

PUBLIC

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Death penalty

11 November 2008

USA (Kentucky) Marco Allen Chapman (m), white, aged 37

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Marco Chapman is scheduled to be executed in Kentucky on 21 November. He was sentenced to death in December 2004 for the murder of two children, aged six and seven, in 2002. He is not appealing his death sentence. This would be the first execution in Kentucky for nearly a decade.

According to the court record, on August 2002 Marco Chapman entered the home of Carolyn Marksberry in Warsaw in northern Kentucky to rob her. He raped and stabbed Carolyn Marksberry, but she survived. He also stabbed her three young children. Two of them died.

On arrest later the same day in neighbouring West Virginia, Marco Chapman asked one of the police officers to shoot him in the head. Once charged, the trial judge conducted a competency hearing, at which a psychologist from the Kentucky Correctional Psychiatric Center (KCPC) testified that Chapman had a history of mental health-related issues, including substance dependence, symptoms of post-traumatic stress disorder, and suicidal thoughts, and was suffering from chronic depression, but was competent to stand trial. After the judge agreed, the defendant wrote to the judge saying that he wanted to dismiss his lawyers, waive his right to a jury trial, and plead guilty to all the charges. He also stated that he was "willingly ready to accept the sentence of death" because "that is the only acceptable sentence for the crimes I have [committed] against the [Marksberrys] and humanity itself."

The trial judge ordered another competency evaluation. The same KCPC psychologist testified that Chapman was competent to make the decision to fire his attorneys and to ask to be executed, although his decision might change if he received mental health treatment. The judge ordered Chapman to be treated and evaluated over the next month, and subsequently conducted another competency hearing. The KCPC psychologist testified that Chapman had been prescribed anti-depressant medication, that depression could not be cured within a month, and that Chapman still had depression. The psychologist reiterated his opinion that Chapman was competent, and Chapman himself testified that he still wanted to pursue his own execution. The judge ruled that "Chapman's eyes are wide open to the consequence of his choices" and that he was competent to fire his legal counsel, plead guilty, and seek a death sentence.

At the sentencing the following week, the judge passed a death sentence, having stated that he had not considered mitigation evidence presented to him by Chapman's former lawyers, in the form of a psychological report, because the defendant did not want any mitigation evidence presented.

Upholding the death sentence in 2007, the Kentucky Supreme Court stated that "adhering to a defendant's choice to seek the death penalty honors the last vestiges of personal dignity available to such a defendant. Therefore, we hold that a competent criminal defendant is entitled to seek to plead guilty to a capital offense and, furthermore, to seek to receive the death penalty." The Court rejected the notion that a defendant who pleads guilty in order to receive the death penalty is committing "state-assisted suicide".

#### **BACKGROUND INFORMATION**

About one in 10 of the more than 1,100 men and women put to death in the USA since judicial killing resumed there in 1977 had given up their appeals (see *Prisoner-assisted homicide – more 'volunteer' executions loom*, May 2007, <http://www.amnesty.org/en/library/info/AMR51/087/2007>). Any number of factors may contribute to a condemned inmate's decision not to pursue appeals, including mental disorder, physical illness, remorse, bravado, religious belief, a quest for notoriety, 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, or pessimism about appeal prospects. In some cases it appears that the detainee may have committed the crime in order to receive a death sentence. Pre-trial or post-conviction suicidal ideation seems to motivate the decision-making of some such inmates, including some whose abusive childhoods have left them traumatized or suffering mental health problems. With such cases in mind, the execution of “volunteers” is often compared to state-assisted suicide. However, “prisoner-assisted homicide” may be a more appropriate description of this phenomenon.

Given the rate of error found in capital cases on appeal, if the more than 130 “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. To look at it another way, the phenomenon of “volunteers” contributes to the arbitrariness that is a part of the death penalty in the USA.

Amnesty International opposes the death penalty in all cases, unconditionally (see *‘The pointless and needless extinction of life’: USA should now look beyond lethal injection issue to wider death penalty questions*, <http://www.amnesty.org/en/library/info/AMR51/031/2008/en>). Today, some 137 countries are abolitionist in law or practice. In 2007, the UN General Assembly voted for a moratorium on executions pending global abolition. There have been 1,130 executions in the USA since judicial killing resumed there in 1977, two of them in Kentucky. The last execution in Kentucky, on 25 May 1999, was of Eddie Harper, who had also given up his appeals. There have been 31 executions in the USA this year.

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

- explaining that you are not seeking to excuse the crime in this case or to downplay the suffering caused;
- opposing the execution of Marco Chapman and the death penalty in general;
- noting the global abolitionist trend and last year’s vote at the United Nations General Assembly calling for a worldwide moratorium on executions;
- calling on the governor to support a moratorium on executions in Kentucky and to work towards abolition of the death penalty in his state.

**APPEALS TO:**

Governor Steve Beshear  
700 Capitol Avenue, Suite 100  
Frankfort, Kentucky 40601, USA

**Fax: +1 502 564-2517**

**Email: <http://governor.ky.gov/contact/contact.htm>.**

**Salutation: Dear Governor**

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

**PLEASE SEND APPEALS IMMEDIATELY.**