

URGENT ACTION

MAN DENIED FEDERAL REVIEW SET FOR EXECUTION

Paul Howell, a 47-year-old man, is due to be executed in Florida at 6pm on 26 February for the murder of a police officer in 1992. As his appeal lawyer missed a filing deadline, the case has had no federal judicial review on the merits of the claims raised.

In February 1992, Florida State Trooper Jimmy Fulford was killed in a bomb explosion. Prosecutions were initiated against **Paul Howell** in both state and federal court – in the former for the murder of Jimmy Fulford, and in the latter on charges under a federal drug conspiracy law. He was appointed the same lawyer for both cases. The lawyer withdrew from the federal case, claiming that his wife had received a threatening phone call that “if Paul Howell goes down, [the lawyer] goes down”. Prejudicial comments made by the lawyer about his client in the federal case – including that he believed Paul Howell would be convicted and that his client was somehow involved in the threat – were later cited in a prosecution motion in the state case for the lawyer to be disqualified, as he had been in federal court. The state motion emphasised that “loyalty is the essence of a lawyer’s relationship to a client” and that if this lawyer remained as Paul Howell’s counsel for the state trial it would “certainly” create an issue on appeal. At a hearing on the state’s motion, the prosecution presented an agent of the federal Drug Enforcement Agency who stated that his investigation concluded that the alleged threatening call had not been made.

The judge nevertheless denied the state’s motion to disqualify the lawyer and, with no co-counsel, that lawyer represented Paul Howell at trial. The jury found the defendant guilty of murder and voted 10-2 for the death penalty. The judge passed the death sentence on 10 January 1995. The lawyer who was subsequently appointed to represent Paul Howell for his habeas corpus appeals then missed a one-year deadline to file a federal habeas corpus petition. On 1 December 2004, the US District Court ruled that there were no “extraordinary circumstances” excusing this late filing and dismissed the petition without reviewing its merits. The petition had raised claims of ineffective legal representation based on trial counsel’s conflict of interest. In 2005, the US Court of Appeals for the 11th Circuit affirmed the District Court decision and in 2006 the US Supreme Court declined to take the case.

Paul Howell’s current lawyers are seeking a stay of execution so as to be able to raise claims relating to his previous legal representation. The claims include that his trial attorney’s conflict of interest created such mistrust between him and the Howell family that little mitigation evidence could be gathered for the sentencing phase and no family member was called to testify. The lawyers want to raise information about Paul Howell not fully presented to the jury, including evidence of brain dysfunction, mental health problems and extensive childhood abuse.

Please write immediately in English or your own language:

- Acknowledging the seriousness of the crime for which Paul Howell was sentenced to death;
- Noting that his trial lawyer had a conflict of interest, which led the prosecution to seek to have him disqualified, and that no federal court has reviewed the case due to an appeal lawyer missing the filing deadline;
- Calling for the execution to be stopped and clemency granted.

PLEASE SEND APPEALS BEFORE 26 FEBRUARY 2013 TO:

Governor Rick Scott,
Office of the Governor, The Capitol,
400 S. Monroe St. Tallahassee, FL 32399-0001, USA
Fax: +1 850 487 0801
Email: Rick.scott@eog.myflorida.com
Salutation: Dear Governor

Also send copies to diplomatic representatives accredited to your country.

Please check with your section office if sending appeals after the above date.

**AMNESTY
INTERNATIONAL**



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ADDITIONAL INFORMATION

If executed, Paul Howell would be the first Florida death row inmate (excluding “volunteers” who waived appeals) to be put to death without federal judicial review of the merits of his claims.

According to the state’s case at the trial, Paul Howell constructed a bomb with the intention of killing Tammie Bailey in her home in Marianna, western Florida, in order to eliminate her as a witness who could link Paul Howell and his brother to a prior murder. According to the state, Bailey and the two brothers were part of a drug ring. The bomb was placed inside a microwave oven which was then giftwrapped. Paul Howell paid another man to deliver the package, but on the way the driver was stopped for speeding by State Trooper Jimmy Fulford. After the driver was taken away by other police, Jimmy Fulford was killed when the bomb went off as he opened the package.

Amnesty International unconditionally opposes the death penalty in all cases. Today, 140 countries are abolitionist in law or practice. The USA appears to be turning gradually against the death penalty and since 2007 four states – New Jersey, New Mexico, Illinois and Connecticut – have legislated to abolish the death penalty. There is the prospect of Maryland becoming the 18th abolitionist state in the USA. On 15 January, Governor Martin O’Malley announced that he was sending the state legislature a bill to abolish the death penalty in Maryland. The death penalty, he said, “does not work in terms of preventing violent crime and the taking of human life”. Pointing to the global picture, he noted that the countries that have abolished the death penalty are “a much more expansive community than the number who still use the death penalty.” He continued: “So who do we choose to be? In whose company to we choose to walk forward?...the choice is really ours. We know what works. We know what does not work. And we know that the way forward is always found through greater respect for the human dignity of all.”

“From an international human rights perspective”, said New Mexico’s Governor Bill Richardson in 2009 when signing the bill to abolish the death penalty in his state, “there is no reason the United States should be behind the rest of the world on this issue”. While international human rights law, including article 6 of the International Covenant on Civil and Political Rights (ICCPR), recognizes that some countries retain the death penalty, this acknowledgment of present reality should not be invoked “to delay or to prevent the abolition of capital punishment”, in the words of article 6.6 of the ICCPR. The UN Human Rights Committee, the expert body established under the ICCPR to monitor the treaty’s implementation, has said that article 6 “refers generally to abolition in terms which strongly suggest that abolition is desirable. The Committee concludes that all measures of abolition should be considered as progress in the enjoyment of the right to life”. The USA ratified the ICCPR more than two decades ago, but there have been 1,100 executions since then.

Safeguard 5 of the United Nations Safeguards guaranteeing protection of the rights of those facing the death penalty states: “Capital punishment may only be carried out pursuant to a final judgement rendered by a competent court after legal process which gives all possible safeguards to ensure a fair trial, at least equal to those contained in article 14 of the International Covenant on Civil and Political Rights, including the right of anyone suspected of or charged with a crime for which capital punishment may be imposed to adequate legal assistance at all stages of the proceedings.”

Executions resumed in 1977 after the US Supreme Court approved revised capital statutes in 1976. There have been 1,321 executions in the USA since then, 74 of them in Florida. There has been one execution so far in 2013 (in Virginia).

Name: Paul Howell
Gender m/f: m

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