

USA (Oklahoma) Robert William Clayton, Native American, aged 39

Robert Clayton is scheduled to be executed in Oklahoma on 4 January 2001 for the 1985 murder of Rhonda Kay Timmons. His clemency hearing before the state Pardon and Parole Board is due to take place on 30 November.

Nineteen-year-old Rhonda Timmons was killed on 25 June 1985 in her flat in Tulsa. She had been stabbed and struck on the head. Robert Clayton, who worked as a groundskeeper at the apartment block, was arrested. He made two statements implicating himself as the murderer. He has since recanted the confessions and maintains that he did not kill Timmons.

At the time, Robert Clayton was a mentally impaired 24-year-old. A psychologist, who testified at the trial, assessed that he had an IQ of 68 (indicating a learning disability), a tendency to be dependent and submissive, and was emotionally immature. The son of alcoholic parents, Robert Clayton had dropped out of school when he was about 12 years old.

One of the police officers who questioned Clayton admitted that he "seemed a little bit on the slow side", and that it took a "considerable amount" of explanation to help him understand his right to remain silent and to have a lawyer present. The trial court ruled that the first confession was inadmissible on the grounds that Clayton had not understood these rights. The second confession was taken after an attorney advised Clayton not to make any statement, or to answer any more questions. However, when the lawyer left, the police took a second confession, allegedly on Clayton's insistence. The court ruled that this statement was admissible as evidence.

Given the lack of physical or eyewitness evidence positively identifying Clayton as the killer, the confession was important to the prosecution. However, the trial jury did not hear the statement, as it had not been recorded. Instead, it heard the police officer's recollection of it, which has itself raised concern. For example, the officer testified that Clayton had said that he had a knife with him when he went to Timmons' apartment. However, at an earlier hearing on the admissibility of the confession, when asked if Clayton had mentioned a knife, the officer had replied categorically that he had not. The prosecutor then gave the officer a copy of the officer's written report in order to "refresh [his] memory". After reviewing the report, the officer stated "apparently I stand corrected on that".

Prior to the trial, the court found that there was doubt as to Clayton's competency to stand trial, that is, as to whether he would be able to understand the proceedings and be able to assist in his defence. The court ordered an evaluation. A doctor carried out an examination on 11 July 1985 and, in a one paragraph report, found Clayton competent. However, the court did not hold a competency hearing as required by law. On appeal, the court was ordered to conduct a retrospective competency hearing, if feasible.

The court first held a hearing to determine if it was feasible to hold a competency hearing nearly six years after the trial. The only expert witness who testified at the feasibility hearing said that the available records concerning Clayton's competency were "poor", and that it would not be possible to establish competency on such records. Nevertheless, the court held a competency hearing, and in September 1991 ruled that Clayton had been competent

to stand trial on 1 March 1986. At the hearing, Clayton's trial lawyer recalled that he had had "significant doubts" about his client's competency during the trial. He described Clayton as having "the mentality of maybe like a seven or eight-year-old and he was unable to give me the details I wanted".

On appeal, the US Court of Appeals for the 10th Circuit said that "the time gap between Clayton's trial and the competency determination is troubling". Furthermore it said that the report of the doctor who had found Clayton competent in 1985 was "admittedly brief". It also described as "troubling" the fact that one of the state's main expert witnesses at the retrospective competency hearing had "no independent recollection of Clayton, had no records or files... and could not identify the bases for his conclusion". Nevertheless the appeals court allowed Clayton's death sentence to stand.

At the time of the trial and the competency hearing, Oklahoma law presumed that a criminal defendant was competent to stand trial unless he or she proved their incompetence by "clear and convincing" evidence. In 1996, the US Supreme Court found that this burden of proof was unconstitutionally high, and that the standard must be a "preponderance" of the evidence.

International standards oppose the use of the death penalty against people "suffering from mental retardation or extremely limited mental competence, whether at the stage of sentence or execution".

RECOMMENDED ACTION: Please send faxes/express/airmail letters in English or your own language, in your own words, using the following guide:

- expressing sympathy for relatives and friends of Rhonda Timmons, and explaining that you are not seeking to excuse her murder;
- expressing concern that a competency hearing was not held until nearly six years after the trial, with only limited records available from 1985-6;
- noting the widespread national concern about the fairness of the death penalty, especially in light of the large numbers of wrongful convictions;
- noting that people with learning disabilities are susceptible to giving false confessions to police, and that Robert Clayton's confession, since retracted, formed an important part of the prosecution's case;
- noting that international standards oppose the use of the death penalty against those who suffer from mental impairments either at the time of the trial or the time of execution;
- (before 30 November) urging the Board to recommend that the governor grant clemency;
- (after 30 November) appealing to the governor to do all in his power and influence to stop this execution.

APPEALS TO:

Before 30 November:

Pardon and Parole Board
4040 North Lincoln, Suite 219, Oklahoma City, OK 73105, USA
Fax: + 1 405 427 6648
Salutation: Dear Board Members

After 30 November:

Governor Frank Keating, Capitol Building, Oklahoma City, OK 73105, USA
Fax: + 1 405 521 3353
E-mail: governor@oklaosf.state.ok.us
Salutation: Dear Governor

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

PLEASE SEND APPEALS IMMEDIATELY.