

PUBLIC

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UA 225/07 Death penalty / Legal concern

USA (Alabama) Thomas Douglas Arthur (m), white, aged 65

Thomas Arthur is scheduled to be executed in Alabama on 27 September. He was sentenced to death for the murder of Troy Wicker in 1982. He has been on death row for much of the past quarter of a century. He maintains his innocence and is seeking modern DNA testing of evidence relating to the crime.

On the morning of 1 February 1982, police were called to the home in north-western Alabama of Judy and Troy Wicker. Troy Wicker, a 35-year-old white man, was in bed having been killed by a single shot through his right eye. There were four .22 bullet casings found at the scene. Judy Wicker was lying on the floor by the bed with injuries and traces of blood on her, and her sister Teresa Rowland was kneeling beside her. Judy Wicker told police that she had come home to find an African American man in the house, that he had raped her, knocked her unconscious, and shot her husband. The murder weapon was never found.

Judy Wicker was charged with the murder of her husband to collect insurance. At her trial in 1982, she pleaded not guilty, but was convicted and sentenced to life imprisonment. Thomas Arthur was charged with shooting Troy Wicker and was also tried in 1982. He was sentenced to death, but his conviction was overturned in 1985 due to improper admission of evidence. He was sentenced to death at a retrial in 1987. In 1990 his conviction was again overturned because of improper admission of evidence.

The prosecutor approached the state parole board to inquire about the possibility of Judy Wicker obtaining early release in exchange for her testimony against Thomas Arthur at his retrial. At this meeting with the parole board, Judy Wicker was represented by a lawyer retained by her family. This same lawyer was subsequently hired as a prosecutor and represented the state at Thomas Arthur's third trial which began in December 1991. At this trial, the state's main witness was Judy Wicker, the prosecutor's former client whose testimony the prosecution had sought in return for assistance with her parole bid. Judy Wicker was paroled about a year after Arthur's trial after serving 10 years in prison.

At her own trial, Judy Wicker had testified that Thomas Arthur was not involved in the murder, but that a stranger had killed her husband, as she had told the police. At Arthur's 1991 retrial, she testified that she, Teresa Rowland and Rowland's boyfriend Theron McKinney had discussed killing Troy Wicker in early 1981. Judy Wicker stated that her husband was violent towards her, and that her sister and Troy Wicker would frequently argue when he threatened to turn her into the police for arson. Teresa Rowland had apparently previously employed Troy Wicker to burn her house down for an insurance claim, but she was then unable to pay him the promised fee. Judy Wicker recalled that Thomas Arthur had telephoned her in November 1981 saying that he had been "hired to do the job... [to] kill [her] husband". She said that she and Arthur began a sexual relationship. She testified that she knew that the murder would take place on 1 February 1982, that she and Thomas Arthur had gone to the house together, and that she had agreed to tell the police that her husband had been murdered by an African American burglar. She said that she collected \$90,000 in insurance proceeds, and that she paid \$10,000 to Arthur, \$6,000 to Rowland, and gave a car and jewellery to McKinney for their assistance in the murder. Teresa Rowland and Theron McKinney were apparently not investigated for their alleged role in the crime. Neither of them was prosecuted.

Thomas Arthur was concerned about the adequacy of his state-appointed lawyers' preparation for his 1991 trial and their lack of communication with him. The trial judge allowed him to represent himself, without conducting any hearing into whether he was knowingly and voluntarily waiving his right to counsel. Thomas Arthur was convicted on 5 December 1991 after a three-day trial. At the sentencing on the same day, Thomas Arthur urged the jurors to pass a death sentence, stating that he would not be executed because his

conviction would be overturned on appeal, telling the jury that he had already twice been sentenced to death in the case. After a sentencing phase that lasted for about 90 minutes, the jury voted by 11-1 to recommend a death sentence. On 24 January 1992, the judge formally sentenced Thomas Arthur to death.

Thomas Arthur maintains his innocence of the murder. No physical evidence links him to the crime. Hair samples and fingerprints from the crime scene were tested, but did not match Thomas Arthur's. He was convicted on disputed circumstantial evidence and the testimony of Judy Wicker, who had committed perjury either at her trial or Arthur's retrial. The prosecution linked Arthur to the crime through testimony alleging that he had got someone to buy .22 bullets the day before the crime. Another witness testified that he had dropped a black rubbish bag into the river on the day of the murder. A large amount of money was found in his personal belongings some time after the murder.

On appeal in 2002, two affidavits were filed which contradict Judy Wicker's testimony that Thomas Arthur was with her on the morning of the murder. The affidavits, signed by Alphonso High and Ray Melson, stated that he had visited them on that morning. The state has not disputed that these affidavits, if true, establish that Thomas Arthur was about an hour's drive away from the Wickers' home at the time of the murder. However, the state obtained its own affidavits from High and Melson contradicting their original statements. Thomas Arthur's lawyers raised critical questions about the circumstances under which these witnesses retreated from their original testimonies and requested a hearing to resolve the factual disputes; their request was denied. In 2006, the US Court of Appeals for the 11th Circuit ruled that the disputed affidavits were not sufficient to meet the threshold for a federal hearing on new evidence of innocence under US law.

In support of his argument that he should be allowed back into court for a hearing on his innocence claim, Thomas Arthur is seeking to have modern DNA testing conducted on various pieces of evidence related to the crime, including Judy Wicker's bloodstained clothing, the rape evidence, and hair samples. Such testing, it is argued, could establish that someone other than him was at the crime scene, thereby discrediting Judy Wicker's trial testimony against Arthur. To date, the state has resisted such testing.

Amnesty International opposes the death penalty in all cases, regardless of the crime or the guilt or innocence of the condemned prisoner. Today, 129 countries are abolitionist in law or practice. In contrast, the USA has carried out 1,095 executions since judicial killing resumed there in 1977. Alabama accounts for 38 of these executions. More than 100 wrongful convictions in capital cases in the USA have been uncovered since 1977. DNA testing has played a substantial role in more than a dozen cases.

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 manner of Troy Wicker's death;
- noting that Thomas Arthur was convicted on the basis of circumstantial evidence and the testimony of Judy Wicker, who has committed perjury and was providing testimony in return for assistance with her parole bid;
- expressing concern that Thomas Arthur has not had a judicial hearing on evidence of his innocence, and that the State of Alabama is resisting modern DNA testing of evidence from the crime;
- calling on the state to allow such testing to take place, noting the number of errors that have been uncovered in capital cases throughout the USA, including as a result of DNA testing;
- opposing the execution of Thomas Arthur, and noting that in comparison to his death sentence Judy Wicker served 10 years in prison having been convicted of the murder, and that two other people implicated in the murder were apparently not even investigated.

APPEALS TO:

Governor Bob Riley, State Capitol, 600 Dexter Avenue, Montgomery, AL 36130, USA

Fax: +1 334 353 0004

Email, via Governor's website at:

http://www.alabamainteractive.org/alabamainteractive_shell/Welcome.do?url=http://governor.alabama.gov

Salutation: Dear Governor

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

PLEASE SEND APPEALS IMMEDIATELY.