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Choosing death again: Texas governor rejects clemency recommendation

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Texas carried out its 23rd execution of the year last night – out of a national total of 48 – after Governor Rick Perry rejected a rare recommendation from the state clemency board for the prisoner's life to be spared.

Robert Lee Thompson, a 34-year-old African American man, was put to death on the evening of 19 November 2009 for the murder of a store worker 13 years earlier. The Texas Board of Pardons and Paroles voted on 18 November that Thompson's death sentence should be commuted to life imprisonment. The person who actually shot the victim is serving a life sentence.

Robert Thompson and Sammy Butler robbed a convenience store in Houston in December 1996. According to the state's evidence, during the robbery Robert Thompson shot Mubarakali Meredia, who survived. Sammy Butler shot his cousin, Mansoor Bhai Rahim Mohammed, who died.

Thompson and Butler were charged with capital murder and tried separately. Sammy Butler was sentenced to life imprisonment while Robert Thompson was sentenced to death.

At Robert Thompson's trial, the jury instructions allowed the jurors to convict him of capital murder under one of three theories, including under the "law of parties", the 1974 Texas law under which the distinction between principal actor and accomplice in a crime is abolished and each may be held equally culpable. The three theories were (1) Thompson intentionally killed the victim during a robbery; (2) Thompson "solicited, encouraged, directed, aided, or attempted to aid Sammy Butler in shooting" the victim; and (3) Thompson was liable under a conspiracy theory because he entered into an agreement with Sammy Butler to commit the felony offence of robbery and while in the course of that conspiracy, Sammy Butler had caused the death of the victim, a crime that that "should have been anticipated by Thompson".

The jury convicted Robert Thompson of capital murder, but the verdict form did not specify under which theory it had reached this decision. However, the prosecution had not presented evidence showing that Thompson had fired the fatal shot and its closing argument did not rest on that theory. Upholding the death sentence in 2007, a federal judge noted that "it is not probable that the jury found Thompson to be the shooter".

Governor Perry rejected the parole board's recommendation for clemency, stating that "I have decided to uphold the jury's capital murder conviction and capital punishment for this heinous crime. There is no reason to set aside the capital murder conviction handed down by a Texas jury and upheld by numerous state and federal courts."

This is the second time that Governor Perry has rejected a clemency recommendation from the Board. In 2004, Governor Perry rejected a recommendation to commute the death sentence of Kelsey Patterson, who suffered from serious mental illness. Patterson was executed a few hours later.

In 2007, Governor Perry accepted a recommendation from the Board and commuted the death sentence of Kenneth Foster, who had been convicted under the “law of parties”. Governor Perry said that he was concerned about the Texas law allowing capital murder defendants to be tried simultaneously, as had occurred in Foster’s case.

Robert Thompson becomes the 207th person to be killed in the Texas execution chamber since Governor Perry took over the governorship from Governor George W. Bush in December 2000. Texas now accounts for nearly 40 per cent of the 1,184 executions carried out in the USA since it resumed judicial killing in 1977. The 446 executions in Texas amount to more than four times the judicial death toll in the next most prolific executing state, Virginia. Texas has killed twice as many people in its execution chamber in the past nine years as Virginia has in the past three decades.

Amnesty International will continue to work against the death penalty in Texas and elsewhere in the USA. The organization unconditionally opposes the death penalty, a cruel, inhuman and degrading punishment that is incompatible with human dignity. To end the death penalty is to abandon a destructive, diversionary and divisive public policy that is not consistent with widely held values. It not only runs the risk of irrevocable error, it is also costly, to the public purse as well as in social and psychological terms. It has not been proven to have a special deterrent effect. It tends to be applied in a discriminatory way, on grounds of race and class. It denies the possibility of reconciliation and rehabilitation. It promotes simplistic responses to complex human problems, rather than pursuing explanations that could inform positive strategies. It prolongs the suffering of murder victims’ families, and extends that suffering to the loved ones of the condemned prisoner. It diverts resources that could be better used to work against violent crime and assist those affected by it.

See also ‘USA: Too much cruelty, too little clemency. Texas nears 200th execution under current governor’, 30 April 2009, available at <http://www.amnesty.org/en/library/info/AMR51/057/2009/en>.

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