

EXTERNAL (for general distribution)

AI Index: AMR 51/47/95
Distr: UA/SC

EXTRA 30/95

Death Penalty

10 March 1995

USA (Florida)

Raleigh PORTER

Raleigh Porter, white, is scheduled to be executed in Florida on 29 March 1995. Raleigh Porter was sentenced to death in 1978 for two murders committed during the course of a burglary.

The jury which tried Raleigh Porter voted unanimously to recommend a sentence of life imprisonment. However the presiding judge overruled their recommendation and passed a death sentence. According to reports, the judge sentenced Raleigh Porter to death "while wearing brass knuckles and fondling a pistol".

After an appeal to the Florida State Supreme Court, Raleigh Porter's death sentence was set aside and he was granted a re-sentencing hearing. The attorney assigned to represent Porter at the re-sentencing hearing had previously successfully prosecuted Porter in his only prior conviction for receiving stolen property. At the re-sentencing hearing, the same judge chose to overrule the jury's previous recommendation and again imposed a death sentence. Since 1974, 132 jury recommendations for life have been overridden by this trial judges in Florida.

According to reports, Raleigh Porter suffered physical and sexual abuse by his stepfather as a child. In spite of this, a recent psychological evaluation of Raleigh Porter described him as "an unusual inmate. He is intelligent, educated and solid emotionally..."

In 1989, in the case of *Cochran v. State of Florida*, the Florida Supreme Court cited Raleigh Porter's case as an example of a death sentence which had been arbitrarily affirmed, and the Court's decision to uphold his death sentence erroneous. However, the appeal courts are technically barred from reversing death sentences at this stage of the appeal process. The Eleventh Circuit Court of Appeals in its ruling in the case of *Marvin Johnson v. Dugger* strongly implied that its inability to reverse death sentences in such cases should be taken into account when considering clemency.

In Florida, the Governor alone takes the decision on clemency, although his decision to commute a death sentence must have the approval of at least three members of the Governor's Cabinet, who make up the Clemency Board. The Governor's decision is final and no reasons are required to be given.

An application for clemency on behalf of Raleigh Porter was submitted to the Governor and Cabinet on 25 January 1995. Governor Chiles refused to refer the case to the clemency board so the Board has not been allowed to consider Raleigh Porter's petition. The Governor also refused to permit either Raleigh Porter or his attorneys to present arguments before the clemency board, although other defendants have been given that opportunity. Raleigh Porter previously had a clemency hearing in 1984 when many of the developments in his case had yet to take place.

BACKGROUND INFORMATION

Florida has the third largest death row population in the USA - as of October

1994, there were 349 prisoners under sentence of death. The last person to be executed in the state was Roy Stewart on 21 April 1994. The method of execution is 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, inhuman or degrading treatment or punishment as proclaimed in the Universal Declaration of Human Rights.

RECOMMENDED ACTION: Please send telegrams/telexes/faxes/express and airmail letters either in English if possible:

- while acknowledging the seriousness of the crime for which Raleigh Porter was convicted, expressing deep concern that he is scheduled to be executed in Florida on 29 March, in particular that the death sentence was passed in spite of a jury's recommendation for life imprisonment;
- noting that, on direct appeal, the State Supreme Court has acknowledged that Porter's case was probably wrongly decided and that the trial judge had inappropriately overruled the jury's recommendation of a life sentence;
- expressing concern that the court-appointed defence attorney at the second sentencing hearing may have shown a conflict of interest, in the light of his previous prosecution of Porter;
- urging Governor Chiles at the very least to hold a clemency hearing to allow for a review of the trial judge's decision to override the recommendation for life imprisonment, in the light of court rulings made since the first clemency hearing: you can make reference to the Appeal Court's decision in the case of *Marvin Johnson v. Dugger*; express concern that both Raleigh Porter and his legal representatives are being denied the opportunity to present the case for clemency to the Governor's Cabinet.

APPEALS TO:

State Governor
 The Honorable Lawton Chiles
 Governor of Florida
 State Capitol
 Tallahassee, FL 32399-0001
 USA
Tel: + 904 488 4441
Fax: +1 904 487 0801
Salutation: Dear Governor

COPIES OF YOUR APPEALS TO:

Miami Herald
 1 Herald Plaza
 Miami, FL 33101
 USA
Fax: + 1 305 376 8950

and to diplomatic representatives of the USA accredited to your country.

PLEASE SEND APPEALS IMMEDIATELY.