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Death penalty / Legal concern

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USA (Indiana)

Darnell Williams (m), black, aged 37

Darnell Williams is due to be executed in Indiana on 9 July. He was sentenced to death in 1987 for a double murder committed in 1986. In the light of developments since the trial, the trial prosecutor who sought the death penalty, a law enforcement officer who investigated the case, at least three jurors who voted for the death penalty, and the post-conviction judge who rejected Williams' post-conviction challenges to his death sentence, are urging the governor and the courts to stop the execution.

On 12 August 1986, 59-year-old Henrietta Rease and her 74-year-old husband John Rease were shot dead in their home during a robbery. The victims were the ex-foster parents of Gregory Rouster. He and Darnell Williams, aged 20 and 19 respectively at the time of the crime, were sentenced to death for the murders. Charges against a third person, Edwin Taylor, were dropped in return for his testimony implicating Darnell Williams. A fourth defendant was acquitted. Darnell Williams has maintained that while he was involved in the crime, he was not present when the shooting occurred.

In 2003, Gregory Rouster's death sentence was overturned because of his mental retardation (the US Supreme Court outlawed the execution of such offenders in 2002). While Darnell Williams does not have such a claim, he was brain damaged at birth and at school was placed in special education classes for the "educable mentally retarded." Appeals that his trial lawyers failed to prepare for the sentencing phase and to present the jury with evidence of his traumatic birth, his hyperactivity, his special education needs, his violent and abusive father, and his chaotic and impoverished upbringing, have been unsuccessful.

Darnell Williams' defence at the guilt stage of the trial was based on his lawyers' belief that no blood had been found on his clothing. For the prosecution, however, a serologist (blood expert) had found three blood spots on Williams' shorts which were consistent with that of the murder victims, Gregory Rouster, and 45 per cent of the population. The serologist's report had been given to the defence before the trial, but the lawyers had failed to notice that the expert had found blood on the shorts. The prosecutor argued to the jury that the blood was key evidence pointing to Williams's participation in the murders.

Darnell Williams was due to be executed on 1 August 2003 when the late Governor of Indiana, Frank O'Bannon, granted a stay in order for modern DNA testing to be carried out on the blood evidence. The testing excluded Henrietta Rease as the source of the two testable blood spots and excluded her husband as the source of one of the spots. However, the data was insufficient to conclude whether John Rease could be excluded as the source of the second spot.

On 6 June 2004, state witness Edwin Taylor recanted his trial testimony implicating Williams as an active participant in the crime. Taylor now states that his testimony was inaccurate because he was young and scared. Earlier this week, two witnesses reportedly confirmed Taylor's recantation, stating that on the night of the crime Taylor came to their home in a panic and reported that Gregory Rouster had shot the Reases.

Post-conviction evidence has undermined the credibility of another key prosecution witness, Derrick Bryant, who implicated Darnell Williams at the trial. Psychiatric records and testimony from his relatives, not known by the jury, support the claim that he lied. New evidence, discovered since the reprieve issued on 28 July 2003, shows Derrick Bryant suffers from mental illness, has a reputation for untruthfulness, and gave conflicting statements regarding the offence. Moreover, newly revealed records reportedly indicate that on the same day he implicated Williams to the police, Bryant told psychiatrists at a mental hospital a different story - that he saw his friend, Edwin Taylor, commit the murders.

At least three of the trial jurors now support clemency because of the new evidence since the trial. One wrote recently: "It is apparent our decision to convict was based on bad information. Mr Williams deserves a new trial." Another has stated: "In the light of the new developments, I believe that the state would be carrying it too far if Darnell would be executed and that this would be an affront to our cherished ideas of democracy". A third has said: "Had I known of these facts at the time of the trial, I would not have voted to impose a death sentence on Darnell Williams." The judge who affirmed the death sentence has said: "It would be an injustice for the death sentence to be lifted, for whatever reason, on one of these to defendants and yet be imposed on the other. This is especially true when the person who may ultimately be executed is not as culpable as the one whose death sentence has been vacated." The trial prosecutor has said: "I feel confident saying that without Gregory Rouster, the murders of John and Henrietta would not have occurred. I'm not sure the same can be said of Darnell Williams. Yet it now appears that only one of the two will be executed, and it won't be Rouster... I do deeply believe that the principles of fairness, justice and equal treatment should now mean equal sentences of life for both". An officer who processed the crime scene evidence in the case also opposes the execution. He has signed an affidavit saying that he and another officer did not find any blood on Williams's clothing during inspections five hours after the shootings.

One of the jurors has also stated: "We must let go of feeling that we couldn't have been wrong. Sometimes we can be wrong and we have to fix it... It is unfair to everyone, including the jurors in this case, not to fix it." International standards prohibit the execution of anyone where the conviction is not based "upon clear and convincing evidence leaving no room for an alternative explanation of the facts". This case clearly falls under this safeguard. Amnesty International opposes all executions, regardless of issues of guilt or innocence. The USA has put 915 prisoners to death since resuming judicial killing in 1977, including 30 this year.

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 Henrietta and John Rease, stating that you are not seeking to condone the manner of their deaths or to minimize the suffering caused;
- noting the serious doubts about the extent of Darnell Williams's involvement in the actual shootings, and that he remains the only one of several defendant facing execution for this crime;
- noting the serious doubts about the credibility of key prosecution testimony at both stages of the trial, and noting that the DNA testing generally supports Williams's claim that he was not present at the shootings;
- welcoming the decision in Gregory Rouster's case, but noting evidence that he may have been the gunman, and suggesting that the evidence of Williams's own mental impairment and impoverished upbringing, about which the jury were not told, are compelling factors for clemency;
- noting that support for clemency comes from at least three of the trial jurors, the post-conviction judge, the trial prosecutor, and a crime scene investigator, some of the very people who put Williams on death row;
- noting that the power of executive clemency exists precisely for such cases where the courts have been unwilling or unable to remedy unfairness, arbitrariness or error;
- calling for clemency for Darnell Williams in the interests of justice and decency.

APPEALS TO:

Governor Joseph Kernan, Office of the Governor, Statehouse Room 206
200 W. Washington St., Indianapolis, IN 46204, USA

Fax: +1 317 232 3443

Email: <http://www.in.gov/gov/contact/index.html>

Salutation: Dear Governor

COPIES TO: Diplomatic representatives of USA accredited to your country.

You may also send brief letters (not more than 250 words) to:

Letters to the Editor, *Indianapolis Star*, PO Box 145, Indianapolis, IN 46206-0145, USA

Fax: +1 317 444 6800. **Email via website:** <http://www.indystar.com/help/contact/letters.html>

PLEASE SEND APPEALS IMMEDIATELY. All appeals must arrive by 9 July 2004.