

PUBLIC

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Further information on EXTRA 100/98 (AMR 51/109/98, 15 December 1998) and follow-up (AMR 51/09/99, 18 January 1999) - Death penalty / Legal concern

USA (NORTH CAROLINA) David Junior BROWN (also know as Dawud Abdullah Mohammed)

David Junior Brown, black, has received a new execution date of 19 November 1999. He was sentenced to death in 1980 for the murder of Diane Chalflinch, white, and her nine-year-old daughter.

The new execution date follows the denial of Brown's last appeal in state court. Brown has now fully completed the appeal process. Under the terms of the *Anti-terrorism and Effective Death Penalty Act*, signed into law by President Clinton in 1996, the federal courts will now only give Brown's case further examination if his lawyers can convince a three-judge panel there is "clear and convincing" evidence of his actual innocence - an almost impossible standard to meet.

The appeal courts have continued to fail to address many of the deeply disturbing issues in Brown's case. In the rejection of the last appeal, the North Carolina Supreme Court cited the "overwhelming" evidence against Brown, including: the discovery of his ring on the victim's body, his bloody palm print on the wall over the girl's body, and the bloody footprints from the victim's apartment to his (they lived in the same building).

Amnesty International believes the evidence against Brown is far from conclusive. The ring did belong to Brown and is undoubtedly a powerful piece of evidence against him. He claims he lost the ring after taking it off at a party where he was playing records the night before the crime. However, other evidence is much weaker than it first appears. The testimony at trial was consistent with the palm print having been placed on the wall weeks or months before the murders. Apparently, it was not possible to tell whether the print was made by a bloody hand or the blood had splashed over it. Brown had been in the victim's apartment prior to the crime helping her move furniture. No other finger prints belonging to Brown were found at the scene. Thirty three other prints that did not match either victim were found but not identified.

The police appear to have ignored the two other possible suspects for the crime, one of whom was positively identified by two witnesses as jumping from the balcony of the apartment block around the time of the murders. According to press reports, when the witnesses reported what they had seen, the police officers investigating the case told them, "We got our man" and "Y'all aren't doing but one thing, helping a murderer get set free".

The "trail of blood", as it is so often referred to in the media or by prosecutors, was in fact not visible to the naked eye. It was only discovered by highly sensitive forensic tests that were incapable of identifying the source of the blood. The authorities have failed to explain how a highly intoxicated individual, who would have been covered in blood after such a brutal crime, was able to clean himself and dispose of his clothing without leaving any trace of blood in his apartment, including in his drains, in such a short space of time.

Successive appeal courts have refused to grant legal relief to David Brown, while continually acknowledging the faults in his trial. The Court of Appeals for the 4th Circuit found that the District Attorney's denial of pre-trial access to

the crime scene and to witnesses was an error of a constitutional nature, but determined the error was "harmless". A judge for the District Court concluded that the conduct of the DA was "inexcusable", "based on personal animosity" (towards the defence attorney), that the DA's gamesmanship was "especially abhorrent when a person's life is at stake", but that it was also harmless (in that it would not have affected the outcome of the trial).

Amnesty International is appalled that the latest and probably last round of Brown's legal appeals have once again failed to adequately address the apparent numerous violations of the US Constitution and international standards governing the death penalty. For the diminishing list of countries which still resort to the death penalty, international human rights standards require the very highest level of fairness in capital cases, given the irreversible nature of the penalty.

Amnesty International is not in a position to know whether Brown is guilty or innocent of these murders. However, the case has many of the troubling aspects that have been present in the cases of the 82 people released from death row after being exonerated in the USA since 1973.

The execution of David Brown would clearly be in contravention of numerous international laws and standards, including Article 4 of the United Nations Safeguards Guaranteeing Protection of the Rights of Those Facing the Death Penalty, which states: "Capital punishment may be imposed only when the guilt of the person charged is based upon clear and convincing evidence leaving no room for an alternative explanation of the facts."

Brown's only remaining option is to seek clemency from the governor. In North Carolina, Governor Jim Hunt has sole authority to grant clemency. Hunt has never commuted a death sentence in his seven years in office (nor in the eight years he previously served). No other North Carolina governor has held office for so long without granting clemency to a condemned prisoner.

FURTHER RECOMMENDED ACTION: Please send telegrams/faxes/express/airmail letters in English or in your own language:

- expressing concern that David Junior Brown is scheduled to be executed on 19 November 1999 despite serious doubts about his guilt for the crime for which he was sentenced to death;
- pointing out that for the diminishing list of countries which still resort to the death penalty, international human rights standards require the very highest level of fairness in capital cases, given the irreversible nature of the penalty;
- pointing out that the courts have found the prosecuting authorities to be in violation of various rules of law but have allowed those violations to go unaddressed;
- pointing out that the jury which convicted and sentenced David Brown to death were prevented by the prosecution and judge from reviewing all the evidence in the case;
- requesting Governor Hunt to prevent the execution of a possibly innocent man by commuting the death sentence of David Junior Brown.

APPEALS TO:

The Honorable James B. Hunt, Jr.
Office of the Governor of North Carolina
116 W. Jones Street
Raleigh, NC 27603, USA

Telephone:+ 1 919 733 4240

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Salutation:Dear Governor

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

PLEASE SEND APPEALS IMMEDIATELY.