

PUBLIC

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Further information on UA 250/08 (AMR 51/099/2008, 09 September 2008) – Death penalty / Legal concern

USA (Georgia) Troy Anthony Davis (m), black, aged 40

On 12 September, the Georgia Board of Pardons and Paroles voted to deny clemency to Troy Davis. He remains scheduled to be executed at 7pm local time on 23 September. He has been on death row for 17 years for a murder he maintains he did not commit.

Troy Davis was convicted in 1991 of the murder of 27-year-old Officer Mark Allen MacPhail who was shot and killed in the car park of a Burger King restaurant in Savannah, Georgia, in the early hours of 19 August 1989. Davis was also convicted of assaulting Larry Young, a homeless man, who was accosted immediately before Officer MacPhail was shot. At the trial, Troy Davis admitted that he had been at the scene of the shooting, but claimed that he had neither assaulted Larry Young nor shot Officer MacPhail. There was no physical evidence against Troy Davis and the weapon used in the crime was never found. The case against him consisted entirely of witness testimony. In affidavits signed over the years since the trial, a majority of the state's witnesses have recanted or contradicted their testimony. In addition, there is post-trial testimony implicating another man, Sylvester Coles, as the gunman.

In March 2008, the Chief Justice of the Georgia Supreme Court, joined by two other Justices on the Court, wrote that "In this case, nearly every witness who identified Davis as the shooter at trial has now disclaimed his or her ability to do so reliably. Three persons have stated that Sylvester Coles confessed to being the shooter. Two witnesses have stated that Sylvester Coles, contrary to his trial testimony, possessed a handgun immediately after the murder. Another witness has provided a description of the crimes that might indicate that Sylvester Coles was the shooter." The Chief Justice wrote that "the collective effect of all of Davis's new testimony, if it were to be found credible by the trial court in a hearing, would show the probability that a new jury would find reasonable doubt of Davis's guilt or a least sufficient residual doubt to decline to impose the death penalty".

In considering the case, the members of the Board of Pardons and Paroles met on 12 September with the lawyer and relatives of Troy Davis, relatives of Mark MacPhail, and prosecutors from the District Attorney's office which prosecuted Davis. The Board gave no explanation for or elaboration of its decision to deny clemency.

When it had stayed the execution on 16 July 2007, the Board stated that "the members of the Georgia Board of Pardons and Paroles will not allow an execution to proceed unless and until its members are convinced that there is no doubt as to the guilt of the accused" (see update to UA 170/07, 17 July 2007, <http://www.amnesty.org/en/library/info/AMR51/121/2007/en>). This would suggest that at least a majority of its members have now been persuaded of Troy Davis's guilt. Amnesty International believes that in the interests of transparency and public confidence in the justice system, the Board should reveal how it came to its conclusion.

Prior to the decision, the chairman of the State Bar of Georgia's indigent defence committee was quoted as saying that "It is important to the public's confidence in Georgia's criminal justice system that no person's life is taken by the state except in circumstances where their constitutional rights to a fair trial have been fully respected. With so many witnesses recanting their testimony, there just seems to be too many doubts to move forward with this execution."

After the Board's decision, Troy Davis's lawyer said that an emergency motion for a stay of execution would be filed with the US Supreme Court. He said that "the hardest thing I've ever had to do was to tell Troy we're denied" by the Board. The head of the Georgia-based Southern Center for Human Rights, Stephen B. Bright, a law professor at Yale University, called the Board's decision "shocking". He said that "For somebody to be executed, we really should be sure beyond doubt that the person is guilty." International standards prohibit the execution of anyone whose guilt is in doubt.

Amnesty International opposes Troy Davis's execution unconditionally, regardless of questions of guilt or innocence, as it does all use of the death penalty.

Since the USA resumed executions in 1977, 1,118 prisoners have been put to death, 42 of them in Georgia. More than 100 people have been released from death rows around the country on grounds of innocence, many of them in cases in which witness testimony has been shown to have been unreliable.

For a full report on this case, see *USA: 'Where is the justice for me?' The case of Troy Davis, facing execution in Georgia*, February 2007, <http://www.amnesty.org/en/library/info/AMR51/023/2007>.

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

- explaining that you are not seeking to condone the murder of Officer Mark Allen MacPhail, or to downplay the seriousness of the crime or the suffering caused;
- expressing deep concern that the Board has voted to deny clemency to Troy Davis, despite the fact that most of the witnesses upon whom the state relied to convict Davis have since recanted or changed their testimony;
- noting the Board's statement last year in issuing a stay of execution that the Board "will not allow an execution to proceed unless and until its members are convinced that there is no doubt as to the guilt of the accused";
- asking the Board for clarification on the reasons for its decision to deny clemency, and how it has dispelled all doubts about Davis's guilt;
- expressing concern that the post-conviction evidence throwing doubt on Troy Davis's guilt has never been examined in court;
- noting that three members of the Georgia Supreme Court, including the Chief Justice, wrote in March 2008 of their doubts about Davis's guilt and dissented against their colleague's decision to deny Davis a hearing to examine the post-conviction evidence;
- noting the large number of wrongful convictions in capital cases in the USA since 1976, and noting that unreliability of witness testimony has been a contributing factor in many of these cases;
- urging the Board to reconsider its decision to deny clemency and calling on it to stop this execution.

APPEALS TO:

State Board of Pardons and Paroles, 2 Martin Luther King, Jr. Drive, SE, Suite 458, Balcony Level, East Tower, Atlanta, Georgia 30334-4909, USA

Fax: +1 404 651 8502

Email: Webmaster@pap.state.ga.us or Clemency Information@pap.state.ga.us.

Salutation: Dear Board members

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

PLEASE SEND APPEALS IMMEDIATELY.