

PUBLIC

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Death penalty / Legal concern

USA (Mississippi)

Dale Leo Bishop (m), white, aged 34

Dale Bishop is scheduled to be executed in Mississippi at 6pm local time on 23 July. He was sentenced to death in February 2000 for the murder of Marcus Gentry in December 1998. The person who actually killed Marcus Gentry received a life sentence.

According to the trial record, on 10 December 1998, Marcus Gentry, Dale Bishop, Jessie Johnson and Ricky Myhand were in a car in Saltillo, Lee County, Mississippi. Johnson asked Gentry, who was driving, why he had informed on Johnson's brother to the police about some burglaries. Johnson, who was in the front passenger seat, then picked up a hammer and hit Gentry in the head with it. Bishop, in the rear passenger seat, grabbed Gentry and Johnson hit him in the head again. After Gentry jumped out of the car, Johnson told Bishop to catch him. Bishop did so, and Johnson proceeded to repeatedly strike Gentry with the hammer. Bishop and Johnson dragged Gentry's body into some bushes, and they themselves hid in the woods until their arrest three days later.

Dale Bishop was brought to trial first. His defence lawyers did not seek a change of venue away from Lee County, despite potentially prejudicial pre-trial publicity. Ricky Myhand, who was present at the crime, was a key witness for the state. The jury convicted Bishop of capital murder. He waived his right to sentencing by jury and instructed his lawyer not to present any mitigating evidence. He asked only to say something to Marcus Gentry's family: "I just wanted to say...I'm sorry for what happened to Mark. Mark was my friend. You know, I – I thought Mark needed his ass kicked. I did. I didn't know Jessie was gonna go all out like that. Mark was a good man... Mark's in heaven right now... I ain't going to heaven; I won't allow it. For what I did, I deserve to die. I ain't gonna ask this Court to spare my life". He then addressed the judge: "These people here, some of them would like to kill me. They can't. They don't have that authority... But you do. You've got that authority. I mean, look at them. They would like to see, you know – their son was killed, you know. I played a part in that... So I'm asking you to do what they can't do, kill me for what I done. I deserve it. I know it, I want you to sentence me to death." The judge responded, "Mr Bishop, I'm gonna grant your wish".

At Jessie Johnson's trial eight months later, the defence motion for a change of venue was granted and Johnson was brought to trial in another county. He was also convicted of capital murder, but was sentenced by the jury to life imprisonment without the possibility of parole. In affirming Bishop's death sentence in 2002, the Mississippi Supreme Court rejected the claim that Bishop should not have been eligible for the death penalty on the grounds that he had not planned or deliberated the murder. The Court pointed to the 1982 Supreme Court ruling, *Enmund v. Florida*, which found that the death penalty was an excessive punishment for a defendant who aids and abets in a crime where murder is committed, but who himself did not kill, attempt to kill, or intend to kill the victim. The state Supreme Court found that Bishop's involvement in the crime was sufficient to justify execution even if the actual killer did not receive the death sentence.

Dale Bishop's current appeal lawyers have raised evidence that was not presented at trial or in the initial appeals, including that Bishop suffered from serious mental illness (bipolar disorder), that there is a history of mental illness in his family, and that his childhood was abusive and marked by severe deprivation. They have presented evidence that he grew up in poverty, was beaten by his alcoholic father, and that signs of mental illness began from the age of four, with school and other records making numerous references to his mental health problems. They say that his mother took him to a psychiatric hospital, but that the family was unable to afford the cost of the treatment that was recommended. According to the lawyers, he was not diagnosed

with bipolar disorder until he was on death row. Bipolar disorder, or manic depressive illness, is a serious brain disorder that causes extreme shifts in mood, energy, and functioning. It is characterized by episodes of mania and depression that can last from days to months. Bipolar disorder is a chronic and generally lifelong condition, requiring lifelong treatment.

Dale Bishop is not the first capital defendant in the USA to have refused to allow his lawyer to present mitigating evidence on his behalf (see *USA: The execution of mentally ill offenders, January 2006*, <http://www.amnesty.org/en/library/info/AMR51/003/2006/en>). Factors contributing to such a decision can include remorse, mental illness (including depressive or paranoid disorders), or a reluctance on the part of the defendant to have relatives testify on his or her behalf, perhaps if there is a history of abuse in the family. A defendant may wish to downplay his or her mental health problems and to spare the distress of revisiting dysfunctional family histories in a courtroom. Whatever motivates capital defendants to make such decisions, they are another factor contributing to the arbitrariness of the death penalty.

BACKGROUND INFORMATION

Dale Bishop's appeal lawyers are seeking to stop the execution through, among other issues, a challenge to Mississippi's lethal injection procedures. In the April 2008 US Supreme Court ruling that upheld Kentucky's lethal injection protocol – a judgment that has not stopped litigation on this issue – senior Justice John Paul Stevens wrote that his experience on the Court has led him to the conclusion that “the imposition of the death penalty represents the pointless and needless extinction of life with only marginal contributions to any discernible social or public purposes. A penalty with such negligible returns to the State is patently excessive and cruel and unusual punishment”.

The death penalty promotes simplistic responses to complex human problems, rather than pursuing explanations that could inform positive strategies. It prolongs the suffering of the murder victim's family, and extends that suffering to the loved ones of the condemned prisoner. It diverts resources that could be better used to work against violent crime and assist those affected by it. It is a symptom of a culture of violence, not a solution to it. It is an affront to human dignity. It should be abolished.

There have been 1,111 executions in the USA since judicial killing resumed there in 1977, nine of them in Mississippi. There have been 12 executions in the USA so far in 2008, one of them in Mississippi.

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

- expressing sympathy for any family of Marcus Gentry, and explaining that you are not seeking to excuse the manner of his death or to downplay the suffering caused;
- opposing the execution of Dale Bishop;
- noting that the person who actually killed Marcus Gentry is not facing execution, but is serving a life prison sentence;
- noting evidence that Dale Bishop suffered from untreated mental illness from a young age, and a childhood marked by deprivation and abuse, and expressing concern that such evidence was not heard by the judge who allowed Bishop to waive his right to present mitigating evidence, and who sentenced him;
- noting that the power of executive clemency can take into account information not considered by at trial;
- calling on the Governor to grant clemency to Dale Bishop, and to commute his death sentence.

APPEALS TO:

Haley Barbour
Governor of Mississippi
P.O. Box 139, Jackson, MS 39205, USA
Fax: +1 601-359-3741
E-mail: governor@governor.state.ms.us
Salutation: Dear Governor

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

PLEASE SEND APPEALS IMMEDIATELY.