

PUBLIC

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UA 288/05

Death Penalty

USA (North Carolina)

Kenneth Boyd (m), aged 57

Kenneth Boyd is scheduled to be executed on 2 December 2005. He was sentenced to death for the murders of his estranged wife, Julie Boyd, and her father, Thomas Dillard Curry, in March 1988. Kenneth Boyd's low IQ means that he is close to being classified as mentally retarded. The US Supreme Court ruled in 2002 that the execution of those with mental retardation is unlawful.

Kenneth Boyd is a Vietnam veteran who was honourably discharged from the armed services. He has suffered from blackouts and flashbacks as a result of his time in Vietnam. According to his attorneys, Kenneth Boyd is sincerely remorseful for the killings and the pain they have caused. They say that the murders were completely out of character for Boyd, who was a caring father of three sons and committed to providing for his family. However, at the time of the crime, Kenneth Boyd was emotionally strained after separating from his wife a number of times, and was suffering from severe depression and alcohol abuse, which made him lose control. Following the murders, Boyd surrendered to police, reportedly describing the crime as being similar to being in Vietnam, saying he could not remember all that had happened. Boyd has reportedly been an exemplary prisoner since he has been on death row.

Kenneth Boyd's attorneys claim that the jury at his trial did not understand that they could impose a sentence of life imprisonment instead of the death penalty, believing incorrectly that a death sentence was automatic if they found that the shootings were premeditated. Two jurors now say that they would never have imposed the death penalty if they had understood that they had the right to insist on voting for a sentence of life imprisonment.

Kenneth Boyd has an IQ of 77, placing him in the borderline mental retardation range. On 2 July 2004, Indiana Governor Joseph Kernan commuted the death sentence of Darnell Williams, whose IQ was measured at a similar level to Boyd's, shortly before he was due to be executed (see UA 207/04, AMR 51/104/2004, 24 June 2004). Governor Kernan noted the 2002 US Supreme Court decision, *Atkins v Virginia*, outlawing the use of the death penalty for those who have mental retardation. The Governor wrote: "Williams's IQ has been measured at 78 and 81, and he attended special education classes throughout his schooling. The usual 'cut-off' for mental retardation is IQ of 70-75, and Williams falls above that level... The courts have set a clear legal standard, but it remains problematic to confidently place the solemn decision of life or death on a few percentage points on either side of a line. Williams's mental status weighs as a factor in the clemency process."

There is strong support for a moratorium on executions in North Carolina because of concerns about the fairness and reliability of the death penalty. There have been almost 1,100 resolutions passed calling for a moratorium by town councils, private businesses, church congregations and religious organizations, political parties, and student and community groups. Many North Carolina newspapers have carried editorials in favour of a moratorium on executions.

Amnesty International does not seek to excuse the perpetrators of violent crime. However, it opposes the death penalty in all cases: a symptom of a culture of violence rather than a solution to it, it consumes resources that could otherwise be used towards constructive strategies to combat violent crime and to offer assistance to its victims and their families. The death penalty has not been shown to have a unique deterrent effect and denies the possibility of remorse, rehabilitation or reconciliation. In addition, the USA capital justice system is marked by arbitrariness, discrimination and error.

Today 121 countries are abolitionist in law or practice. In contrast, there have been 994 executions in the USA since it resumed executions in 1977. North Carolina accounts for 37 of these executions. There have been 50 executions in the USA this year.

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

- expressing sympathy for the family and friends of Julie Boyd and Thomas Dillard Curry, and explaining that you are not seeking to excuse the manner of their deaths or to minimize the suffering that their deaths will have caused;
- opposing the execution of Kenneth Boyd;
- noting reports of Kenneth Boyd's low IQ level, his sincere remorse and the fact that he has been a model prisoner;
- noting that he is a Vietnam veteran who suffered from flashbacks following his experiences in Vietnam and who was reportedly suffering from severe depression and alcohol abuse at the time of the crime;
- stating that while you recognize that this cannot excuse the crime for which he was sentenced to death, it should be taken into consideration when determining the granting of clemency;
- noting reports that two of the original jurors who imposed the death sentence have since stated that they would not have voted for a sentence of death if they had been aware that a sentence of life imprisonment was an option;
- calling on the governor to stop this execution and to support a moratorium on executions in North Carolina.

APPEALS TO:

Governor Michael F. Easley

Office of the Governor, 20301 Mail Service Center, Raleigh, NC 27699-0301, USA

Fax: +1 919 715 3175/+1 919 733 2120

Salutation: Dear Governor

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

PLEASE SEND APPEALS IMMEDIATELY.