

**EXTERNAL**

**AI Index: AMR 51/54/96**

**5 July 1996**

**Further information on EXTRA 79/96 (AMR 51/42/96, 24 May 1996) and follow-up (AMR 51/49/96, 17 June) - Death Penalty**

**USA (INDIANA) Tommie J SMITH (aka Ziyon Yisrayah)**

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Tommie Smith, who was scheduled to be executed in Indiana on 14 June 1996, and received a stay of execution is now scheduled to be executed on 18 July.

Tommie Smith, black, 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 on 8 December 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 consider Tommie Smith's case on 10 July.

Tommie Smith and Gregory Resnover were jointly tried for the murder of the police officer. According to Smith's attorney, there is evidence which suggests that Tommie Smith did not fire the fatal shot that killed the victim, but that Earl Resnover, against whom charges were dismissed for lack of evidence, had been the trigger-person. 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".

Tommie Smith's stay of execution in June was granted by the US Supreme Court pending their decision in the case of Wayne Felker, a prisoner under sentence of death in Georgia (EXTRA 55/96, AMR 51/38/96, 22 April 1996). Felker's appeal was challenging the constitutionality of the Anti-Terrorism and Effective Death Penalty Act, signed into law by President Clinton on 24 April 1996, which among other things, severely restricted the opportunities for death row inmates to appeal to the federal courts (known as federal habeas corpus appeals). The Supreme Court unanimously denied Felker's appeal on 28 June 1996.

Amnesty International is extremely concerned that this new law will have significant adverse implications for people sentenced to death in the United States by severely restricting the number of times they can appeal to the federal courts, and that the pace of executions will increase.

As of 30 April there were 50 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. If executed, Tommie Smith will be the first inmate executed by lethal injection in Indiana. Before July 1995 the method of execution was electrocution. Gregory Renover's was the most recent execution in Indiana.

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

**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 10 July, when the board will consider the case:**

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

**To governor Bayh: appeals should only be made to the Governor after 10 July:**

- 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

Governor Evan Bayh

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**Salutation: Dear Governor Bayh**

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**Salutation: Dear Board Members**

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**PLEASE SEND APPEALS IMMEDIATELY.**