

URGENT ACTION

MENTAL HEALTH IN QUESTION AS EXECUTION SET

Marshall Gore, aged 50, is due to be executed in Florida on 1 October for a murder committed in 1988. His mental “competence” for execution is in question.

Marshall Gore was sentenced to death in 1995 for the murder of Robyn Novick, whose body was found in a rural area of Miami-Dade County, Florida on 16 March 1988, four days after she went missing. The Florida Supreme Court overturned the conviction in 1998 on the grounds of prosecutorial misconduct, but Marshall Gore was again sentenced to death at a 1999 retrial. He was already serving a death sentence passed in Columbia County, Florida in 1990 for the murder of Susan Roark, a student who went missing in Tennessee in January 1988 and whose body was found in Florida two months later. In a 2009 opinion, the Florida Supreme Court noted that the question of Marshall Gore’s “mental status” had been a “recurrent theme” throughout proceedings in both cases.

On 13 May 2013, Governor Rick Scott signed Marshall Gore’s death warrant in the Miami-Dade case. Marshall Gore’s state court lawyer told the governor that his client might be “incompetent” to be executed, that he was “irrational” and “could not be reasoned with”. The execution of a prisoner who lacks a rational understanding of the reason for and reality of their punishment violates the US Constitution. As required under Florida law, the governor appointed a commission of three psychiatrists to assess the prisoner’s competence. During their evaluation, Marshall Gore told them that there was a conspiracy among Florida officials to harvest the organs of executed prisoners, and that a state senator was in line to obtain Marshall Gore’s eyeballs for his son. The psychiatrists concluded that Marshall Gore was faking mental illness to avoid execution. The same three experts had recently found another inmate, John Ferguson, competent. He had a decades-long history of paranoid schizophrenia, and was executed on 5 August, displaying signs of delusional thinking to the end (<http://www.amnesty.org/en/library/info/AMR51/057/2013/en>).

The lawyer who was representing Marshall Gore in federal court raised a competence claim in US District Court. On 18 June, the judge noted that there was a “reasonable basis” for asserting that Marshall Gore might be incompetent for execution, given the various “delusional” statements he had made. The judge noted that Marshall Gore had indicated a belief that his execution was set for his ‘death and organ/harvesting/to be a human sacrifice or both’, that his then execution date of 24 June added up to 6-6-6 and that “because of his virgin innocence of murder, he is a target of Satan Worshipers who have threatened that date by mail for years”.

On 24 June, the District Court found that the case presented a “highly unusual set of circumstances” as Marshall Gore was being represented by two different lawyers in state and federal court. As the state lawyer had not filed a competence claim in state court, the federal judge ruled that he could not review it. Since then, the federal lawyer has taken over the state appeals. After a state court hearing in July, at which an expert for the defence asserted that Marshall Gore was incompetent for execution and two of the three governor-appointed psychiatrists stated the opposite, the judge ruled that Marshall Gore “has a rational understanding that he is being executed because he murdered Ms Novick and will die as a result of that execution”. On 13 August the state Supreme Court upheld this.

Please write immediately in English or your own language:

- Noting the serious crimes of which Marshall Gore was convicted and the suffering caused by violent crime;
- Opposing his execution, and noting the questions about his mental competence for execution;
- Urging the Governor to commute his death sentence.

PLEASE SEND APPEALS BEFORE 2 OCTOBER 2013 TO:

Governor Rick Scott, Office of the Governor, The Capitol, 400 S. Monroe St. Tallahassee, FL 32399-0001, USA

Email: Rick.scott@eog.myflorida.com

Salutation: **Dear Governor**

Also send copies to diplomatic representatives accredited to your country.

Please check with your section office if sending appeals after the above date.

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INTERNATIONAL**



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ADDITIONAL INFORMATION

In 1986, in *Ford v Wainwright*, the US Supreme Court affirmed that the execution of the insane violated the US Constitution's Eighth Amendment ban on "cruel and unusual punishments". However, the *Ford* majority neither defined competence for execution (although Justice Powell's suggestion that the test should be whether the prisoner was aware of his or her impending execution and the reason for it was generally adopted by states), nor did a majority of the Court mandate specific procedures that must be followed by the individual states to determine whether an inmate was legally insane. The result was different standards in different states and minimal protection for seriously mentally ill inmates (see *USA: The execution of mentally ill offenders*, January 2006, <http://www.amnesty.org/en/library/info/AMR51/003/2006/en>).

In June 2007, in *Panetti v. Quarterman*, the Supreme Court moved to clarify the *Ford* ruling which it acknowledged had "not set forth a precise standard for competency" (see <http://www.amnesty.org/en/library/info/AMR51/114/2007/en>). The *Panetti* majority said that "A prisoner's awareness of the State's rationale for an execution is not the same as a rational understanding of it". In 2012, in a Florida case, the US Court of Appeals for the 11th Circuit wrote: "The bottom line of the *Panetti* decision is that there is not yet a well-defined bottom line in this area of the law. Instead of attempting to answer more specifically the question of what is required for a rational understanding of death by execution and the reason for it, the Supreme Court preferred to leave 'a question of this complexity' to be addressed in a fuller manner and on a better record by the district court and the court of appeals in that [Texas death row] case. The decision not to decide more is, unfortunately, the last word from the Supreme Court on the 'question of this complexity'".

In the *Panetti* ruling, the Supreme Court had acknowledged that "a concept like rational understanding is difficult to define". In other words, there will always be errors and inconsistencies. There is only one solution – abolition. Pending that outcome in the legislature or by judicial order, the power of executive clemency should be used.

According to Marshall Gore's appeal to the Florida Supreme Court, the defence expert at the state competency hearing in July said that in his opinion, although Gore knew that he was going to be executed, he did not have a rational understanding of the reason for that punishment. The expert also pointed to a number of prison records in Marshall Gore's case over the past decade that indicated delusional or other distorted thinking, and that he had been prescribed antipsychotic medication in the past. He disagreed with the state experts that Marshall Gore was malingering.

Over a century ago, the US Supreme Court said that the USA's constitutional ban on "cruel and unusual punishments" had a "progressive" character and "may acquire wider meaning as public opinion becomes enlightened by humane justice". In recent decades country after country has abolished the death penalty, and today 140 countries are abolitionist in law or practice. In contrast, there have been 1,343 executions in the USA since the US Supreme Court approved new capital statutes in 1976. Florida accounts for 78 of these executions. There have been 23 executions this year, four of them in Florida.

Four US states have legislated to abolish the death penalty in the past four years – New Mexico (2009), Illinois (2011), Connecticut (2012) and Maryland (2013), and 18 US states are now abolitionist. The annual number of death sentences in the USA has declined since its peak in the 1990s. Florida remains one of the states bucking this trend. In 2012, there were 22 death sentences passed in Florida, more than in any year since 1998 and more than 25 per cent of all new death sentences nationally. Legislation recently enacted in Florida threatens to increase the pace of executions in the state (see <http://www.amnesty.org/en/library/info/AMR51/038/2013/en>).

Amnesty International opposes the death penalty in all cases and all countries, unconditionally.

Name: Marshall Gore

Gender m/f: m

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