

PUBLIC

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Death penalty / Legal concern

USA (Mississippi)

Ronald Chris Foster (m), black, aged 30

Chris Foster is scheduled to be executed in Mississippi on 8 January 2003, on his 31st birthday. He was sentenced to death in 1991 for the murder of George Shelton, white, who was shot on 10 June 1989 during a robbery at the shop where he worked. Chris Foster was 17 years old at the time of the murder. International law, respected by almost every country in the world apart from the USA, prohibits the use of the death penalty against people who were under 18 at the time of the crime.

No expert testimony was presented at Chris Foster's sentencing, either about the mitigating effects of his age, the fact that he had suffered at least two serious head injuries between the ages of 12 and 14, or on evidence that he had exhibited bizarre behaviour throughout his life which had led his family to question his sanity and emotional well-being. The only defence witnesses were his parents, whose testimony, including cross-examination, extends to fewer than 22 pages of a 1,211 page trial transcript. Their testimony was largely a plea for their son's life. Where it went beyond that, it was unsubstantiated or tended to undermine the defence lawyer's own argument for leniency. For example, the lawyer urged the jury to find that Chris Foster's limited intelligence was a mitigating factor. However, the father testified that his son was a good student who achieved good grades. In fact, Chris Foster had dropped out of school by the age of 15, and his grades were poor. In addition, his IQ was assessed at 80 before the trial, which the jury did not know. The lawyer also argued for leniency on the grounds Chris Foster had been drunk at the time of the murder, having consumed 12 beers. He failed to bolster this with evidence of his client's history of childhood alcohol abuse. His brother, sister, friends, and a neighbour later stated that they if they had been asked to testify, they could have told the jury about Chris Foster's experience of growing up with a father who was an "habitual drunkard", or that the boy, given alcohol by his older brothers, had begun drinking at around the age of 12. What the jury heard was the parents testifying that they were unaware of their son's history of alcohol abuse.

BACKGROUND INFORMATION

The use of the death penalty against child offenders, people who were under 18 at the time of the crime, is prohibited under international law. The Geneva Conventions, the International Covenant on Civil and Political Rights (ICCPR), the Convention on the Rights of the Child (CRC), the American Convention on Human Rights and the United Nations Safeguards Guaranteeing Protection of the Rights of Those Facing the Death Penalty, all have provisions exempting this age group from the death penalty. The prohibition stems from the widespread recognition of the immaturity and impulsiveness of young people and their capacity for growth and change.

Under the 1989 US Supreme Court decision, *Stanford v Kentucky*, defendants who were 16 or 17 at the time of the crime can be subject to the death penalty in the USA. Since that decision, 191 countries have ratified the CRC. The USA has not ratified it. The USA ratified the ICCPR in 1992, but filed a "reservation" purporting to allow it to execute child offenders. The Human Rights Committee, the expert body established by the ICCPR to oversee the treaty's implementation, has said that the reservation is "incompatible with the object and purpose of the Covenant" and should be withdrawn. The Committee has confirmed that the ICCPR prohibition on the execution of child offenders is a principle from which there can be no derogation.

On 22 October 2002, the Inter-American Commission on Human Rights found that “a norm of international customary law has emerged prohibiting the execution of offenders under the age of 18 at the time of their crime. Moreover, the Commission is satisfied... that this rule has been recognized as being of a sufficiently indelible nature to now constitute a norm of *jus cogens*... [N]early every nation state has rejected the imposition of capital punishment to individuals under the age of 18... The acceptance of this norm crosses political and ideological boundaries and efforts to detract from this standard have been vigorously condemned by members of the international community as impermissible under contemporary human rights standards... [T]he Commission considers that the United States is bound by a norm of *jus cogens* not to impose capital punishment on individuals who committed their crimes when they had not yet reached 18 years of age. As a *jus cogens* norm, this proscription binds the community of States, including the United States. The norm cannot be validly derogated from, whether by treaty or by the objection of a state...”

Since 1990, the USA has executed 18 child offenders, compared to 14 such executions reported in the rest of the world combined. These 14 occurred in Democratic Republic of Congo (DRC), Iran, Nigeria, Pakistan, Saudi Arabia, and Yemen. Yemen and Pakistan have now abolished such use of the death penalty in law. In 2001, the DRC authorities commuted the death sentences of five child offenders. China, the world’s main executing state, abolished the death penalty against child offenders in 1997.

In September, Amnesty International issued *USA: Indecent and internationally illegal: The death penalty against child offenders* (AMR 51/143/2002). The report argued that the US Supreme Court should reconsider its *Stanford v Kentucky* decision in light of its June 2002 ruling, *Atkins v Virginia*. In *Atkins*, the Court found the death penalty against people with mental retardation unconstitutional in the light of “evolving standards of decency”. However, in October 2002, the Court refused to take the appeal of Kevin Stanford, whose case was at the centre of the *Stanford v Kentucky* decision and who remains on death row for a crime committed at the age of 17. Four of the nine Supreme Court Justices dissented from the denial of the appeal: “There are no valid procedural objections to our reconsideration of the issue now, and, given our recent decision in *Atkins v Virginia*, we certainly should do so.” The dissent continued that the execution of people for crimes committed when they were under 18 years old “is a relic of the past and is inconsistent with evolving standards of decency in a civilized society. We should put an end to this shameful practice.”

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

- expressing sympathy for the family and friends of George Shelton, and explaining that you are not seeking to excuse the manner of his death;
- expressing deep concern that the State of Mississippi is planning to execute Ronald Chris Foster for the crime, in violation of the international prohibition on the execution of people for crimes committed when they were under 18 years old;
- calling for clemency for Ronald Chris Foster in the interest of decency and the reputation of Mississippi and the United States as a whole;
- expressing concern at the minimal mitigation put on at the sentencing, including the absence of expert testimony, leaving the jury unable to make a truly individualized determination of sentence;
- noting that four US Supreme Court Justices have described the execution of child offenders as a “shameful practice”, and that this practice has also been roundly condemned by international bodies, including the United Nations and the Inter-American Commission on Human Rights.

APPEALS TO:

Governor Ronnie Musgrove
Office of the Governor, PO Box 139, Jackson, MS 39205, USA
Fax: +1 601 359 3741
Email: via website: www.governor.state.ms.us/aboutthegov/writetoindex.htm
Salutation: Dear Governor

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

You may also copy your appeals to the following newspaper, or alternatively send brief letters (not more than 250 words) to its editor at:

Letters to the Editor, c/o *The Clarion-Ledger*, PO Box 40, Jackson, MS 39205-0400, USA

Fax: +1 601 961-7211

Email, via website: www.clarionledger.com/news/about/letters.html#form

PLEASE SEND APPEALS IMMEDIATELY.