

URGENT ACTION

OKLAHOMA GOVERNOR CONSIDERING CLEMENCY

The Governor of Oklahoma has stayed the execution of Richard Smith in order to consider the Pardon and Parole Board's recommendation that his death sentence be commuted. Richard Smith, who has been on death row for 23 years, is now scheduled for execution on 4 May.

Richard Smith, aged 47, was convicted in March 1987 of the murder in 1986 of John Cederlund (see <http://www.amnesty.org/en/library/info/AMR51/024/2010/en>). At the sentencing phase of the trial, the defence lawyer presented almost no evidence, and no expert testimony, to persuade the jury not to sentence his client to death. The evidence presented by the lawyer at the sentencing was described in 2005 by a federal District Court judge as "shocking in its brevity, its failure to humanize [Smith] or to explain his actions"

In 1992, a psychologist and a neuro-pharmacologist hired for the appeals process revealed that Richard Smith had had a childhood and adolescence marked by systematic neglect and abuse, and that he suffered serious mental impairments. In 2008, the 10th Circuit Court of Appeals noted that the lawyer's investigation for the sentencing phase had begun "a mere seven to ten days before trial", and "with 20-20 hindsight, there is much more that might have been presented, including [Smith's] abuse as a child, addiction problems, and psychological problems, brain injury and borderline intelligence". However, like the District Court, the 10th Circuit upheld the death sentence.

Less than eight months after Richard Smith's trial, Oklahoma adopted life imprisonment without parole (LWOP) as a sentencing option in the state. Six jurors from the trial have signed statements either that they would not have voted for execution if they had had the option of LWOP or that they do not oppose commutation of his death sentence now to LWOP.

On 25 March 2010, the Oklahoma Pardon and Parole Board decided by three votes to two to recommend that Governor Brad Henry commute Richard Smith's death sentence to life imprisonment without parole. Donald Cederlund, a younger brother of the murder victim, appeared at the clemency hearing to appeal for clemency for Richard Smith. Also appealing for clemency was a pastor who has set up a community program called TASK (Teaching and Saving Kids), which seeks to turn young people away from drugs, gangs and crime. Richard Smith has worked with TASK to help to have an aspect of the programme, which seeks to reduce violence in prison through conflict resolution, implemented in Oklahoma Department of Corrections facilities.

Governor Henry has stayed the execution of Richard Smith until 4 May to give him more time to consider the board's recommendation. He is due to meet with lawyers for the prisoner and the prosecution, separately, on 15 April. He has not said when he will make his decision.

PLEASE WRITE IMMEDIATELY in English or your own language, in your own words:

- Welcoming the Governor's decision to stay Richard Smith's execution in order to consider the case for clemency;
- Noting that the jurors who sentenced Richard Smith to death had no information about the background of neglect, abuse and mental impairment of the young defendant whose fate was in their hands;
- Noting that six of the trial jurors have since the trial signed affidavits indicating their support for clemency;
- Calling on the Governor to commute Richard Smith's death sentence.

PLEASE SEND APPEALS BEFORE 4 MAY 2010 TO:

Governor Brad Henry
State Capitol Building, 2300 N. Lincoln Blvd., Room 212
Oklahoma City, OK 73105, USA
Fax: +1 405 521 3353

Email: <http://www.gov.ok.gov/message.php>
Please note that only US residents can submit emails through Governor Brad Henry's website
Salutation: Dear Governor

Also send copies to diplomatic representatives of the USA accredited to your country. This is the first update of UA 69/10 (AMR 51/024/2010). Further information: <http://www.amnesty.org/en/library/info/AMR51/024/2010/en>

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ADDITIONAL INFORMATION

According to the reports of the psychologist and neuro-pharmacologist hired during Richard Smith's appeals, his father was in prison for the first eight years of his son's life, and after his release used to engage in physical fights with the boy, as well as teaching him to shoplift, steal cars and burgle houses. His mother remarried, but her husband was physically violent towards his stepson. At the age of 11 or 12, Richard Smith ran away from home, was apprehended by the authorities and sent to a juvenile facility, where he attempted suicide rather than be sent home. Upon being returned home, he was beaten by his stepfather and for two weeks was handcuffed and locked in a cupboard each night at bedtime. At the age of 12, Richard Smith went to live with his father, and took to alcohol and substance abuse, and witnessed his father intravenously injecting amphetamines. In subsequent years, he was shuttled between his mother, father and other relatives, living in five states and attending over a dozen schools. Richard Smith began using marijuana at the age of eight, and later took to "huffing" glue and gasoline. By 14 or 15, he was injecting methamphetamine four times a day, smoking marijuana, and taking injections of cocaine mixed with methamphetamine twice a week, as well as drinking whisky. At 17, he began to inject heroin together with either methamphetamine or cocaine. He also took to using LSD, injecting it intravenously.

As part of the post-conviction assessment, Richard Smith was diagnosed with chronic schizophrenia, and ascertained to have suffered multiple head injuries. According to the psychologist, Richard Smith did not receive adequate treatment during his youth, and his mental illness was exacerbated by his drug and alcohol use. She concluded that at the time of the crime, his ability to conform his conduct to the law was likely very impaired. In the US District Court ruling on the case in 2005, the judge ruled that, "by today's standards", the failure by Richard Smith's trial lawyer "to request funds for or the appointment of a psychiatrist to assist him at the penalty phase of the trial was not objectively reasonable". However, the judge upheld the death sentence, saying that under the less developed state of the law on this issue in force in 1987 he could not rule that the lawyer's failure was "professionally unreasonable" at that time.

Three jurors from the trial have said that if LWOP had been an option at the trial, they would have voted for it, not for death. A fourth has stated that he believes LWOP is the "appropriate sentence" in this case. Two others have said that they would not oppose his death sentence being commuted to LWOP. Two of these jurors recalled that they had been "unimpressed" by the defence lawyer's performance at the trial, with one referring to the "meaningless case" he presented at the sentencing. Another recalled his feeling that the state's two key witnesses were accomplices in the crime and that "it was not an open and shut case, where Richard Smith's guilt was clear". Another noted "all the news lately about wrongful convictions" and that she now had "serious concerns about the State executing Mr Smith", who was not among "the worst of the worst" offenders or responsible for the "worst of the worst" crimes for which the US death penalty is supposed to be reserved.

Amnesty International unconditionally opposes the death penalty, in all cases and in all countries. The USA has carried out 1,200 executions since resuming judicial killing in 1977. Oklahoma accounts for 92 of these executions. Per head of population, Oklahoma has the highest execution rate in the USA. Since taking office on 13 January 2003, Governor Henry has received six recommendations from the Pardon and Parole Board for clemency for death row inmates (not including the recommendation just made in Richard Smith's case). He has rejected all but two of them. There have been 37 executions in Oklahoma during Governor Henry's term in office. There have been 12 executions in the USA this year, one of them in Oklahoma. For further information on Richard Smith's case, see Amnesty International document USA: Second thoughts – Former jurors rethink death decision as execution approaches, 26 March 2010, <http://www.amnesty.org/en/library/info/AMR51/025/2010/en>

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