

PUBLIC

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Further information on EXTRA 57/01 (AMR 51/125/2001, 21 August 2001) and update (AMR 51/137/2001, 18 September) - Death penalty / Legal concern

USA (Ohio) John Byrd, white, aged 37 (m)

On 9 October, the Sixth Circuit Court of Appeals granted John Byrd an indefinite stay of execution and a hearing into his claims that his is not guilty of the 1983 murder of Monte Tewksbury (see original action). Byrd came within 40 hours of execution in the electric chair in September.

A majority of the Sixth Circuit remanded the case to a federal district judge who must appoint a Magistrate Judge "to promptly conduct an appropriate factual hearing". The order said that the scope of the Magistrate's inquiry should include matters raised by testimony contained in various affidavits, including that of John Brewer who claims that it was he, not Byrd, who stabbed Monte Tewksbury. The Magistrate is to report back to the Sixth Circuit "with factual findings and recommendations" within 45 days of his or her appointment.

The majority's decision drew angry dissents from several of the Sixth Circuit judges who variously described the ruling as "illegal", "lawless" and "outrageous". The dissent accuses the majority of unlawfully siding with John Byrd in his attempt to avoid "finality": "[Byrd], with the approval of this court, has concocted a procedure unknown to the law, where this court takes control of matters not properly before it, "remands" them to a court where they have never been, and commands that the matters then be returned to this court, in 45 days or so, for this court, only then, to consider whether permission to file [another appeal] should be granted by the full court"... The dissent also says: "If we can direct a particular federal judge to appoint a particular type of official to advise us, we could just as easily appoint a law school dean, the UN Commission on Human Rights, or Amnesty International to conduct such a hearing...".

Amnesty International opposes the death penalty in all cases, irrespective of issues of guilt or innocence. The organization also believes that, given the unresolved issues in this case, the execution of John Byrd would have contravened the UN Safeguards Guaranteeing Protection of the Rights of Those Facing the Death Penalty which states that "capital punishment may be imposed only when the guilt of the person charged is based upon clear and convincing evidence leaving no room for an alternative explanation of the facts."

No further action by the UA Network is requested at present. Many thanks to all who sent appeals.