

UA 154/07

Death penalty / Legal concern

USA (South Dakota)

Elijah Page (m), white, aged 25

Elijah Page is scheduled to be executed in South Dakota in the week beginning 9 July. He was sentenced to death in 2001 for the kidnapping, torture and murder of 19-year-old Chester Allan Poage in 2000. South Dakota has not carried out an execution for 60 years. Elijah Page has given up his appeals.

Chester Poage was killed on 13 March 2000 near the town of Spearfish in the rural west of South Dakota. His body was found a month later, and after an autopsy it was determined that he had died of stab wounds and blunt force injury to the head. Three young men were charged with his murder: Darrell Hoadley, Briley Piper and Elijah Page, who were 20, 19 and 18 years old respectively at the time of the crime.

The three were tried separately. Briley Piper pleaded guilty, waiving his right to trial and sentencing by jury, and was sentenced to death by a judge on 19 January 2001. Elijah Page did the same and was condemned to death by the same judge on 16 February 2001. Darrell Hoadley pleaded not guilty and was tried by jury. The jurors found him guilty of the same crime with the same aggravating factors (factors making the crime eligible for the death penalty) as had been found in the cases of Elijah Page and Briley Piper. The jury was split on the question of punishment and Darrell Hoadley was sentenced to life imprisonment without the possibility of parole in May 2001.

In January 2006, the state Supreme Court upheld Elijah Page's death sentence. Two of the five Justices dissented (as they also did in Piper's case), stating: "Based primarily on untested, un-cross-examined and self-serving statements by Hoadley, Piper and Page, the circuit court and the majority opinion comes to the conclusion that Piper and Page were more culpable and less remorseful than Hoadley, and therefore more deserving of death. In a stunning reversal from its argument in the Hoadley case, the State now argues that Hoadley is less culpable in this horrendous crime than Piper and Page. . . In fact, the State charged Hoadley, Piper and Page with identical acts, conduct and charges, all resulting in identical convictions. The same aggravating factors were alleged and found against all three. . . There are no meaningful differences to justify life for Hoadley and death for Piper and Page." The dissenting Justices concluded that all three "should receive life in prison without the possibility of parole for their substantially identical acts of murder".

Like many on death row in the USA, Elijah Page's childhood was one of deprivation and abuse. According to reports, from when he was two years old living with his siblings and his drug-addicted mother in abandoned buildings in Kansas City, Missouri, his mother would allow people to sexually molest him in exchange for drugs. When he was about seven years old, his mother lost custody of the children because of the abuse, violence and deprivation to which they were being exposed. The state placed the children in the care of their stepfather, but the abuse and deprivation persisted. Taken into state care again when he was about 13, for the following year Page lived in more than a dozen foster homes and ran away on numerous occasions. By the age of 14 or 15, psychiatric assessments recorded that he was displaying aggressive and anti-social behaviour. By the time he drifted to South Dakota in 1999 at the age of 17, he had a history of time spent in juvenile detention facilities, including as a result of burglaries and car thefts. Sentencing him to death for the murder committed in 2000 at the age of 18, the judge acknowledged to Elijah Page that "your early years must have been a living hell. Most people treat their pets better than your parents treated their kids".

BACKGROUND INFORMATION

About one in 10 of the people executed in the USA since 1977 have been so-called "volunteers", prisoners who had dropped their appeals and "consented" to execution. Any number of factors may lead a prisoner not to pursue appeals against his or her death sentence, including mental disorder, physical illness, remorse, bravado, religious belief, the severity of conditions of confinement, including prolonged isolation and lack of physical contact visits, the bleak alternative of life imprisonment without the possibility of parole, pessimism about appeal prospects, a quest for notoriety, or simply a desire to gain a semblance of control over a situation in which the prisoner is otherwise powerless. Whether the prisoner's decision is rational or irrational, there is no disguising the fact that the state is pursuing a killing that is at least as calculated as any murder for which the condemned inmate is being punished (for more information, see *USA: Prisoner-assisted homicide: More 'volunteer' executions loom*, AI Index: AMR 51/087/2007, 17 May 2007, <http://web.amnesty.org/library/Index/ENGAMR510872007>).

Elijah Page was previously due to be put to death on 29 August 2006 (see UA 206/06, AMR 51/126/2006, 2 August 2006, and follow-up). About four hours before his scheduled execution, Governor Mike Rounds ordered a stay until after 1 July 2007 on the grounds that there was a discrepancy between the state's law on lethal injection and the method that was about to be used to kill Elijah Page. State law, last revised in 1984, required that two chemicals be used to execute the prisoner – "a lethal quantity of ultra-short-acting barbiturate and a chemical paralytic agent". However, the state correctional department's lethal injection policy involved a third chemical, potassium chloride, as used in most states in the USA.

On 23 February 2007, Governor Rounds signed into law a bill passed by the state legislature, under which the law becomes more general rather than more specific and under which, according to a recent expert study on lethal injections, the state "retreated into

greater secrecy, illustrating the tendency for states to withhold when constitutional challenges appear threatening." The new law provides that:

"The punishment of death shall be inflicted within the walls of some building at the state penitentiary. The punishment of death shall be inflicted by the intravenous injection of a substance or substances in a lethal quantity. The warden, subject to the approval of the secretary of corrections, shall determine the substances and the quantity of substances used for the punishment of death. An execution carried out by intravenous injection shall be performed by a person trained to administer the injection who is selected by the warden and approved by the secretary of corrections. The person administering the intravenous injection need not be a physician, registered nurse, licensed practical nurse, or other medical professional licensed or registered under the laws of this or any other state. Any infliction of the punishment of death by intravenous injection of a substance or substances in the manner required by this section may not be construed to be the practice of medicine. Any pharmacist or pharmaceutical supplier is authorized to dispense the substance or substances used to inflict the punishment of death to the warden without prescription, for carrying out the provisions of this section, notwithstanding any other provision of law."

This becomes law on 1 July 2007. The following week, Elijah Page is due to become the first person killed under it, and the first person executed in South Dakota since George Stitts was put to death in the electric chair on 8 April 1947. In the intervening 60 years, more than 100 countries have abolished the death penalty in law or practice.

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

- expressing sympathy for those affected by the murder of Chester Allan Poage and explaining that you are not seeking to downplay the seriousness of the crime or the suffering caused;
- opposing the execution of Elijah Page, noting his young age at the time of the crime, his childhood of abuse and deprivation, noting the dissent by two Justices of the state Supreme Court in this case, and explaining your opposition to the death penalty in general;
- welcoming the fact that South Dakota has not carried out an execution for six decades, pointing out that today 129 countries have abolished the death penalty in law or practice;
- urging the Governor to stop this execution, and to support a moratorium on executions in South Dakota.

APPEALS TO:

Governor Mike Rounds, Office of the Governor, 500 E. Capitol Avenue, Pierre, SD 57501, USA

Faxes: +1 605 773 5844

Email, via: <http://www.state.sd.us/governor/>

Salutation: Dear Governor

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

PLEASE SEND APPEALS IMMEDIATELY.

Message from UA team, 10 July 2007

Elijah Page is now scheduled to be executed on 11 July at 10pm local time. A judge had ruled that he should be put to death during the week beginning 9 July, and the precise date was then set by the warden of the Dakota State Penitentiary, where Elijah Page is held. Please continue your appeals on this case.