

URGENT ACTION

MENTAL DISABILITY CLAIM AS EXECUTION NEARS

Lawyers for Robert Campbell, on death row in Texas for a crime committed when he was aged 18, have filed an appeal based on new evidence that he has an intellectual disability that would render his execution unconstitutional. The execution is still set for 13 May.

Alexandra Rendon went missing after leaving work at a bank in Houston on 3 January 1991. Her body was found 12 days later, with the cause of death found to be a gunshot wound to her back. Eighteen-year-old **Robert Campbell** was arrested the next day at his mother's house. He was convicted of capital murder and sentenced to death in May 1992.

On 5 May 2014, lawyers for Robert Campbell filed an appeal in state court. Based on an assessment conducted on 4 April, the appeal asserts that Robert Campbell has a degree of intellectual disability that would render his execution unlawful under the 2002 US Supreme Court ruling prohibiting the execution of people with "mental retardation". The Court did not define retardation (now usually known as "intellectual disability"), but pointed to definitions used by professional bodies under which it is a disability, manifested before the age of 18, characterized by significantly sub-average intellectual functioning (generally indicated by an IQ under 70), with limitations in two or more adaptive skill areas such as communication, self-care, work, and functioning in the community.

The assessment was conducted by a clinical neuropsychologist who was appointed by Governor Rick Perry in 2009 to serve a six-year term as one of nine members of the Texas State Board of Examiners of Psychologists. She assessed Robert Campbell's IQ at 69 and diagnosed him as having "mild mental retardation", and noted that this was consistent with testing undertaken when he was under 18. The fact that Robert Campbell has been in prison since age 18, she noted, presents special challenges in showing that he lacks the adult adaptive skills typical of the normal population. But what is known about Robert Campbell's youth – his "academic failures, poor test performances, inability to live independently, inability to obtain gainful employment, and inability to stay out of trouble" – supports her diagnosis.

The current lawyers are also raising serious questions about the adequacy of the legal representation Robert Campbell received from the state-appointed lawyers who represented him at trial and for his initial state appeal.

Please write immediately in English or your own language (please cite inmate number 999-032):

- Calling for clemency for Robert Campbell and for his death sentence to be commuted;
- Noting new evidence that he has intellectual disability (formerly known as "mental retardation");
- Noting he was 18 at the time of the crime, emerging from a childhood of severe deprivation and abuse;
- Expressing your understanding of the seriousness of the crime and its consequences.

PLEASE SEND APPEALS BEFORE 13 MAY 2014 TO:

Clemency Section, Board of Pardons
and Paroles

8610 Shoal Creek Blvd.
Austin, Texas 78757-6814, USA
Fax: +1 512 467 0945
Email: bpp-pio@tdcj.state.tx.us

Salutation: Dear Board members

Governor Rick Perry

Office of the Governor
PO Box 12428
Austin, Texas 78711, USA
Fax: +1 512 463 1849

Salutation: Dear Governor

And copies to:

Governor's Press office
Fax: +1 512 463 1847

Office of the General Counsel
Fax: +1 512 463 1932

Also send copies to diplomatic representatives accredited to your country. Please insert local diplomatic addresses below:

Name Address 1 Address 2 Address 3 Fax Fax number Email Email address Salutation Salutation

Please check with your section office if sending appeals after the above date. This is the first update of UA 90/14. Further information:

<http://www.amnesty.org/en/library/info/AMR51/025/2014/en>

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ADDITIONAL INFORMATION

In 2005, when it outlawed the execution of those who were under 18 at the time of the crime, the US Supreme Court noted that “the qualities that distinguish juveniles from adults do not disappear when an individual turns 18”. Scientific research has continued to show that development of the brain and psychological and emotional maturation continues well beyond the late teenage years.

Robert Campbell left home when he was 13 years old to escape the physical and emotional abuse he experienced, principally at the hands of his father. He lived on the streets until he was taken in by a woman at about the age of 16. In a sworn statement in 2000, the woman said “Robert finally left [his family] house for good because he saw his dad hit his mother in the face with a phone and knocked all her teeth out”. She recalled that “the entire time Robert lived with me, he was very disturbed”, and that “Robert could have been a good kid if his family was good. I think Robert doesn’t know right from wrong because he was never taught. Robert basically raised himself. He learned everything he knew on the streets”.

The jury convicted Robert Campbell of the murder of Alexandra Rendon in the course of a kidnapping or aggravated sexual assault. The jury heard some information about his background, but less than was available from a variety of witnesses. The question as to whether Robert Campbell’s trial lawyer did enough to investigate and present a mitigation case has never been fully answered on appeal because of the actions of the initial appeal lawyer. In his state habeas corpus proceeding – which is the first opportunity for the condemned prisoner to present new evidence outside of the bare trial record in support of claims that he or she was denied their constitutional rights – Robert Campbell’s appeal lawyer alleged that the trial attorneys had failed to conduct a proper investigation into his background, but then himself failed to demonstrate what such an investigation would have revealed. This effectively forfeited the claim of ineffective assistance of trial counsel.

On federal appeal, the next lawyer presented a number of affidavits signed by relatives and family friends in 2000 attesting to Robert Campbell’s childhood of deprivation and abuse. One of these statements, for example, recalled that Robert Campbell’s father “was always drunk and would beat up on their mom when he came home...also used to beat on the kids something terrible...He used to hit them on the head or wherever he felt like it. He would throw bricks, irons, and boards at them as well...Those kids had a terrible life...To this day Richard [Robert’s brother] still cries about what his dad did, and tells me ‘you just don’t know, it’s really bad.’ Whatever he did to them made them all turn to alcohol and drugs”. Robert Campbell’s older brother Wilbert recalled that “when dad was home, it was a nightmare. He was always yelling or hitting someone. As we got older dad started whipping us”. Their mother recalled how “a couple of times [her husband] cut me so bad I had to go [to] the hospital for stitches in my face and once in [the] back of my head. The kids wanted to break up the fights, but I would not let them because they would get hurt. This type of stuff went on for years...If the kids did not do exactly what he wanted, when he wanted, they were beaten bad”. Robert’s older sister recalls her father beating her with an “air-conditioning cord. I had whelps [sic] all over”. She said that “when Robert was little, he used to pretend he was leaving for school but he didn’t go. He would go hang out with kids from the apartment projects where we lived. Neither mom nor dad did anything to make sure Robert went to school”.

In 2003, the federal District Court ruled that because “the affidavits and their underlying allegations have not been exhausted in state court”, and because there was no excuse for the failure to present the affidavits in state court, consideration of their contents by federal court was procedurally barred. The US Court of Appeals for the Fifth Circuit upheld this in December 2004. The failure of Robert Campbell’s court-appointed state habeas lawyer to raise in state court the claim of inadequate legal representation at trial meant that it was “procedurally defaulted”, that is, barred from federal judicial review.

See also USA: *‘He could have been a good kid’*, 1 May 2014, <http://www.amnesty.org/en/library/info/AMR51/027/2014/en>

Name: Robert Campbell
Gender m/f: m

Further information on UA: 90/14 Index: AMR 51/029/2014 Issue Date: 6 May 2014