

USA (Virginia) Andre L. Graham, black, aged 29

Andre Graham is scheduled to be executed on 9 December 1999 in Virginia. He was sentenced to death in 1994 for the murder of Sheryl Stack. If executed, he will be the 14th prisoner to be put to death in Virginia this year, the highest annual total since the state resumed executions in 1982.

In the early hours of 8 October 1993, Sheryl Stack and Edward Martin, both white, were shot in the head in a car park after being approached by at least two assailants, who then drove off in Martin's car. Sheryl Stack was killed, but Edward Martin survived.

Edward Martin identified Andre Graham as one of the assailants in a photo line-up. He then testified at trial that Graham was the last person he had seen with a gun, and forensic evidence indicated that it was Graham's gun which had been used. Martin was unable to say, however, how much time passed between him and Sheryl Stack being told to lie face down on the ground and the shots being fired. He also testified that another man, Mark Sheppard, had been one of the assailants. Sheppard was not charged in connection with this crime; he was sentenced to death for another murder and executed in January 1999.

Edward Martin had failed to pick Sheppard out in a photo line-up and instead picked someone else not involved in the crime. Despite the fact that this error undermined his credibility as an eyewitness, it was not disclosed to the defence until it emerged during the trial in cross-examination of a police witness. Post-conviction appeals, on the grounds that the defence lawyers should have immediately called for a postponement of proceedings, have been unsuccessful. The defence lawyers also failed to tell the jury that Andre Graham had a constitutional right not to testify at the trial, and that his decision not to testify should not be used against him. This was a serious oversight given the possibility that a juror might interpret a defendant's failure to testify as an admission of guilt.

Graham does not deny being present at the crime, but has always denied being the gunman. Before the judge sentenced him to death, he stated there were "three of us there" and denied shooting Stack and Martin. Under Virginia law, only the person who fires the gun (the "triggerman") can be sentenced to death. On appeal, Andre Graham's lawyers have argued that letters sent to him on death row from Sheppard support his claim that he was not the triggerman. The letters contain such lines as: "You didn't smoke [kill] those people, and I tell everybody that" and "Yes, it is fucked up that you're here for some shit you didn't do." The appeal courts have ruled that this new evidence does not meet the standard of reliability required for a successful appeal.

Amnesty International opposes the death penalty in all cases, irrespective of issues of guilt or innocence. Every death sentence is an affront to human dignity; every execution serves to deepen a culture of violence. The shooting of Sheryl Stack and Edward Martin was a shocking crime. An execution is likewise a cold-blooded killing of a human being who has been captured and rendered defenceless.

BACKGROUND INFORMATION

Virginia continues to execute prisoners at an alarming rate. Since it resumed executing in 1982, it has put 72 prisoners to death. Only Texas (195 executions), which has a population three times as large as Virginia, has executed more.

In an editorial in the Virginia newspaper, the *Virginian-Pilot*, on 20 November 1999, the paper asked: "What has been gained by these deaths? Perhaps, a measure of solace for some of those who've lost loved ones in terrible brutal ways. It is tempting to say their comfort is justification enough. But punishment meted out by the state must be more than a substitute for individual revenge. It is a measure of a society's moral code, of its regard for justice, mercy, and the rule of law. It is not from sympathy for the predators who have committed atrocities that the death penalty should be abolished, but from a profound aspiration to elevate society above the killers' baseness and depravity. When the state kills in the name of justice, it makes murderers of those on whose behalf it acts."

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

- acknowledging the shocking crime of which Andre Graham was convicted and expressing sympathy for Edward Martin and the relatives of Sheryl Stack;
- expressing concern at the imminent execution of Andre Graham, due to take place on the eve of international Human Rights Day;
- noting that Andre Graham, while admitting that he was present at the crime, has always denied that he was the "triggerman";
- expressing concern that this would be the 14th execution in Virginia in 1999, more than in any year since the state resumed the death penalty;
- noting that this directly contradicts the world trend to abolish the death penalty, with more than half of countries having stopped executions;
- voicing opposition to the death penalty as a symptom of, not a solution to, the culture of violence;
- urging the Governor to commute the death sentence of Andre Graham as a first step towards abolishing this outdated punishment in Virginia.

APPEALS TO:

The Honourable James Gilmore
Governor of Virginia
State Capitol
Richmond, VA 23219, USA

Telegrams: Governor Gilmore, Richmond, VA, USA

Faxes: + 1 804 371 6351

Salutation: Dear Governor

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

You may also write brief letters of concern (not more than 250 words) to:

Letters to the Editor: *Richmond Times-Dispatch*, PO BOX 85333, Richmond, VA 23293, USA.

Faxes: + 1 804 775 8090

PLEASE SEND APPEALS IMMEDIATELY.