

URGENT ACTION

SENTENCING DISPARITY IN DEATH PENALTY CASE

Shane Kormondy, a Florida inmate who has exhausted his normal court appeals, is seeking commutation of his death sentence to life imprisonment, the sentence being served by his two co-defendants. Doubt about who shot the murder victim persists.

Gary McAdams was shot dead and Cecilia McAdams was raped, but survived, during a robbery of their Pensacola home on 11 July 1993. Three men were charged, with the state intending to seek the death penalty against all three. They were tried separately in 1994. Curtis Buffkin, aged 23 at the time of the crime, was brought to trial first, with the prosecutor describing him as “the ringleader” who “got to carry the gun” and “took total command of his cohorts”. However, during jury deliberations when it looked like a first-degree murder verdict might not emerge, the state agreed to a plea bargain under which Buffkin avoided the death penalty in return for testimony against his two co-defendants. James Hazen, 21 at the time of the crime, was sentenced to death. This was reduced to life by the state Supreme Court on the grounds that he was less culpable than Buffkin, who received a life sentence.

The third defendant, **Johnny Shane Kormondy**, 21 at the time of the crime, led police to the other two after his arrest. He said that it was Buffkin who shot Gary McAdams. After turning state’s witness, Buffkin said that Kormondy shot the victim accidentally. At Shane Kormondy’s trial, the state presented Cecilia McAdams, whose testimony indicated that Buffkin was not the gunman, and a witness who had gone to the police to seek the large reward on offer for information about the crime and testified that Kormondy said he shot the victim. There were inconsistencies in the testimony of both witnesses compared to their pre-trial statements. Shane Kormondy was found guilty and the jury voted eight to four for a death sentence. In 1997 the Florida Supreme Court overturned this, ruling that the evidence “cannot support a finding of premeditation”, only first-degree felony murder. At a re-sentencing in 1999 a new jury voted for death, again eight to four. In 2003 the state Supreme Court upheld this death sentence, rejecting the claim that it was disproportionate compared to the life sentences of the other two men because, on the trial evidence indicating he was the gunman, Shane Kormondy was more culpable.

At a hearing in state court in 2005, Curtis Buffkin and James Hazen recanted their prior statements. The former testified that he shot Gary McAdams, by accident, and that the murder weapon was never in Kormondy’s hands during the crime. He said he lied in order to “get a plea bargain”, and was changing his story now because “the family should really know what exactly happened”. James Hazen testified that he was present at the crime – at his own trial he denied being there. He said that Curtis Buffkin verbally indicated to him that he shot Gary McAdams. The court declined to credit the recantations. In 2011 a US District Court judge noted that the evidence that Shane Kormondy “was the shooter...is not conclusive” and “a new trial might or might not produce a finding that Mr Kormondy was the shooter”. However, the federal judge ruled that Shane Kormondy had “not shown, by clear and convincing evidence, that he was not” the gunman.

Please write immediately in English or your own language:

- Opposing the execution of Johnny Shane Kormondy and calling for clemency to be granted;
- Noting the disparity in sentencing of the three defendants, and that it is “not conclusive” who shot the victim;
- Expressing your understanding of the seriousness of the crime in this case and its consequences.

PLEASE SEND APPEALS BEFORE 4 AUGUST 2014 TO:

Governor Rick Scott
Office of the Governor, The Capitol
400 S. Monroe St.
Tallahassee, FL 32399-0001
USA
Email: Rick.scott@eog.myflorida.com
Salutation: Dear Governor

Office of Executive Clemency
Florida Parole Commission, 4070 Esplanade Way
Tallahassee, FL 32399-2450, USA
Email: ClemencyWeb@fpc.state.fl.us
Fax: +1 850 414-6031 or +1 850 488-0695
Salutation: Dear Members of the Clemency Board

Also send copies to diplomatic representatives accredited to your country. Please insert local diplomatic addresses below:

Name Address 1 Address 2 Address 3 Fax Fax number Email Email address Salutation Salutation Please check with your section office if sending appeals after the above date.

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ADDITIONAL INFORMATION

According to his clemency petition, Shane Kormondy “accepts his responsibility in this case..., has shown remorse and has grown as a human being while being in prison”. He maintains that he did not shoot Gary McAdams or rape Cecilia McAdams. This is consistent with his original police statement in July 1993. In a deposition in October 1993, the detective who had taken this statement said that during the police interview, Shane Kormondy had “show[n] remorse for what had happened”, had “stated to us emphatically that he was not the one who shot Mr McAdams”, but was present when he was shot. According to the detective, Shane Kormondy was most emphatic that he had not raped Cecilia McAdams, and willingly allowed the authorities to take blood and saliva samples. The detective stated that he “definitely believe[d]” that Kormondy and Buffkin “were present when the man was shot” and that “Hazen was in the rear assaulting Mrs McAdams at the time the shot occurred”.

At Shane Kormondy’s original 1994 trial, his lawyer presented mitigating evidence, including about his difficult childhood of abuse and neglect, his minimal education, a learning disability, and problems of addiction. At the resentencing in 1999, in front of a different judge and different jury, Shane Kormondy’s new lawyer did not present any mitigation witnesses, choosing only to cross-examine those put on by the prosecution. These again included Cecilia McAdams, who admitted that she had been unable to identify Shane Kormondy as having been in her home (“I did not see him as far as his full face”). The defence lawyer did not ask her about a statement she apparently made to police on the night of the crime because he did not know it existed. She had apparently said in this statement that two of the assailants were with her in the back room when the fatal shot was fired in the kitchen. In her trial testimony, she said there was only one man in the back room with her at the time, and her account suggested that this was Curtis Buffkin and that he was therefore not the gunman.

In 2011 the US District Court judge described this testimony as “more than a little damaging to Mr Kormondy”, and also noted “the obvious fact that the events were traumatic and a person in that situation might not observe or recall the events accurately”. The judge also noted that “If Mrs McAdams really said two assailants were with her when the shot was fired, it would cast at least some doubt on her ability to recall what happened. This, in turn, would cast some doubt on her statement that Mr Buffkin was with her when the shot was fired. Or so a reasonable juror or judge might conclude”. The federal judge noted that the question as to whether the lawyer’s failure to bring up this prior statement at the retrial was not ineffective assistance of counsel was a “close” one. If this question was before the federal courts as an original matter, the judge continued, “one might reasonably find” that Kormondy had been prejudiced by his lawyer’s failure to impeach this witness’s reliability (in which case his death sentence would be overturned). However, it was not before the District Court as an original matter, but for federal review of the Florida Supreme Court’s finding that the legal representation had not been constitutionally inadequate. Under the deference federal courts have to give to state court rulings under US law, “Mr Kormondy is not entitled to relief on this claim”.

In 2012, a quarter of all death sentences in the USA were passed in Florida, and in 2013, Florida accounted for nearly 20 per cent of the year’s death sentences in the USA. In 2013, Florida executed more people than it had in any year since 1984 and today lies behind only Texas, Virginia and Oklahoma in the number of executions carried out since 1976 when the US Supreme Court approved new capital statutes, including Florida’s. There have been 1,382 executions in the USA since 1976, 87 of them in Florida. There have been 23 executions in the USA this year, six of them in Florida. In Florida, an execution date is set when an inmate’s ordinary judicial appeals are exhausted and after clemency is denied. Shane Kormondy’s petition for clemency is currently before the Governor and other officials involved in executive clemency decisions. It is not known when a decision will be taken on his case. Amnesty International opposes the death penalty in all cases, unconditionally.

Name: Johnny Shane Kormondy

Gender m/f: m