

EXTERNAL (for general distribution)

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EXTRA 42/95 Death Penalty

20 April 1995

USA (Montana)

Duncan MCKENZIE

Duncan McKenzie is scheduled to be executed in the state of Montana on 10 May 1995.

Duncan McKenzie was sentenced to death in 1975 for the kidnapping and murder of school teacher Lana Harding. Duncan McKenzie is currently Montana's longest serving death row inmate.

Before his trial Duncan McKenzie was offered and accepted a prison sentence in exchange for a guilty plea. However, despite the fact that the plea-bargain had already been approved by the trial-judge, this offer was withdrawn after objections from the victim's family. The mother of the victim is a state senator.

Duncan McKenzie was tried under Montana's 1973 death penalty laws which contained no listing of mitigating circumstances for prisoners facing capital punishment. These laws were repealed in 1977. Duncan McKenzie is the only person currently sentenced to death under the old laws.

At the trial, testimony from psychiatrists on behalf of both the State and the defence presented clear evidence of Duncan McKenzie's mental illness. In his sentencing order, the judge made no comment on the mitigating effect of mental illness.

In a recent ruling the Supreme Court of Montana refused to hear an appeal from Duncan McKenzie. The appeal was based on the State of Montana's refusal to allow the change in its death penalty laws to be applied in McKenzie's case. In an unusual move, the Court gave no reason for its ruling. The Court's decisions in McKenzie's case have been criticised by former Justice Dan Shea in his dissenting opinion, "The McKenzie Rules: Not for General Application--Apply Sparingly."

Amnesty International opposes the death penalty unconditionally as a violation of the right to life and the right not to be subjected to cruel, inhuman or degrading punishment, as proclaimed in the Universal Declaration of Human Rights.

BACKGROUND INFORMATION

Duncan McKenzie would be the first person to be executed in Montana in over 50 years. The last prisoner to be executed in Montana was Philip "Slim" Coleman on 10 September 1943. As of January 1995, Montana had 8 prisoners under sentence of death. Prisoners are offered a choice of hanging or lethal injection as the method of execution.

The power to grant commutation of a death sentence rests with the state governor. The governor needs the approval of, but is not bound by, the majority opinion of the three-member Board of Pardons. The Board of Pardons is appointed by the governor.

According to Montana's clemency laws, the governor can also grant a reprieve "for such time as he thinks proper."

RECOMMENDED ACTION: Please send telegrams/telexes/faxes/express and airmail letters either in English or in your own language:

- expressing deep concern that Duncan McKenzie is scheduled to be executed on 10 May 1995; at the same time expressing concern and sympathy for the victims of violent crime and their families;
- urging the Board of Pardons to recommend to Governor Racicot that he grant clemency to Duncan McKenzie by commuting his death sentence;
- expressing concern that the trial-judge may not have taken Duncan McKenzie's mental illness into account as a mitigating factor when passing a sentence of death;
- pointing out that under Montana's current death penalty laws Duncan McKenzie may not have been sentenced to death;
- stating that for Montana to have its first execution after more than half a century would be a retrograde step which goes against the international trend away from the use of the death penalty;
- expressing your opposition to the death penalty in all cases.

APPEALS TO

The Board of Pardons
300 Marilyn Avenue
Deer Lodge, MT 59722
USA

Fax: +1 406 846 3512
Telephone: +1 406 846 1404
Salutation: Dear Board Member

COPIES OF YOUR APPEALS TO:

Governor Marc Racicot
P.O. Box 200801
Hellena, MT 59620-0801
USA

Fax: +1 406 444 5529
Telephone: +1 406 444 3111
Salutation: Dear Governor

The Letters Editor

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

PLEASE SEND APPEALS IMMEDIATELY.