

PUBLIC

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Death penalty / Legal concern

02 August 2006

USA (South Dakota)

Elijah Page (m), white, aged 24

Elijah Page is scheduled to be executed in South Dakota in the week of 28 August 2006. He was sentenced to death in 2001 for the kidnapping, torture and murder of 19-year-old Chester Allan Poage in 2000. A hearing is scheduled for 14 August in order for the trial court to rule on Elijah Page's competency to dismiss his lawyers and to waive his appeals. South Dakota has not carried out an execution since 1947.

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 in 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 you parents treated their kids".

BACKGROUND INFORMATION

In 1972, the US Supreme Court overturned the USA's capital laws after finding that the death penalty was being applied in an arbitrary manner (*Furman v. Georgia*). Four years later, in *Gregg v. Georgia*, the Court

approved new laws passed by state legislatures. Executions resumed in January 1977 after almost a decade without them. There have been some 500,000 murders in the USA since 1977. In the same period about 7,000 people have been sentenced to death, just over 1,000 of whom have been executed and about 3,300 of whom remain on death row. The capital justice system is marked by arbitrariness, discrimination and error.

About one in 10 of the people executed 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. Rational or irrational, a decision taken by someone who is under threat of death at the hands of others cannot be consensual. What is more, it cannot disguise the fact that the state is involved in a premeditated killing – part of a culture of violence, not a solution to it. Whether or not prisoners who “ask” to be executed are deluding themselves about the level of control they have gained over their fate – after all, they are merely assisting their government in what it has set out to do anyway – the state is guilty of a far greater deception. It is peddling its own illusion of control: that, by killing a selection of those it convicts of murder, it can offer a constructive contribution to efforts to defeat violent crime. In reality, the state is taking to refined, calculated heights what it seeks to condemn – the deliberate taking of human life. While “volunteer” executions are sometimes referred to as a form of state-assisted suicide, “prisoner-assisted homicide” would be a more accurate label. For if a death row inmate seeks to commit actual suicide, the state will make every effort to prevent it. The phenomenon of prisoners “volunteering” for execution contributes to the lottery of the death penalty. To put it another way, given the rate of reversible error found in capital cases, if the approximately 120 “volunteers” executed since 1977 had pursued their appeals, there is a significant possibility that a number of them would have had their death sentences overturned to prison terms by the appeal courts. (See also: *USA: Blind faith*, [http://web.amnesty.org/library/pdf/AMR511002006ENGLISH/\\$File/AMR5110006.pdf](http://web.amnesty.org/library/pdf/AMR511002006ENGLISH/$File/AMR5110006.pdf); and *USA: The illusion of control*, [http://web.amnesty.org/library/pdf/AMR510532001ENGLISH/\\$File/AMR5105301.pdf](http://web.amnesty.org/library/pdf/AMR510532001ENGLISH/$File/AMR5105301.pdf)).

South Dakota reintroduced the death penalty in 1979, but no-one has been executed there since then. The most recent execution was of George Sitts, who was electrocuted on 8 April 1947, the last of six prisoners to be put to death in the state in the 20th century. There are currently four inmates on South Dakota’s death row, where prisoners are held in the Jameson Annex of the State Penitentiary in Sioux Falls. Under state law, a condemned inmate must be “kept in solitary confinement at the penitentiary and no person shall be allowed access to him without an order of the trial court except the officers of the prison, his counsel, his physician, a priest or minister if he shall desire one, and the members of his family.” The Warden of the prison sets the time of the execution within the week designated on the judicial death warrant.

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

- 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 125 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.