

URGENT ACTION

KENNETH MOSLEY FACING EXECUTION IN TEXAS

Kenneth Mosley, a 51-year-old African American man, is scheduled to be executed in Texas on 24 September. He has spent 12 years on death row for the murder of David Moore, a white police officer.

Kenneth Mosley entered a bank in Garland, Texas, on 15 February 1997, wearing bulky clothes that were inappropriate for the warm weather. His appearance raised a staff member's suspicion – she recognized him as the person who had robbed the bank the previous month – and the police were called. Officer David Moore arrived and confronted Mosley who was waiting in the queue. A struggle occurred, the two men crashed through a plate glass window, and Moore was shot and fatally wounded. Mosley was arrested at the scene with a note saying “This is a hold up, I have a gun, put money in bag”. At the trial, Kenneth Mosley said that he had gone to the bank to rob it to buy drugs. He testified that he had not intended to kill the officer, and there was varying witness testimony about the incident, including whether the shooting had appeared intentional. Kenneth Mosley was convicted of capital murder. At the sentencing phase of the trial, the defence presented only two witnesses. Mosley himself testified, and was removed from the courtroom after he swore in graphic terms at the jurors. He was sentenced to death.

Evidence not heard by the jury has been presented to the appeal courts describing Mosley's poverty-stricken and abusive upbringing in a family of poor farm-workers, his exposure to toxic pesticides as a child, his possible brain damage, his depression, and his use of cocaine to self-medicate. The appeal courts have upheld Kenneth Mosley's death sentence, rejecting the claim that he had received inadequate representation at trial. Kenneth Mosley's clemency petition asks the Board of Pardons and Paroles to recommend to Governor Rick Perry that he commute the death sentence to life imprisonment.

Texas continues to account for a large number of the USA's executions. Of the 1,173 people put to death nationwide since 1977 when executions resumed in the USA, 439 have been in Texas. There have been 37 executions in the USA so far this year, 16 of them in Texas. Texas has carried out 200 executions since Governor Rick Perry took office in December 2000 (see USA: Too much cruelty, too little clemency: Texas nears 200th execution under current governor, 30 April 2009, <http://www.amnesty.org/en/library/info/AMR51/057/2009/en>).

PLEASE WRITE IMMEDIATELY in English or your own language and cite Kenneth Mosley's prisoner number (#999243) in your appeals:

- √ Expressing concern that Kenneth Mosley's jury was not presented with a full picture of who they were sentencing, including of his background of poverty and abuse, his possible brain impairment, and his depression;
- √ urging the Board to recommend clemency to Kenneth Mosley;
- √ calling on Governor Perry to accept such a recommendation, or if such a recommendation is not forthcoming, to issue a stay of execution and a request to the Board to reconsider;
- √ explaining that you are not seeking to excuse violent crime or to downplay the suffering caused to its victims.

PLEASE SEND APPEALS BEFORE 24 SEPTEMBER 2009 TO:

Rissie L. Owens
 Presiding Officer, Board of Pardons and Paroles, Executive
 Clemency Section
 8610 Shoal Creek Boulevard, Austin, TX 78757, USA
Fax: + 1 512 467 0945
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

Also send copies to diplomatic representatives of the USA accredited to your country. Please check with your section office if sending appeals after the above date.

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ADDITIONAL INFORMATION

Kenneth Mosley's family lived on several farms in Arkansas between 1961 and 1971 (when he was aged three to 13) and the whole family had continued to work as labourers until 1979. In an affidavit presented to the appeal courts in Kenneth Mosley's case, one of his brothers recalled that the family was very poor. He also recalled the violence of their father towards their mother: "He would become angry over the least little thing and hit Mom with his hands, his fists, and kick her when she was on the floor". The children, the brother said, were all scared of their father: "When one of us kids did something wrong, our father would punish all of us. We each had to take a turn in getting beat. One time the violence got so bad that me and two of my brothers ran away from home. We did not get very far; the police found us the same night. When we were returned home, we were all whipped by our father."

The brother also recalled that the children would play around drums and barrels of pesticides on the farms and that the pesticide residue would remain on the cotton fields where they worked. Kenneth Mosley's mother and another older brother recalled that both their house and the crops would be sprayed from the air with pesticides.

A psychologist who examined Kenneth Mosley in 2000 concluded that he suffers from frontal lobe dysfunction. Another psychologist, who reviewed this finding, concluded that the evidence supported this assessment, and that such a brain impairment would help to explain Kenneth Mosley's poor impulse control, his problems with attention and concentration, and his difficulty in inhibiting inappropriate behaviour. In her affidavit, she asserted that it was "exceedingly difficult for Kenneth Mosley to conform his behaviour to societal standards, particularly in the midst of stressful situations". A third expert concluded that Kenneth Mosley has "generalized brain impairment, as well as damage to specific areas in both the right and left sides of his brain". She concluded that the "primary cause" of his "neuro-cognitive deficits" was "his lengthy and varied exposures to toxic chemicals at a vulnerable developmental stage". In her affidavit, she added that current research and science indicate that such exposure can cause "severe health problems, particularly in terms of neurological damage".

Evidence that Kenneth Mosley has long suffered from major depression, and that this had led him to self-medicate with cocaine, has also been presented on appeal. However, the appeal courts have rejected the claim that Mosley's trial lawyers had failed to adequately investigate and present mitigating evidence to challenge the state's pursuit of the death penalty at the sentencing phase of the trial. In a recent appeal brief to the US Supreme Court, his current lawyers wrote: "Mosley's numerous inpatient drug and alcohol treatments support that Mosley had debilitating addiction and depression issues. Had [trial] counsel followed the leads that these un-obtained medical records revealed, they would have learned that much of Mosley's conduct was motivated by his desire to self-medicate his severe depression. In addition, Mosley has brain impairment due to chemical exposure as a child. There was a plethora of mitigating evidence that was never uncovered and, thus, never evaluated for introduction at the penalty proceedings".

Amnesty International opposes the death penalty in all cases, unconditionally. 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 proved 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 the murder victim's family, 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. Today, some 139 countries are abolitionist in law or practice.

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