

EXTERNAL

AI Index: AMR 51/42/96

EXTRA 79/96

Death Penalty

24 May 1996

USA (Indiana) Tommie J. SMITH (aka Ziyon Yisrayah)

Tommie Smith, black, is scheduled to be executed in Indiana on 14 June 1996. He was one of two men convicted of the murder of a white police officer in Indianapolis in 1980. His co-defendant, Gregory Resnover, also black, was executed in 1994. In Indiana, the power to grant clemency rests with the state governor, on the advice of the Parole Board. The latter is due to decide their recommendation on Tommie Smith's case on 4 June.

According to Smith's attorney, on the day of the shooting in 1980, police arrived at the house where Smith, Resnover, and Resnover's brother, Earl Resnover, were, in order to carry out an arrest warrant concerning a bank robbery. The police kicked in the door, throwing tear gas into the house. There immediately followed an exchange of gunfire, during which Police Sergeant Jack Ohrlberg was killed and Tommie Smith was wounded.

Tommie Smith and Gregory Resnover were jointly tried for the murder of the police officer, while charges against Earl Resnover were dismissed for lack of evidence. However, some reports indicate that Gregory Resnover threw down a gun that had not been fired and that it was Earl Resnover who threw down the weapon that had fired eight rounds. Earl Resnover was reportedly found to have large amounts of gunshot residue on both hands. In a petition for clemency on behalf of Gregory Resnover, in November 1994, it was argued that the jury at Gregory Resnover's trial was seriously misled when it was told that he and Tommie Smith were equally culpable.

Gregory Resnover was executed on 8 December 1994 (see EXTRA 68/94, AMR 51/96/94, 23 November 1994 and update, 9 December). Indiana State Representative William Crawford publicly opposed Resnover's execution based on allegations of racial discrimination. He noted a gross disparity in sentencing between Resnover's case and that of a white Indianapolis man who fatally shot a police officer in 1988 and was sentenced to seven years for involuntary manslaughter. Mr Crawford stated, "...executing Gregory Resnover would result in an extreme injustice. We do not execute people for attempting to commit a homicide."

The clemency petition presented to the Indiana Parole Board argues that there is a purely legal reason that Smith should not be executed because believing he was under threat, he was acting in self-defence when he fired a rifle at Jack Ohrlberg, unaware that he was a police officer. Tommie Smith states that: "In defence of my life from what I thought was an intruder, I grabbed a nearby rifle and fired one shot".

According to the attorney currently representing Smith there is no point in asking for clemency on the grounds of the mitigating circumstances of Smith's background, given that the Board of Pardon refused to consider the extremely deprived background of another prisoner, Gary Burris, as mitigating evidence (see EXTRA 137/95, AMR 51/142/95, 9 November 1995).

The Constitution of Indiana states: "The penal code shall be founded on the principles of reformation, and not vindictive justice."

BACKGROUND INFORMATION

As of 31 January 1996 there were 51 prisoners under sentence of death in Indiana. Since executions resumed in 1981, three prisoners have been put to death in the state under its present death penalty laws. The most recent execution in Indiana was Gregory Resnover, on 7 December 1994. If executed, Tommie Smith will be the first inmate executed by lethal injection in Indiana. Before July 1995 the method of execution was electrocution.

Amnesty International opposes the death penalty in all cases as a violation of the right to life and the right not to be subjected to cruel or degrading punishment, as proclaimed in the Universal Declaration of Human Rights.

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

To the Parole Board: Please send appeals to arrive to the Parole Board before 4 June, when the board will vote publicly on its recommendation:

- urging that they recommend that Governor Bayh grant clemency to Tommie Smith;

To governor Bayh: appeals till 14 June

- urging Governor Bayh to grant clemency to Tommie Smith by commuting his death sentence;

To both:

- acknowledging the seriousness of the crime and expressing sympathy for the victims of violent crime and their families;

- expressing concern at evidence which suggests that Tommie Smith did not fire the fatal shot that killed the victim;

- expressing concern about allegations of racial discrimination in the application of the death penalty in Indiana. Point out that Tommie Smith received the death penalty while a white defendant convicted of an apparently similar offence in 1988 received seven years' imprisonment.

- quoting from the Indiana State Constitution.

APPEALS TO:

State Governor

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PLEASE SEND APPEALS IMMEDIATELY.