

PUBLIC

AI Index: AMR 51/073/2008

8 July 2008

UA 195/08 Death penalty / Legal concern

USA (Alabama) Thomas Douglas Arthur (m), white, aged 66

Thomas Arthur is scheduled for execution on 31 July in Alabama. The state is pursuing his execution even though his conviction was based mainly on the testimony of an admitted perjurer who had an incentive to lie at his trial. Although DNA evidence exists which Thomas Arthur says could help demonstrate his innocence, the State of Alabama has not granted his request to be allowed to conduct DNA testing of evidence relating to the crime.

Thomas Arthur was sentenced to death for the 1982 murder of Troy Wicker. The victim's wife, Judy Wicker, was also convicted and sentenced to life imprisonment for the murder. She was released on parole after testifying at Thomas Arthur's 1991 retrial (see previous UA on Thomas Arthur's case, UA 225/07, 30 August 2007, <http://www.amnesty.org/en/library/info/AMR51/137/2007/en>).

At her own trial, Judy Wicker had testified that Thomas Arthur was not involved in the murder, but that a stranger had killed her husband, and had also raped her. This was the same version of events that she had told the police at the time of the murder. However, at Arthur's 1991 retrial, she testified that she, Teresa Rowland and Rowland's boyfriend Theron McKinney had discussed killing Troy Wicker in early 1981. She testified that she knew that the murder would take place on 1 February 1982, that she and Thomas Arthur had gone to the house together, and that she had agreed to tell the police that her husband had been murdered by an African American burglar. She said that she collected \$90,000 in insurance proceeds, and that she paid \$10,000 to Arthur and \$6,000 to Rowland, and gave a car and jewellery to McKinney for their assistance in the murder. Teresa Rowland and Theron McKinney were apparently not investigated for their alleged role in the crime. Neither of them was prosecuted.

Thomas Arthur maintains his innocence of the murder. No physical evidence links him to the crime. Hair samples and fingerprints from the crime scene were tested, but did not match Thomas Arthur's. He was convicted on disputed circumstantial evidence and the testimony of Judy Wicker, who had committed perjury at either her trial or Arthur's retrial.

On appeal in 2002, two affidavits were filed which contradict Judy Wicker's testimony that Thomas Arthur was with her on the morning of the murder. The affidavits, signed by Alphonso High and Ray Melson, stated that he had visited them that morning. The state has not disputed that these affidavits, if true, establish that Thomas Arthur was about an hour's drive away from the Wickers' home at the time of the murder. However, the state obtained its own affidavits from High and Melson contradicting their original statements. Thomas Arthur's lawyers raised critical questions about the circumstances under which these witnesses retreated from their original testimonies, and requested a hearing to resolve the factual disputes: their request was denied. In 2006, the US Court of Appeals for the 11th Circuit ruled that the disputed affidavits did not constitute sufficient new evidence for Arthur to be granted a new federal hearing of his case.

In support of his argument that he should be allowed back into court for a hearing on his innocence claim, Thomas Arthur is seeking to have modern DNA testing conducted on various pieces of evidence related to the crime, including Judy Wicker's bloodstained clothing, the rape evidence, and hair samples. Such testing, it is argued, could establish that someone other than him was at the crime scene, thereby discrediting Judy Wicker's trial testimony against Arthur.

On 5 November 2007, the Innocence Project, which represents inmates seeking DNA testing to prove their innocence, wrote to the Alabama Governor's Office responding to its request for advice on how to approach requests for post-conviction DNA testing in capital cases. In its letter to the Governor's Policy Director, the Innocence Project outlined its guidance and urged the Governor to grant DNA testing in Thomas Arthur's case. Its letter stated: "We believe that the Arthur case easily fits within the category of cases where DNA testing should be granted... In fact, DNA testing has the potential to conclusively prove that Mr Arthur was not the perpetrator of this crime and to identify the real killer."

Alabama has scheduled Arthur's execution despite the fact that DNA evidence exists which could help demonstrate his innocence; that his lawyers are willing to bear the cost of the DNA tests; and that the tests could be concluded before his scheduled execution on 31 July. Among those calling for Governor Riley to order such tests is the Alabama newspaper, the Birmingham News. In an editorial on 5 July, it wrote that the Governor "should have ordered the tests long ago, when he was first asked to do so. But it's still not too late."

On 30 June 2008, following his official visit to the USA, the UN Special Rapporteur on extrajudicial, summary or arbitrary executions issued a statement. Alabama was one of the states he singled out for particular concern on the death penalty: "The situation in Alabama remains highly problematic. Government officials seem strikingly indifferent to the risk of executing innocent people and have a range of standard responses, most of which are characterized by a refusal to engage with the facts. The reality is that the system is simply not designed to turn up cases of innocence, however compelling they might be. It is entirely possible that Alabama has already executed innocent people, but officials would rather deny than confront flaws in the criminal justice system".

There have been 1,109 executions in the USA since judicial killing resumed there in 1977, 38 of them in Alabama. There have been 10 executions in the USA this year. In late 2007, the UN General Assembly passed a landmark resolution calling for a worldwide moratorium on executions. The resolution recognized that "the use of the death penalty undermines human dignity", that and "a moratorium on the use of the death penalty contributes to the enhancement and progressive development of human rights", and "that any miscarriage or failure of justice in the implementation of the death penalty is irreversible and irreparable". Amnesty International opposes the death penalty in all cases, unconditionally. There is no such thing as a humane, fair, reliable or useful death penalty system.

RECOMMENDED ACTION: Please send appeals to arrive as quickly as possible, in English or your own language, in your own words:

- explaining that you are not seeking to condone the manner of Troy Wicker's death;
- noting that Thomas Arthur was convicted on the basis of circumstantial evidence and the testimony of Judy Wicker, who has committed perjury and was providing testimony in return for assistance with her parole bid;
- noting that Thomas Arthur has not had a judicial hearing on evidence of his innocence, and that he is seeking modern DNA testing of evidence from the crime;
- calling on the governor to order such testing to take place, noting that a number of errors have been uncovered in capital cases throughout the USA, some as a result of DNA testing;
- opposing the execution of Thomas Arthur, and noting that in contrast to his death sentence Judy Wicker served 10 years in prison having been convicted of the murder, and that two other people implicated in the murder were apparently not even investigated.

APPEALS TO:

Governor Bob Riley, State Capitol, 600 Dexter Avenue, Montgomery, AL 36130, USA

Fax: +1 334 353 0004

Email, via Governor's website at:

http://www.alabamainteractive.org/alabamainteractive_shell/Welcome.do?url=http://governor.alabama.gov

Salutation: Dear Governor

COPIES TO: diplomatic representatives of the USA accredited to your country.

PLEASE SEND APPEALS IMMEDIATELY.