

5 April 2000

Further information on UA 12/00 (AMR 51/09/00, 19 January 2000) and follow-up (AMR 51/33/00, 24 February 2000) - Death penalty / Legal concern

USA (Tennessee) Philip Ray Workman, white, aged 45

On 4 April, a three-judge panel of the Sixth Circuit Court of Appeals granted Philip Workman a stay of execution, less than 48 hours before he was due to be executed at 1am local time on 6 April 2000.

The Sixth Circuit panel took the unusual step of granting him an "en banc" hearing in front of the full court (14 members). It has given the defence lawyers until 17 April, and the state until 1 May, to file their briefs with the court. After that, a date will be set for oral arguments to be heard.

Governor Sundquist had not yet given his clemency decision when the Sixth Circuit decision was announced. A clemency hearing was held in Riverbend Prison, which houses the state's death row, on 3 April. Each side were given 90 minutes to argue their case for and against clemency. The Governor did not attend, but had designated a deputy to report back to him.

Philip Workman's original clemency hearing, scheduled for 9 March before the Tennessee Board of Probation and Parole, was canceled on 8 March by his lawyers. They took this decision following the emergence of new evidence which they wished to take to the Sixth Circuit Court of Appeals.

Philip Workman was convicted of the first-degree murder of a police officer, Lieutenant Ronald Oliver, during an after-hours robbery of a Wendy's fast food restaurant in Memphis, Tennessee, in 1981. While Workman has never denied responsibility for creating the situation in which Lt Oliver was killed, evidence has emerged since his trial that discredits the police version of the crime, and raises the possibility that the fatal shot may have been fired by a fellow police officer rather than by Workman.

This evidence, which has never been heard in open court, includes testimony from ballistics experts as well as the retraction of the key prosecution witness's testimony, who now says he was coerced into lying at the trial. Another witness, who did not testify at the trial, has since stated that he saw another police officer fire his gun at Workman, contradicting the evidence presented at trial that the only shots fired at the scene came from Workman's and Oliver's revolvers.

The claim which led to the cancellation of the clemency hearing concerns an X-ray taken during the autopsy of Lt Oliver. Workman's lawyers claim that the state withheld the X-ray from the defence at a 1995 appeal despite a subpoena for any such evidence to be made available. The existence of the X-ray, only uncovered in early March 2000, reportedly shows that the bullet passed through Lt Oliver without fragmenting. In 1998, the Sixth Circuit Court had said that there was "no doubt" that the fatal bullet could not have come from Workman's gun if it had left Lt Oliver's body whole, because of the relative sizes of the entry and exit wounds. In rejecting the appeal, the Court speculated that the bullet must have fragmented, despite uncontested evidence that it had exited whole.

Of the eight trial jurors that the appeal lawyers have been able to locate, seven have been informed of the opinion of the ballistics experts (before the new X-ray

evidence) and agreed that it raises serious doubts about the conviction and sentence. Three jurors subsequently gave statements that they would not have voted for death at the trial had they been presented with the evidence about the key witness and the ballistics.

The Workman case has generated increasing concern over recent weeks. Additional media attention was focused on it after a press conference on 27 March, co-organized by Amnesty International USA, at which the daughter of Workman and the daughter of Lt Oliver both appealed for clemency. "I cannot stand here and tell you that I'd like to see Philip Workman executed simply because he's been accused of killing my father", said the daughter of Lt Oliver, who spoke of the pain of losing a father; "If I request that he be executed, I would be taking him away from Michele [Workman's daughter]. We suffered the same loss at the same time....". Workman's daughter thanked her for her "huge capacity for compassion" and for "rising above revenge".

However, state officials continue to couch their support for the execution of Philip Workman and Robert Coe, a prisoner scheduled for execution 24 hours before Workman who also received a stay on 4 April (see follow up to EXTRA 139/99, AMR 51/52/00, 5 April 2000). Tennessee's Attorney General said on 4 April: "My heart goes out to the families and friends of the victims... and to the citizens of Tennessee, who want and expect justice and finality to resolve these long-standing matters. We are disappointed for those people, who expect their justice system to work efficiently and in a timely manner."

Since 1973, 87 people have been released from US death rows after evidence of their innocence emerged. Recurring factors contributing to wrongful convictions include inadequate defence representation, misconduct by police and prosecutors, and the use of unreliable testimony and physical evidence. On 31 January 2000, the Governor of Illinois imposed a moratorium on executions in his state because of its "shameful" record on wrongful convictions. That move has sparked increased debate on the reliability of the death penalty in the USA.

No specific action for Philip Workman is requested at this stage. However, given that Robert Coe could still face execution within a few days, becoming the first prisoner to be executed in Tennessee since 1960, if anyone is able to send an additional general appeal, it would be very welcome. You do not need to be specific to Coe's case (the governor has already denied clemency), but simply appeal in your own words for Governor Sundquist not to allow executions to resume. Many thanks to all who have taken part in this action.

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