon delusions and therefore, could not distinguish between right and wrong at the time. Based upon my recent review of the additional materials, I stand by my original diagnosis and this opinion." In addition, two inmates who were in the county jail at the time of James Brown's arrest gave post-conviction affidavits that describe how he was out of touch with reality and psychotic.

The state's position at the 1990 retrial, however, was that James Brown was faking his mental illness. It presented a doctor who stated that, in his opinion, the defendant did not have schizophrenia, but had suffered drug-induced flashbacks. This doctor appears to have ignored James Brown's long history and repeated diagnoses of mental illness (over the years more than 25 mental health experts employed by the state have found James Brown to be mentally ill and not malingering). Moreover, in closing arguments, the prosecutor stated to the jury: "That brings us to the question that [the defence lawyer] wanted you to consider, should we put the mentally ill to death. Well, I don't know the answer to that

question... And you don't have to decide that question in this case. Because, ladies and gentlemen, this man isn't mentally ill, he has never been mentally ill, and he is not mentally ill today. He was not mentally ill on the [day of the crime]."

To bolster the state's theory that the defendant was malingering, the prosecution presented two witnesses; a police officer and a former inmate, who said that James Brown had made statements suggesting that he was faking his mental illness. The credibility of these witnesses has since been called into serious question. Appeal courts have held that the trial lawyers were ineffective in not having impeached this testimony, but under the stringent US Supreme Court precedent on this issue, have ruled that the prisoner had not proved that this failure had affected the outcome of the proceedings.

Like many on death row in the USA, James Willie Brown comes from a background of poverty, deprivation and serious abuse. According to a 1994 affidavit given by a clinical psychologist, James Brown was born in 1948 to a 15-year-old mother and an alcoholic father. Theirs was one of the poorest families in a low-income neighbourhood. The children were subjected to routine physical abuse, principally by the father. According to the psychologist: "Instruments of abuse included belts, boards, branches, cords, and fists, and the children were also kicked. In addition to beatings of the children, the father also often brutally beat the mother with his fists in front of the children. When [James Brown] attempted to aid his mother while she was being beaten, he only earned himself yet another beating from his father... According to [James Brown], his brothers and his mother, the father's beatings were extremely severe, leaving welts, drawing blood, and even, in [his] case, causing unconsciousness. The father not only beat [him] at home but also did so in public, in front of friends and family, and [James Brown] reports that the father appeared to take great pride and pleasure in humiliating him like this."

This psychologist noted that James Brown had "adjusted well to prison life... Based on my evaluation of Mr Brown, I would opine to a reasonable degree of psychological certainty that he will not present a security risk or disciplinary problem during his incarceration if he were sentenced to life in prison".

BACKGROUND INFORMATION

Each year since 1997, the United Nations Commission for Human Rights has passed a resolution which, among other things, calls on retentionist countries not to impose or carry out the death penalty against anyone with any form of mental disorder. The US grassroots advocacy organization, the National Alliance for the Mentally Ill, opposes the use of the death penalty against people with schizophrenia and other serious mental illness. Amnesty International opposes the death penalty unconditionally. While 111 countries are abolitionist in law or practice, the USA has put 805 prisoners to death since resuming executions in 1977.

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

- expressing sympathy for the family and friends of Brenda Watson, and explaining that you are not seeking to condone the manner of her death or to minimize the suffering caused;
- noting that James Willie Brown has a long history of serious mental illness stemming long before the crime, and that his illness has been recognized by the state on numerous occasions, including when he was in the military and the state hospital;
- expressing concern that the prosecution argued to the jury that he had never been mentally ill, and expressing concern that the testimony of two state

witnesses used to bolster this theory has been called into question;
- pointing to the United Nations resolutions and the National Alliance for the Mentally Ill's position opposing the use of the death penalty against people with mental illness, whether at the time of the crime, trial, or execution;
- urging clemency for James Willie Brown in the interest of decency and the reputation of Georgia.

APPEALS TO:

State Board of Pardons and Paroles, 2 Martin Luther King, Jr. Drive, SE
Suite 458, Balcony Level, East Tower, Atlanta, Georgia 30334-4909, USA

Fax: +1 404 651 8502, Salutation: Dear Board Members

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

You may also copy your appeals or write a brief letter (not more than 250 words) to:

Letters to the Editor, Atlanta Journal Constitution, PO Box 4689, Atlanta, GA 30302, USA. Fax: +1 404 526 5611

E-mail: www.accessatlanta.com/partners/ajc/letters

Please send appeals immediately.