

EXTRA 10/01

Death penalty / Legal concern

8 February 2001

USA (Oklahoma)Phillip DeWitt Smith, black, aged 38

Phillip Smith is scheduled to be executed in Oklahoma on 8 March 2001. He was sentenced to death in 1984 for the murder of Matthew Dean Taylor.

Matthew Taylor, white, was killed in his apartment during the early hours of 4 November 1983. He had been bludgeoned on the head with a blunt instrument. There were no eyewitnesses. No physical evidence linked Phillip Smith to the crime scene, and he maintained his innocence of the murder. He admitted to being at a party at Taylor's apartment on the evening of 3 November, and that Taylor gave him \$20 to go and buy some marijuana. The state alleged that Smith returned later in the night to rob Taylor.

The murder weapon was never found. The prosecution theorized that it was a hammer, and produced evidence that Smith had borrowed a hammer shortly before the murder. The jury was presented with graphic autopsy photographs. When the state Court of Criminal Appeals upheld Smith's conviction in 1987 one of the judges dissented. He said that Smith should receive a new trial because the photos had been "extremely inflammatory" and their probative value "substantially outweighed by the danger of unfair prejudice", particularly given that the evidence against Smith was "entirely circumstantial".

At his trial in 1984, the state produced two key witnesses against Phillip Smith, Billy Joe Dixon and Victor Hickman, whose testimonies have since been questioned.

Billy Joe Dixon, a jailhouse informant, testified that Smith had confessed the crime to him when they were in jail together. Dixon denied that he had any deal for leniency for the charges he was facing in return for his testimony. However, 10 days after Smith's trial, part of the charge against Dixon was dropped. He pleaded guilty to the remaining charge and was released on time served. Dixon later told defence investigators that Smith had never confessed to him, and that he had fabricated the evidence in exchange for leniency. However, at a post-conviction hearing, Dixon returned to his trial testimony. At the hearing, the prosecutor denied that he had made any deal with Dixon, but admitted that his office had a policy of encouraging "snitch" testimony through favourable treatment of jailhouse informants. Such testimony is notoriously unreliable and has contributed to at least one wrongful capital conviction in Oklahoma, that of Ronald Williamson who was released in 1999 after nine years on death row.

Victor Hickman testified that he had given Smith a ride to Taylor's apartment on the night of the murder. He said that he waited in the car, and that when Smith returned, he had a small blood stain on his shirt. However, in a 1999 affidavit, Victor Hickman recanted his testimony, saying he had initially told the prosecutor's investigator that he had not been to the apartment on the night in question, but fearful of facing charges himself he had eventually told the investigator "what he wanted to hear"; "The truth is, though, I never took Phillip over to the victim's apartment. I never saw a stain on Phillip's shirt... At the end of our conversation [the investigator] told me to keep my mouth shut - not to say anything to anyone else." Smith's trial lawyer has stated that he was never informed that Hickman had at first told the state's investigator a different version

of events, information which the defence could have used to undermine the credibility of the prosecution's most important witness.

An evidentiary hearing was held in 2000 into the new Hickman evidence. His testimony at the hearing was reported to be hesitant and apparently fearful, and marked by long pauses. Under defence questioning he affirmed that the affidavit was accurate to the best of his recollection. Under cross-examination by the state, his testimony was less beneficial to Smith, although he maintained that he did not recall taking Smith to Taylor's apartment, and said that he gave his trial testimony "out of being scared".

After the hearing, the judge ruled that Hickman had not recanted his trial testimony and that the prosecution had not withheld exculpatory information from the trial lawyer. On 8 January 2001, the Oklahoma Court of Criminal Appeals denied Smith's appeal against this decision.

After Smith's 1984 trial, the judge's report to the Court of Criminal Appeals, standard in capital cases, contained the response "no" to the question: "Although the evidence suffices to sustain the verdict, does it foreclose all doubt respecting the defendant's guilt?". However, the UN Safeguards Guaranteeing Protection of the Rights of Those Facing the Death Penalty state that: "Capital punishment may be imposed only when the guilt of the person charged is based upon clear and convincing evidence leaving no room for an alternative explanation of the facts." More than 90 people have been released from death row in the USA since 1973 after evidence of their actual innocence emerged. Many came close to execution.

Amnesty International opposes the death penalty in all cases, regardless of issues of guilt or innocence. Every death sentence is an affront to human dignity, every execution a symptom of a culture of violence rather than a solution to it. There have been 696 executions in the USA since it resumed executions in 1977, including eight already this year in Oklahoma.

RECOMMENDED ACTION: Please send faxes/express/airmail letters in English or your own language, IN YOUR OWN WORDS, using the following guide:

- expressing sympathy for the family and friends of Matthew Dean Taylor, and explain that you do not seek to condone the manner of his death;
- opposing the execution of Phillip DeWitt Smith;
- noting that Phillip Smith was convicted on circumstantial evidence and that the trial judge believed that there was residual doubt about Smith's guilt in the crime;
- expressing concern at the less-than-credible testimony of the state's key witness, Victor Hickman;
- noting that jailhouse informant testimony has regularly been shown to be unreliable, and expressing concern about the inconsistency of Billy Joe Dixon's testimony;
- calling for clemency for Phillip Smith.

APPEALS TO:

Pardon and Parole Board,
4040 North Lincoln, Suite 219, Oklahoma City, OK 73105, USA

Fax: + 1 405 427 6648

Salutation: Dear Board Members

Note: Appeals to the Board should arrive before 1 March, when Phillip Smith's clemency hearing will be held.

Governor Frank Keating, Capitol Building, Oklahoma City, OK 73105, USA

Fax: + 1 405 521 3353

E-mail: governor@gov.state.ok.us

Salutation: Dear Governor

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

You may also write brief letters of concern (not more than 250 words) to:
Letters to the Editor, *Tulsa World*, 318 Main Mall, Tulsa, OK 74103, USA.

Fax: + 1 918 581 8353

PLEASE SEND APPEALS IMMEDIATELY.