

PUBLIC

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EXTRA 18/03

Death penalty / Legal concern

10 March 2003

USA (Georgia)

Larry Eugene Moon (m), white, aged 57

Larry Eugene Moon is scheduled to be executed in Georgia on 25 March 2003. He was sentenced to death in Catoosa County in January 1988 for the murder of Ricky Callahan, white, in November 1984.

Ricky Callahan was found dead in a gravel pit in northern Georgia near the border with Tennessee on 25 November 1984. He had been shot in the head. According to Moon's current clemency petition, the state convicted the wrong man. It claims that although there was circumstantial evidence against Larry Moon, he is innocent of the killing, and that a professional hit man, Mickey Lee Davis, was responsible. Davis was on the run from the authorities at the time of the Callahan murder having allegedly committed the murder-for-hire of Cletus Price in Tennessee a few weeks earlier. Cletus Price had been shot in the head. Hiding in Louisiana after the Callahan killing, Mickey Davis is said to have confessed to his cousin that he had killed Callahan. After being arrested in 1985 for the murder of Cletus Price, Davis also allegedly confessed to fellow inmates that he had killed Ricky Callahan. Davis later escaped from jail, and was killed in a motorcycle accident in July 1988.

Larry Moon's trial for the murder of Ricky Callahan did not take place until 1988 because he was in custody in Tennessee and had to be extradited from there. After the jury found him guilty of the Callahan murder, the trial moved into a separate sentencing phase, the phase of a US capital trial when the state argues for execution and the defence argues for leniency. In this case, the prosecution bolstered its case for execution by presenting evidence that Moon had committed two other murders in Tennessee within a month of the Callahan killing. Before the Georgia trial, Larry Moon had been sentenced to life imprisonment in Tennessee on charges of armed robbery and kidnapping in other crimes, but he was never tried in either of the two killings used by the prosecution at his 1988 sentencing.

In the first case levelled against Larry Moon by the prosecution, the murder of Jimmy Hutcheson outside a bar on 15 November 1984, the charges were dropped because of lack of evidence. Neither was Larry Moon prosecuted for the second killing, that of Thomas DeJose on 2 December 1984. Larry Moon admitted shooting Thomas DeJose, but maintained that it was an act of self-defence when DeJose tried to rob him at knifepoint. Larry Moon's appeals have argued that one of the state's witnesses at the sentencing phase, an officer with the Tennessee Bureau of Investigation (TBI), had failed to reveal certain information about the DeJose killing which supported Moon's self-defence claim. Firstly the TBI had run a background check on DeJose and found that he had an armed robbery conviction and had fled New York to avoid a six-month prison sentence on a drunk driving conviction. Secondly, DeJose was drunk at the time he died and that the autopsy showed him to be an intravenous drug user who had used drugs shortly before his death. Thirdly, the TBI agent failed to reveal that the state's eyewitness to the killing, DeJose's girlfriend Daryl Ehrlanger, who was aiding DeJose's flight from New York prison, had failed a lie detector test.

On appeal, a county Superior Court judge found that Daryl Ehrlanger's evidence was "by all accounts, the most damaging testimony" against Larry Moon at the sentencing phase. However, the court found that the evidence strongly supported the claim that Ehrlanger had lied and that this was a self-defence case. It found that Larry Moon's trial lawyer had been constitutionally ineffective for failing to adequately investigate the DeJose killing, and that the prosecution had acted unconstitutionally by failing to disclose the exculpatory evidence. However, in 1994, the Georgia Supreme Court reversed the lower court's decision and the conviction and death sentence have survived the remaining appeals process intact.

In 2001, in another case, the Inter-American Commission on Human Rights (IACHR) found that the use of evidence of untried crimes at a capital sentencing violated the USA's international obligations. It called on

the US authorities to act, "in particular by prohibiting the introduction of evidence of unadjudicated crimes during the sentencing phase of capital trials". On 6 January 2003, the IACHR issued "precautionary measures" in Larry Moon's case urging that he not be executed pending the Commission's consideration of the unadjudicated crimes issue in his case.

BACKGROUND INFORMATION

Amnesty International opposes the death penalty in all cases, regardless of issues of guilt or innocence, or the seriousness of the crime. There is growing concern in the USA about the reliability of the capital justice system after more than 100 people have been released from death rows after evidence of their innocence emerged. A landmark study of 23 years of US death penalty cases, published by Columbia University in 2000, found that capital cases were characterized by serious errors in convictions and sentences, and that the main errors were inadequate legal representation and the withholding of evidence by police and prosecutors. International standards require that capital defendants be afforded adequate legal representation at all stages of proceedings; that prosecutors act fairly, consistently and without any discrimination; and that no execution be allowed to proceed where there is any doubt about the guilt of the condemned prisoner. Today 111 countries are abolitionist in law or practice. Since resuming executions in 1977, the USA has executed more than 830 prisoners.

RECOMMENDED ACTION: Please send appeals to arrive as quickly as possible, in English or your own language:

- expressing sympathy for the family and friends of Ricky Callahan, and explaining that you are not seeking to condone the manner of his death or the suffering it will have caused;
- opposing the execution of Larry Moon calling for clemency;
- noting with concern evidence raised by the appeal lawyers that Mickey Lee Davis, an alleged professional hit man, confessed to the murder;
- expressing concern that the prosecution used evidence of unadjudicated crimes at Larry Moon's sentencing phase, a practice which the Inter-American Commission on Human Rights has condemned, noting that the Commission has called on the authorities to stay Larry Moon's execution;
- expressing concern that the jury was left unaware of evidence which supported Larry Moon's claim that he had shot Thomas DeJose in self-defence, and noting that a Georgia court found that Larry Moon's trial lawyer had failed to investigate this evidence and the prosecution had acted improperly in failing to disclose it.

APPEALS TO:

Mr Milton E. Nix, Jr., Chairman
Georgia Board of Pardons and Paroles
Floyd Veterans Memorial Building
2 Martin Luther King, Jr. Drive, S.E.
Suite 458, Balcony Level, East Tower
Atlanta, GA 30334-4909, USA

Fax: +1 404 651 8502
Email: webmaster1@pap.state.ga.us
Salutation: Dear Mr Nix

COPIES TO:

If possible, please fax your appeal to Larry Moon's attorney, Charles Surasky: +1 404 688 0671

and to diplomatic representatives of USA accredited to your country.

PLEASE SEND APPEALS IMMEDIATELY.