

PUBLIC

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UA 01/07 **Death penalty/Legal concern**

USA (Texas) **Ronald Curtis Chambers (m), black, aged 51**

Ronald Chambers is scheduled to be executed in Texas on 25 January for a murder committed during a robbery in 1975. He has been in custody for the past 31 years, almost all of it on death row.

Two college students, Mike McMahan and Deia Sutton, both white, were robbed and shot in Dallas on 11 April 1975. Mike McMahan died, while Deia Sutton survived. Ronald Chambers and Clarence Williams were arrested within a few days and charged with the crime. Clarence Williams reached a plea arrangement under which he received two life sentences. He is still in custody. Ronald Chambers was sentenced to death in 1976 for the murder of Mike McMahan. This was overturned in 1984 because Chambers had been interviewed by the state's psychologist without being informed that what he said could be used to support a death sentence. He was condemned to death at a second trial in 1985. This was reversed in 1986 due to discriminatory jury selection by the state. He was tried for a third time in 1992 and again sentenced to death.

In Texas, a jury has to determine a number of "special issues", including whether the defendant will pose a future danger to society if allowed to live, even in prison (the "future dangerousness" question). By the time of this third trial, Ronald Chambers had been in prison for 17 years. While he had some minor disciplinary infractions on his record, there was no evidence that he had committed violent acts in prison. At the time of the crime 17 years earlier, Ronald Chambers was 20 years old, without a history of violence. His lawyers presented mitigating evidence of his difficult childhood growing up in the rough neighbourhood of West Dallas where crime and drugs were rife. They presented evidence of his good character, his remorse about the crime, and of his continuing positive relationships with family members including his daughter.

The jurors never learned that his co-defendant would serve a life sentence. The defence tried to introduce evidence of Clarence Williams's prior convictions for violent offences, the claim that he had been the driving force in this crime, and that it would be unfair to execute Chambers if Williams was allowed to live. However, the judge ruled that the defence could only admit the fact of Williams's conviction and life sentence in the McMahan case, and no further detail. They decided not to do so on the grounds that without the extra background, the bare fact that Williams was serving a life sentence could act as an aggravating factor against Chambers by, they argued, presenting a misleading picture of the two men's relative culpability.

Even without this evidence, two jurors at Chambers's sentencing, including the jury foreperson, initially supported a "no" to the future dangerousness question while 10 voted "yes". The jury twice sent a note to the judge that they were deadlocked. Each time, the judge ordered them to continue deliberating. Five and a half hours after they began, they reached a verdict, having unanimously answered "yes" to the dangerousness question. The foreperson was reportedly crying as she handed the verdict to the court.

Chambers's appeal lawyers have presented evidence that the jurors wrongly assumed they had to be unanimous on the dangerousness question whereas, in fact, if they had been unable to reach unanimity, a life sentence would have been the result. The jury had been given the temporary instructions formulated after the US Supreme Court had found the previous ones unconstitutional on the grounds that they did not allow jurors to give mitigating effect to certain evidence. Over the years, the Supreme Court has made a number of rulings concerning Texas capital jury instructions, and is due to hear oral arguments this month in three cases involving the instructions used around the time of Ronald Chambers's third trial. His appeal lawyers have argued that if the jurors had been given the instructions now in use in Texas, the jurors' confusion would have been avoided and they would have been able to give full consideration and full mitigating effect to all of the defence's evidence. In addition, they have argued that if the jurors had known of his co-defendant's life sentence, a vote for a life sentence for Chambers also would have been more likely.

Chambers's appeal lawyers have also argued that the length of time he has spent on death row – the result of constitutional violations by the state that led to the need for retrials – amounts to “cruel and unusual” punishment prohibited by the US Constitution. The Supreme Court has not ruled on this issue directly, but individual Justices have raised their concerns. For example, in an opinion in November 2006 involving a California case that was 25 years old, four Justices wrote that “the incremental value to California of carrying out a death sentence at this late date is far outweighed by the interest in maintaining confidence in the fairness of any proceeding that results in a State’s decision to take the life of one of its citizens.”

In 1995, Justice Stevens wrote that executing a prisoner who had been on death row for 17 years – over a decade less than Ronald Chambers has suffered – arguably negated any deterrent or retributive justification for the punishment, supposedly the two main social purposes of the death penalty. If these goals no longer existed, he suggested, the outcome would be “patently excessive and cruel”. He noted that over a century earlier, the Supreme Court had recognized that “when a prisoner sentenced by a court to death is confined in the penitentiary awaiting the execution of the sentence, one of the most horrible feelings to which he can be subjected during that time is the uncertainty during the whole of it”. One other inmate now on Texas death row was first sentenced in 1976 (the month after Chambers). He has been found to have gone insane and for more than a decade has been considered incompetent for execution under the US Constitution.

In 1999, Justice Breyer expressed his concern (in the case of one inmate in Florida and another in Nebraska who had been on death row for 24 and 19 years respectively) at the “astonishingly long delays flowing in significant part from constitutionally defective death penalty procedures”. He suggested that “where a delay, measured in decades, reflects the State’s own failure to comply with the Constitution’s demands, the claim that time has rendered the execution inhuman is a particularly strong one.” In 2002, in the case of a Florida inmate on death row for about 27 years, Justice Breyer wrote of this “extraordinarily long confinement under sentence of death, a confinement that extends from late youth to later middle age.” If executed, Justice Breyer stated, the prisoner would have been “punished both by death and also by more than a generation spent in death row’s twilight. It is fairly asked whether such punishment is both unusual and cruel.”

When Ronald Chambers was first sentenced, no one had been executed in the USA for almost a decade. Since then, more than 1,057 men and women have been put to death in the USA, 379 of them in Texas.

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 excuse the murder of Mike McMahan and the attempted murder of Deia Sutton or to downplay the suffering caused, but that you oppose the execution of Ronald Chambers;
- noting that Ronald Chambers has been on death row for three decades, and that US Supreme Court Justices have repeatedly raised concerns that such use of the death penalty may amount to excessive and cruel punishment in violation of the US Constitution;
- expressing concern at the apparent confusion among the jurors who sentenced him to death, and at continuing questions about whether they were able to give full effect to the mitigating evidence presented on his behalf, and noting that the jury never knew that his co-defendant had received a life sentence;
- calling on the Board of Pardons and Paroles to recommend that the Governor grant clemency;
- calling on the Governor to stop this execution and to do all in his power to ensure clemency.

APPEALS TO:

Rissie Owens, Presiding Officer, Texas Board of Pardons and Paroles
PO Box 13401, Austin, Texas 78711-3401, USA

Fax: +1 512 463 8120

Salutation: Dear Ms Owens

Governor Rick Perry, Office of the Governor, P.O. Box 12428, Austin, Texas 78711-2428, USA

Fax: +1 512 463 1849

Salutation: Dear Governor

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

PLEASE SEND APPEALS IMMEDIATELY.