

PUBLIC

AI Index: AMR 51/139/2007

31 August 2007

Further information on UA 205/07 (AMR 51/131/2007, 8 August 2007) – Death penalty / Legal concern

USA (Texas) Kenneth Eugene Foster (m), black, aged 30

Kenneth Foster had his death sentence commuted to life imprisonment by Texas Governor Rick Perry on 30 August, a few hours before he was due to be executed. He had been sentenced to death in 1997 for the 1996 murder of Michael LaHood.

Mauriceo Brown, the man who shot LaHood, was executed in 2006. Kenneth Foster, in a car some 30 metres from the crime when it was committed, was convicted under Texas's 1974 "law of parties", under which the distinction between principal actor and accomplice in a crime is abolished and each may be held equally culpable. Kenneth Foster maintains that he did not know that Brown would either rob or kill Michael LaHood. There is evidence not heard at trial that the murder was an unplanned act committed by Mauriceo Brown, as the latter himself claimed.

Among the thousands of people who appealed for clemency for Kenneth Foster was former US President Jimmy Carter. Archbishop Desmond Tutu signed an *amicus curiae* (friend of the court) brief filed in the US Supreme Court supporting Kenneth Foster's final appeal. The newspaper serving the capital of Texas, Austin, the *Austin American-Statesman*, was among those opposing Foster's execution. In an editorial on 29 August, it called on Governor Perry to "spare a life, uphold justice and bring a semblance of honor to Texas" by commuting Kenneth Foster's death sentence. "It's the only thing to do. If the governor or parole board allows this execution, Texas will be further stained by injustice."

On the morning of 30 August, the Texas Board of Pardons and Paroles announced that it had voted 6-1 to recommend to Governor Perry that he commute Kenneth Foster's death sentence. Shortly afterwards, Governor Perry announced that he had accepted the recommendation. In his statement, he said: "After carefully considering the facts of this case, along with the recommendations from the Board of Pardons and Paroles, I believe the right and just decision is to commute Foster's sentence from the death penalty to life imprisonment. I am concerned about Texas law that allows capital murder defendants to be tried simultaneously, and it is an issue I think the legislature should examine."

Mauriceo Brown and Kenneth Foster were tried jointly for the murder of Michael LaHood.

Since the USA resumed executions in 1977, 1,095 prisoners have been put to death, 402 of them in Texas. There have been 38 executions in the USA so far this year, 23 of them in Texas.

Although Governor Perry has commuted the death sentences of a number of Texas prisoners who have been found to fall under the US Supreme Court rulings prohibiting the execution of child offenders and people with mental retardation, this is the first time he has commuted the death sentence of a prisoner facing imminent execution. In 2004, he rejected a recommendation from the Board of Pardons and Paroles to commute the death sentence of Kelsey Patterson, who suffered from serious mental illness, and Patterson was executed a few hours later. There have been 163 executions in Texas during Governor Perry's term in office.

Amnesty International welcomes the commutation of Kenneth Foster's death sentence and will continue to urge an end to all executions in Texas and elsewhere in the USA.

No further action is requested from the UA network. Many thanks to all who sent appeals.