

**USA (Georgia)Wallace Marvin Fugate, white, aged 52**

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Wallace Fugate is scheduled to be executed in Georgia at 7pm local time on 18 June 2002. He was sentenced to death in 1992 for the murder of his former wife, Pattie Dianne Fugate, in 1991.

Wallace and Pattie Fugate were divorced in 1990 after 20 years of marriage. At the time of her death, Pattie Fugate was living in the former marital home near Eatonton in Putnam County with their 15-year-old son, Mark. On 4 May 1991, Wallace Fugate, who was living in another town, came to the Eatonton house. Later that day he shot Pattie Fugate.

Wallace Fugate's defence was that his gun had gone off accidentally as he and his former wife engaged in a physical struggle. However, Mark Fugate, who was murdered five years later in an unrelated case, testified at the trial that he had seen his father "grab [Pattie Fugate], holding her by the hair, tilt her head back, put the gun in her face, and pull the trigger". The state-appointed defence lawyers did not bring to the attention of the jury Mark Fugate's earlier statement to the police in which he had said: "I heard a shot. I saw my mother's head hit the ground. I could not tell if he held her head back or not".

This failure to raise the different pre-trial version of the killing in order to challenge the credibility of the state's key witness is one of numerous instances where Wallace Fugate's trial representation appears to have been inadequate. For example, the lawyers offered no objections during the two-day trial. They did not seek funding for any experts, such as an independent weapons expert who could have testified (as one did during post-conviction proceedings) that the brand of gun used in the shooting had a manufacturing defect which made it susceptible to accidental discharge. The defence position was even further undermined when, during closing arguments, one of the defence lawyers reportedly argued that the killing was accidental, and the other described it as self-defence.

The whole sentencing phase of the trial lasted 64 minutes, its evidentiary portion less than half an hour. The defence presented four mitigation witnesses whose testimony covered only 20 pages of transcript. The lawyers did not do any investigation of Wallace Fugate's medical, military, employment or school history in preparation for the sentencing.

On appeal, affidavits were obtained from 13 potential character witnesses who indicated that they would have testified on Wallace Fugate's behalf if asked. During post-conviction proceedings, one of the two trial lawyers recalled that they had "shared the work" on the case, "particularly on mitigation". He testified that they had divided contacting the potential witnesses between them. However, the other lawyer testified that he had not participated in contacting potential sentencing phase witnesses, and that his co-counsel had "talked to whatever had to be talked to".

During post-conviction proceedings one of the lawyers reportedly stated that he had heard of neither *Furman v Georgia*, the landmark US Supreme Court decision in 1972 which imposed a *de facto* moratorium on the death penalty in the USA, nor *Gregg v Georgia*, the equally momentous decision in 1976 which allowed executions to resume.

**BACKGROUND INFORMATION**

To win an appeal on a claim of ineffective assistance of counsel, a US prisoner must prove that not only was the trial lawyer's performance inadequate, but that it had affected the outcome of the trial. Under the US Supreme Court precedent, *Strickland v Washington* (1984), the judicial scrutiny of legal representation must be "highly deferential" and "must indulge a strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance". In rejecting Wallace Fugate's claim of inadequate trial counsel, the US Court of Appeals for the 11<sup>th</sup> Circuit applied an arguably even higher standard, holding that "in order to show that counsel's performance was unreasonable, the petitioner must establish that no competent counsel would have taken the action that his counsel did take". The 11<sup>th</sup> Circuit was quoting its 2000 decision in *Chandler v United States*, in which it upheld the death sentence of federal death row inmate David Ronald Chandler. Chandler was convicted on the basis of testimony given by the actual killer, who later recanted. Chandler's lawyer failed to conduct any sentencing phase investigation. The death sentence was subsequently commuted in January 2001 by President Bill Clinton in one of his last acts of office, because of doubts about Chandler's guilt (see EXTRA 03/01, AMR 51/008/2001, 12 January 2001 and update 22 January).

When the 11<sup>th</sup> Circuit upheld Wallace Fugate's conviction and death sentence in August 2001, one of the three judges noted: "I remain convinced that our court set the acceptable level of attorney assistance for preparation for the penalty phase of a capital case too low in *Chandler v United States*".

International safeguards require adequate legal representation for capital defendants "at all stages of proceedings", above and beyond that provided in non-capital cases.

Amnesty International opposes the death penalty in all cases. It believes that every death sentence is an affront to human dignity, and every execution a symptom of a culture of violence rather than a solution to it. Since resuming executions in 1977, 780 men and women have been put to death across the USA. Twenty-nine of these executions have been in Georgia.

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

- expressing sympathy for the family and friends of Pattie Dianne Fugate, and explaining that you are not seeking to excuse the manner of her death;
- opposing the execution of Wallace Fugate;
- expressing concern at the trial lawyer's failure to draw attention to the inconsistencies in the eyewitness testimony, and other evidence supportive of the defence position that the shooting was accidental;
- expressing concern at the brief nature of the sentencing phase, and the lawyers' failure to do more investigation of potential mitigating circumstances, citing international safeguards;
- calling on the Board of Pardons and Paroles to grant clemency.

**APPEALS TO:**

Walter S. Ray, Chair,  
State Board of Pardons and Paroles  
Floyd Veterans Memorial Building  
Balcony Level, East Tower

2 Martin Luther King Jr Drive, S.E.  
Atlanta, GA 30334, USA

**Fax: +1 404 651 8502**

**Salutation: Dear Mr Ray**

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

You may also copy your appeals, or write brief letters to the editor (not more than 250 words) to:

*The Atlanta Journal-Constitution*, PO Box 4689, Atlanta, GA 30302, USA. **Fax:**  
**+1 404 526 5611. E-mail: [www.accessatlanta.com/partners/ajc/letters](http://www.accessatlanta.com/partners/ajc/letters)**

**PLEASE SEND APPEALS IMMEDIATELY.**