

EXTERNAL

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Death Penalty / Legal concern

13 June 1997

USA (KENTUCKY) Harold MCQUEEN

Harold McQueen is scheduled to be executed on 1 July 1997 in what would be the first execution in Kentucky for 35 years.

McQueen, white, was sentenced to death for the murder of Becky O'Hearn in 1981.

He was tried along with his half-brother and co-defendant Keith Burnell for robbery-murder. Burnell's father paid for a private attorney to represent his son, while McQueen was represented by a court-appointed lawyer. The maximum payment allowed for court-appointed lawyers in 1980 was \$1,000 - an insufficient figure to allow an attorney to conduct adequate preparations for trial. During the trial, Burnell's attorney continually implicated McQueen as the actual murderer of O'Hearn. McQueen's attorney failed to request a separate trial even though Burnell's attorney had made it clear during pre-trial motions that he planned to blame the murder on McQueen. Burnell was sentenced to 20 years' imprisonment and was paroled in 1988.

McQueen's attorney also failed to adequately present mitigating evidence during the penalty phase of the trial (a post-conviction hearing where jury members have to decide between a sentence of death or imprisonment based on aggravating and mitigating factors presented by the prosecution and defence). McQueen's trial attorney testified in an appeal court hearing in 1984 that he did not talk to McQueen's family before trial because they had a bad reputation in the community. The jury which sentenced McQueen to death was therefore unaware that he had been severely neglected as a child and started abusing alcohol when he was 10 years old. At the time of the crime, McQueen was addicted to heroin and other illegal drugs.

A neuropsychologist found that McQueen suffered frontal lobe brain damage due to long term drug abuse, and a psychopharmacologist found that McQueen could not have formed the intent to commit murder at the time of the crime. Neither of these experts testified at the penalty phase of the trial, despite their findings being recognised as mitigating factors in death penalty cases.

No court has considered the evidence that McQueen suffered from brain damage and did not have the ability, due to intoxication, to form criminal intent at the time of the crime. The US Supreme Court has ruled that these factors must be considered as mitigating factors by the jury if presented by the defence.

Despite the appeal courts' failure to adequately examine these issues, Kentucky's Governor, Paul Patton, stated that the courts had thoroughly reviewed McQueen's conviction and death sentence when he announced that he had signed the death warrant.

McQueen has been a "model" prisoner during his 16 years on death row. He has taken part in a program designed to stop juvenile offenders re-offending by talking to them about his own experience and has worked as a janitor in the prison. The unit administrator for the death row described McQueen's custody score (inmates obtain points for rule violations) as "so low he would have been gone [been transferred to a lesser security prison] years ago for good conduct" were he not under sentence of death. Other prison officials have signed statements confirming their belief that McQueen would not be a danger to the general prison population were he to be transferred from death row.

If executed, McQueen would become the first prisoner executed in Kentucky since the resumption of executions in the USA in 1977. The last prisoner executed in the state was Kelly Moss in 1962. As of 31 July 1996, there were 28 prisoners under sentence of death in Kentucky. The method of execution is electrocution. The governor has sole authority to commute a death sentence to life imprisonment without parole.

According to information received by Amnesty International, Governor Patton has stated twice in the last 10 days that he will not grant clemency to any death row prisoner. The power to grant executive clemency was long been recognised as a vital part of the judicial process in death penalty cases, for example, the US Supreme Court, in its ruling in *Herrera v. Collins*, wrote "Clemency is deeply rooted in our Anglo-American tradition of law, and is the historic remedy for preventing miscarriages of justice where judicial process has failed."

RECOMMENDED ACTION: Please send telegrams/telexes/faxes/express/airmail letters in English or your own language:

- expressing deep concern that Harold McQueen is scheduled to be executed in Kentucky on 1 July 1997;
- urging Governor Patton to reconsider his stated unwillingness to even consider clemency for any death row inmates, and to grant clemency to Harold McQueen by commuting his death sentence;
- expressing concern that the jury which sentenced McQueen to death was unaware of relevant mitigating factors;
- pointing out that Harold McQueen has an exemplary prison record;
- expressing sympathy for the victims of violent crimes and their families;
- stating that the resumption of executions in Kentucky would be a retrograde step running against international trends.

APPEALS TO:

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