

PUBLIC

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Further information on UA 311/06 (AMR 51/176/2006, 22 November 2006) – Death penalty / Legal concern

USA (Virginia) Percy Levar Walton (m), black, aged 28

Governor Timothy Kaine of Virginia has stayed Levar Walton's execution for 18 months because of the prisoner's severe mental illness.

Levar Walton was scheduled for execution on 8 December 2006. He was sentenced to death in 1997 for the murders of an elderly white couple, Elizabeth and Jesse Hendrick, aged 81 and 80 respectively, and a 33-year-old black man, Archie Moore, in the town of Danville in November 1996.

On 8 June 2006, Governor Kaine had issued a stay of execution for Levar Walton about an hour before he was due to be put to death (see UA 139/06, AMR 51/078/2006, 18 May 2006 and follow-up, AMR 51/089/2006, 9 June 2006). The six-month reprieve was for the purpose of obtaining an evaluation of Levar Walton's mental competency.

On 4 December, Governor Kaine issued the following statement:

"On June 8, 2006, I delayed for six months the scheduled execution of Percy Levar Walton. I did so because of significant questions about Walton's mental competence. The question of Walton's mental status is of the utmost importance because the US Supreme Court has held that it is unconstitutional to execute a person who is mentally incompetent. The late US Supreme Court Justice Lewis F. Powell, Jr. wrote in the seminal case of Ford v. Wainwright (1986), that the Eighth Amendment of the US Constitution 'forbids the execution of those who are unaware of the punishment they are about to suffer and why they are to suffer it.' He further concluded that the execution of a mentally incompetent inmate would be a 'uniquely cruel penalty' where the inmate could not comprehend that they are about to die and could not 'prepare, mentally and spiritually' for the execution.

These principles have guided my review of Walton's scheduled execution. There is no doubt that Walton committed horrific crimes against innocent victims in their own homes, and that the victims' families have suffered greatly. I have no reason to question the prosecutor's decision to seek the death penalty or the court's decision that death was an appropriate sentence. There is also no doubt that the courts have struggled with the question of whether Walton is competent to be executed. Most recently, the 4th Circuit Court of Appeals reviewed his mental status and, in a narrow 7-6 majority ruling, determined that Walton was competent to be executed. The ruling was limited, however, to psychiatric evaluations and other information pertaining to the period from 1997 and 2003.

Earlier this year, I was presented with evidence that Walton's mental state had deteriorated since 2003. Due to the concerns that courts had expressed about Walton's mental status and because there was more than a minimal chance that Walton no longer knew why he was to be executed, or that he was even aware of the final punishment he was about to receive, I determined that it was important to have current and independent information about Walton's mental condition in order to comply with the law forbidding execution of a mentally incompetent person.

Over the past six months, I have been provided with such current and independent information pertaining to Walton's mental state from a number of sources. The additional information has included a thorough review

of records maintained by the Department of Corrections, updated evaluations by psychiatrists, and information provided by persons who have interacted with Walton on a regular basis over a period of years.

After reviewing this information, I am compelled to conclude that Walton is severely mentally impaired and meets the Supreme Court's definition of mental incompetence. Because one cannot reasonably conclude that Walton is fully aware of the punishment he is about to suffer and why he is to suffer it, his execution cannot proceed at this time.

At the same time, it is within the realm of possibility – though unlikely – that Walton's mental impairment is not permanent. Accordingly, a commutation of his sentence is not appropriate at this time. Rather, continued observation of Walton's condition over a more extended period of time is the appropriate course of action.

Therefore, I delay Walton's execution date for 18 months, until June 10, 2008, to permit further observation of Walton's mental condition and competence. On or prior to that date, I will determine whether additional information warrants a different conclusion.

My thoughts and prayers today are with the families and friends of the victims."

No further action by the UA Network is requested. Many thanks to all who sent appeals.