

# URGENT ACTION

## BOARD RECOMMENDS MERCY AS EXECUTION LOOMS

**The Delaware Board of Pardons has recommended that the state governor commute the death sentence of Robert Gattis to life imprisonment. The Governor has until 20 January, the day of the scheduled execution, to decide if he will accept the recommendation.**

**Robert Gattis**, now 49 years old, has been on death row for almost two decades for the murder in May 1990 of Shirley Slay with whom he had had a six-year relationship. A clemency hearing was held on his case before the Delaware Board of Pardons on 9 January 2012. On 15 January, the Board announced that, by four votes to one, it was recommending to Governor Jack Markell that he commute Robert Gattis's death sentence to life imprisonment without the possibility of parole. The governor does not have to accept the recommendation.

In its statement, the Board explained the reason for the majority's clemency recommendation. Referring to evidence presented about Robert Gattis's background (see overleaf), the Board said, "We accept that if even half of what has been submitted about Mr Gattis's childhood is true, he was victimized physically, emotionally, and sexually by family members who owed him a duty of care." Furthermore, the Board continued, "There is evidence in the record that Mr Gattis complained to medical professionals of mental illness and involuntary violent impulses over a year before Ms Slay's murder... [I]n the exercise of conscience required to us as members of this Board, [we] believe that these are sufficiently mitigating facts to warrant consideration for clemency".

The statement also revealed that a number of other factors had weighed "heavily" on the Board's decision-making. For example, members of the Board were concerned by the fact that the juror's vote at the 1992 trial to recommend the death penalty had not been unanimous – 10 jurors had voted for death, two for life. Only two other US states allow death sentences to be imposed by non-unanimous juror decisions (Alabama and Florida). Some members of the Board were also concerned by the disparity in sentences handed out in murder cases in Delaware. The level of disparity, the statement said, "had become too great and offends a moral sense of proportionality".

At the hearing, Robert Gattis told the Board that he was sorry for killing Shirley Slay, and that it had not been an accident as he had previously claimed. He said that today he is a changed person, and expressed the hope that his life would be spared. "I am not the Robert Gattis who killed Shirley Slay", he said, "That's not who I am".

### **Please write immediately in your own language:**

- Welcome the decision of the Board of Pardons, after conducting a hearing, to recommend clemency;
- Express concern that the judge and jury never heard compelling evidence about Robert Gattis's background;
- Note the Board majority's concern about the non-unanimous jury vote and the disparity in sentencing in murder cases in Delaware;
- Call on Governor Markell to grant clemency to Robert Gattis.

### **PLEASE SEND APPEALS BEFORE 20 JANUARY 2012:**

Governor of Delaware

Governor Jack Markell

Tatnall Building, William Penn Street, 2nd Floor,

Dover, DE 19901, USA

Email: <http://smu.governor.delaware.gov/cgi-bin/mail.php?contact>

Fax: +1 302 739-2775

**Salutation: Dear Governor**

**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. This is the first update of UA 5/12. For more information see:

<http://www.amnesty.org/en/library/info/AMR51/002/2012/en>

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### ADDITIONAL INFORMATION

Robert Gattis's case for clemency before the Delaware Board of Pardons argued that the jury and the trial judge at his 1992 trial had heard little of his "horrific past", namely that he had suffered "extreme and sustained sexual, physical abuse throughout his childhood – abuse, experts have concluded, that was 'catastrophic' to his development". A forensic psychologist who has reviewed Robert Gattis's background of abuse, neglect, abandonment, poverty and deprivation, and his history of self-harm and suicide attempts, has assessed him as suffering from, among other things, Post-Traumatic Stress Disorder and Major Depressive Order, linked to his severe childhood abuse.

This information on Robert Gattis's background was only revealed after 2006, after his ordinary appeals had been exhausted. In 2009, his lawyers filed motions in state and federal court seeking to reopen his case based on the new information. The lawyer who had represented Robert Gattis for over a decade in earlier state and federal appeals said that he was "frankly shocked" to learn of the level of abuse. He admitted his failure to "thoroughly investigate, uncover and present the information", and that his close professional and personal ties to one of the trial lawyers had "in all probability affected the level of scrutiny I brought to bear on his performance in representing Mr Gattis." The courts denied the motions, under technical rules that limit the authority of the courts to correct injustices.

Under Delaware law, "extreme emotional distress" is a recognized defence to capital murder. In 2009, the lawyers who had uncovered the history of abuse in Robert Gattis's childhood and adolescence presented this information to the trial lawyers and the mental health experts they had consulted before the trial. One of the experts said that if he been aware of Gattis's life history, "I would have concluded that Mr Gattis was likely under the influence of extreme emotional distress at the time of the offense". Another of the experts similarly stated that the new information demonstrated that "Mr Gattis's formative years were characterized by extreme sexual, physical and emotional abuse, in addition to poverty, neglect and abandonment... Mr Gattis's background and consequent emotional and mental deficits support a mental health defense to first-degree capital murder (extreme emotional disturbance)". A third expert wrote that if he had been provided with the information about Robert Gattis's background, he would have looked for evidence of whether the defendant was "under the influence of extreme emotional distress at the time of his offense, as both a guilt phase and penalty phase defense".

In a statement signed on 13 April 2009, the trial lawyer who had been responsible for investigating Robert Gattis's background said that "these new materials reveal that Mr Gattis's life was far more traumatic and chaotic than I previously realized", and that if he could try the case again, he would develop and present the "compelling defense" of "extreme emotional distress". He added that at the time the lawyers had not had "any formal training on how to defend a capital defendant", and that he now recognized that "the manner in which we handled capital cases at the time of Mr Gattis's trial was inadequate". The lawyer who had represented Robert Gattis for more than 10 years during the appeal process admitted that he was "frankly shocked to learn of the poverty, abuse, dysfunction, sexual improprieties and trauma suffered by my client". He said it put the case in "an entirely different light", light that was "stunning in its scope and profound in regard to missed opportunities at his trial and in his post-conviction proceedings."

According to his clemency petition, Robert Gattis has shown a "sustained commitment to rehabilitation", including through his positive influence on younger inmates and his relationship with his two sons. An expert on male victims of abuse has said that: "His current adjustment provides a glimpse of the person Robert could have been, if only appropriate interventions had been available to him when he was young". Four former prison officers who knew Robert Gattis have been supporting clemency.

Name: Robert Gattis

Gender m/f: m

Further information UA: 5/12 Index: AMR 51/006/2012 Issue Date: 16 January 2012.