

URGENT ACTION

U.S. FEDERAL COURT BLOCKS TEXAS EXECUTION

On 13 May a federal court blocked the execution in Texas of Robert Campbell about two and a half hours before it was due to be carried out. The stay will allow his lawyers to pursue the claim that his mental disability renders his death sentence unconstitutional.

Robert Campbell was sentenced to death in 1992 for the murder of Alexandra Rendon in Houston, Texas, in 1991. Campbell was just over 18 years old at the time of the crime, emerging from a childhood of severe deprivation and abuse. An African American, he was tried before an all-white Harris County jury.

On 5 May 2014 Robert Campbell's lawyers filed an appeal in state court. Based on an assessment conducted on 4 April, they asserted that he has a degree of intellectual disability that would render his execution unlawful under the 2002 US Supreme Court ruling, *Atkins v. Virginia*, prohibiting the execution of people with "mental retardation". The assessment was conducted by a clinical neuropsychologist who assessed Robert Campbell's IQ at 69 and diagnosed him as having "mild mental retardation".

On 8 May the Texas Court of Criminal Appeals (TCCA) refused to issue a stay of execution by five votes to four, ruling that the new claim did not meet the requirements of Texas law for a successor habeas corpus petition. Four of the judges dissented, arguing that there was a "prima facie case of mental retardation", and that the execution should be stayed and the case remanded to the trial court for consideration of the "compelling evidence" presented by Robert Campbell's lawyers that showed that "he is ineligible for execution under *Atkins v. Virginia*". The dissenting judges further noted that the Harris County District Attorney's Office had been "in possession of material evidence" about Robert Campbell's "possible, if not probable, mental retardation" when the TCCA previously considered an "*Atkins* claim" in the case in 2003. That information, the dissenting judges noted, "was not brought forward to this Court either by applicant's former habeas lawyer or by the prosecution".

The lawyers then turned to the federal courts. In a ruling issued on 13 May the US Court of Appeals for the Fifth Circuit noted that in the period immediately following the 2002 *Atkins* ruling, the Harris County District Attorney's office apparently had in its "exclusive possession" information relating to two intelligence tests Robert Campbell had taken as a child under 10 years old. In one, he was assessed as having an IQ of 68. In another, he performed in the lowest range of the test in question. In addition, the Texas prison authorities had conducted an assessment in 1992 in which Robert Campbell scored an IQ of 71. Without his lawyer having knowledge of these three tests not disclosed by the authorities, Robert Campbell's 2003 *Atkins* claim failed.

The three-judge panel of the Fifth Circuit ruled that "the evidence in the record before us is more than sufficient to satisfy Campbell's burden of making out a prima facie showing of intellectual disability sufficient to warrant a successive habeas petition". It authorized Robert Campbell's lawyers to file such a petition in US District Court for "fuller exploration" of the evidence of Robert Campbell's intellectual disability by that federal court. The Fifth Circuit said that it was "regrettable that we are now reviewing evidence of intellectual disability at the eleventh hour before Campbell's scheduled execution. However, from the record before us, it appears that we cannot fault Campbell or his attorneys, present or past, for the delay". It granted the stay of execution.

No further action is requested from the UA network at this time. Many thanks to all who sent appeals.

This is the second update of UA 90/14. Further information: <http://www.amnesty.org/en/library/info/AMR51/029/2014/en>

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Gender m/f: m

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