

EXTERNAL (for general distribution)

AI Index: AMR 51/48/93  
Distr: UA/SC

4 June 1993

Further information on UA 77/93 USA (AMR 51/22/93, 19 March 1993) and follow-ups AMR 51/29/93, 7 April 1993, AMR 51/37/93, 29 April 1993, AMR 51/38/93, 6 May 1993, AMR 51/43/93, 19 May 1993 and AMR 51/47/93, 3 June 1993 - Death Penalty

USA (Texas):

Gary GRAHAM

---

Amnesty International has received information concerning the reason for the stay of execution granted to Gary Graham, a juvenile offender under sentence of death in Texas, USA, who was scheduled to be executed on 3 June 1993.

In a 5-4 ruling on 2 June 1993, the Texas Court of Criminal Appeals granted a stay of execution to Gary Graham, just hours before the execution was scheduled to be carried out. The stay was granted pending a decision by the US Supreme Court in another Texas case, *Johnson v Texas*. This appeal claims that the capital sentencing statute under which Dorsie Johnson, a 19 year old offender on death row in Texas, was sentenced was unconstitutional; it did not allow consideration of his youth as a mitigating circumstance. In September 1991, the Texas death penalty statute was changed completely, to allow for the consideration of any mitigating circumstance to be taken into account. Before the law was changed in September 1991, juries at the sentencing hearing were instructed to answer three questions; whether the crime was deliberate; whether the defendant was likely to be a continuing danger to society; and whether the killing was unreasonable in response to a provocation. Once the jury had answered yes to all three questions, the death sentence was automatically imposed. There was no opportunity to allow for any separate consideration of other issues such as a defendant's youth, mental illness or social background as reasons for imposing a lesser sentence than death. The new law however, has not been applied retroactively to prisoners whose crimes were committed before September 1991.

Amnesty International is particularly disturbed by the fact that most juvenile offenders on death row in Texas were sentenced under the pre-1991 statute - despite pronouncements by the US Supreme Court in key cases since the 1970s that youth is a factor which **must** be considered in capital cases. The organisation finds it shocking that executions of juvenile offenders are being scheduled in Texas while the *Johnson* case is pending a decision before the US Supreme Court. The Supreme Court's ruling in the *Johnson* case - expected later this year - could have a vital impact on the cases of juveniles and other young offenders on death row in Texas.

According to reports, Judge Lawrence Meyers, writing for the majority opinion

said: "This petition represents the worst-case scenario - the possibility that a person might be unconstitutionally punished by the legal system...[because Mr Graham] could be put to death tomorrow for something which is, within 30 days determined to be unconstitutional...With this much at stake, the state will wait 30 days."

Although one of the issues presented to the court as grounds for granting clemency concerned new evidence relating to Gary Graham's innocence of the crime for which he was sentenced to death, this was not considered by the

**Page 2 of 6FU 77/93**

court in its ruling. In a dissenting opinion against the court's decision not to consider the issue of new evidence, Judge Frank Maloney said: "Where an arguably innocent person, wrongly convicted and sentenced to death, is wholly without a meaningful form in which to present newly discovered claims of innocence, this court should be compelled, as a matter of public policy, to provide sufficient safeguards to insure that state and Federal constitutional protections are given effect."

Thank you to everyone who sent appeals. No further action is required at this stage from the Urgent Action Network. Amnesty International will advise the network if further action is necessary at a later stage.