

PUBLIC

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Further information on EXTRA 11/01 (AMR 51/023/2001, 9 February 2001) - Death penalty / Legal concern

USA (North Carolina) Ernest Paul McCarver, white, aged 39

The US Supreme Court stopped Ernest McCarver's execution less than seven hours before he was due to be lethally injected on 2 March 2001. A few minutes earlier, the Governor of North Carolina had announced that he had decided to deny clemency.

The US Supreme Court said that it wanted more time to decide whether to review the case. It is expected to make a decision later this month. If it rejects the case, the state will seek another execution date. One of the appeal issues raised before the court is the constitutionality of executing people with mental retardation. In 1989, when only one US retentionist state prohibited such executions, the Court ruled by five votes to four that "standards of decency" in the USA had not evolved to the point where the use of the death penalty against individuals with mental retardation violated the constitution. It has not re-examined this issue in the 12 years since, a period which has seen 12 more states legislate against such use of the death penalty and several more consider it.

On 13 February, Ernest McCarver's IQ was assessed at 67, below the number (70) considered to indicate possible mental retardation. Prior to his trial, his IQ had been measured at 74-75, in the borderline mental retardation range.

On 26 February, a North Carolina judge granted Ernest McCarver a stay of execution until the state legislature makes a decision on a bill prohibiting the use of the death penalty against defendants with mental retardation. As currently written, the proposed law does not cover people already sentenced to death, although it could be amended during debates on the bill. The state Supreme Court overturned the stay of execution the next day.

Governor Easley denied clemency before the US Supreme Court had ruled on the case. Yet in his statement he reportedly said: "I do not see evidence sufficiently compelling to stop the fate that a jury of his peers recommended and that the courts have upheld."

FURTHER RECOMMENDED ACTION: Please send faxes/express/airmail letters, IN YOUR OWN WORDS, in English or your own language, using the following guide:

- expressing concern that the Governor denied clemency before the US Supreme Court had ruled on the case;
- urging the Governor to reconsider his decision, in the event that the Supreme Court decides not to take the case;
- calling on the Governor to support a prohibition on the use of the death penalty against people with mental retardation and to support a moratorium on executions in North Carolina.

APPEALS TO:

Governor Michael F. Easley
Office of the Governor
20301 Mail Service Center
Raleigh, NC 27699-0301, USA

Fax: + 1 919 715 3175 or + 1 919 733 2120

Salutation: Dear Governor

COPIES TO: diplomatic representatives of USA accredited to your country.

You may also write brief letters of concern (not more than 250 words) to:

- Letters to the Editor, *Raleigh News and Observer*, PO Box 191, Raleigh, NC 27602, USA. **Fax: + 1 919-829-4872. E-mail: forum@nando.com**

- Letters to the Editor, *Charlotte Observer*, PO Box 20848, Charlotte, NC 28230, USA. **Fax: + 1 704 377 6214. E-mail: opinion@charlotteobserver.com**

PLEASE SEND APPEALS IMMEDIATELY.