

PUBLIC

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Further information on UA 283/08 (AMR 51/116/2008, 16 October 2008) – Death penalty/Legal concern

USA (Georgia) Troy Anthony Davis (m), black, aged 40

On 24 October, the US Court of Appeals for the 11th Circuit granted Troy Davis a provisional stay of execution. He had been scheduled to be put to death on 27 October. He has been on death row for 17 years for a crime he maintains he did not commit.

Troy Davis had exhausted his ordinary appeals against his conviction and death sentence, and the Georgia Board of Pardons and Paroles had denied clemency. On 22 October, Davis's lawyers applied to the 11th Circuit Court for an emergency stay of execution and for permission to file a second habeas corpus petition, maintaining that his execution would be unconstitutional.

In its decision issued on 24 October, the three-judge panel of the 11th Circuit stated that "entry of a stay on a second . . . habeas petition is a drastic measure", but "upon our thorough review of the record, we conclude that Davis has met the burden for a provisional stay of execution." The court then ordered the parties to address the question of whether Troy Davis can satisfy "the stringent requirements" under federal law to get back into court for further appeals on his innocence claim.

Specifically, the 11th Circuit Court ordered the parties to address the two-pronged question under the federal statute of whether (a) the basis for Troy Davis's claim of innocence could not have been discovered (and therefore raised in the courts) earlier, and (b) whether Davis can show that, in the absence of constitutional error at the trial, the facts underlying his claim of innocence would mean that no reasonable juror would have found him guilty of the crime. In addition, the 11th Circuit ordered the parties to address the question of whether Davis can be executed if he can establish innocence under (b), but cannot satisfy his burden under (a), in other words that his claim could and should have been raised earlier.

Davis's lawyers have to file their written arguments within 15 days of the 11th Circuit's order. After receiving this brief, the government has 10 days to file its response.

Troy Davis was convicted in 1991 of the murder of 27-year-old Officer Mark Allen MacPhail who was shot and killed in the car park of a Burger King restaurant in Savannah, Georgia on 19 August 1989. Troy Davis was also convicted of assaulting Larry Young, a homeless man, who was accosted immediately before Officer MacPhail was shot. At the trial, Troy Davis admitted that he had been at the scene of the shooting, but claimed that he had neither assaulted Larry Young nor shot Officer MacPhail. There was no physical evidence identifying Troy Davis as the gunman and the weapon used in the crime was never found. The case against him consisted of witness testimony. In affidavits signed over the years since the trial, a majority of the state's witnesses have recanted or contradicted their testimony. In addition, there is post-trial testimony implicating another man as the gunman.

In March 2008, the Georgia Supreme Court denied Troy Davis a new trial or a court hearing in which post-conviction evidence could be presented. The Chief Justice of the state Supreme Court, joined by two other Justices, dissented from this decision, arguing that "In this case, nearly every witness who identified Davis as the shooter at trial has now disclaimed his or her ability to do so reliably. Three persons have stated that Sylvester Coles confessed to being the shooter. Two witnesses have stated that Sylvester Coles, contrary to his

trial testimony, possessed a handgun immediately after the murder. Another witness has provided a description of the crimes that might indicate that Sylvester Coles was the shooter.” The Chief Justice stated that “the collective effect of all of Davis’s new testimony, if it were to be found credible by the trial court in a hearing, would show the probability that a new jury would find reasonable doubt of Davis’s guilt or a least sufficient residual doubt to decline to impose the death penalty”.

Troy Davis was less than two hours from execution on 23 September 2008 when the US Supreme Court issued a stay of execution to give it time to decide whether to hear his appeal against the Georgia Supreme Court’s ruling. The stay of execution was dissolved on 14 October when the Court announced that it had decided not to take the case. The State of Georgia immediately moved to set a new execution date.

If the 11th Circuit Court of Appeals decides that Troy Davis has not met his burden under the federal statute to be able to pursue further appeals, the State of Georgia could again move to set another execution date.

More than 300,000 people in the USA and around the world have appealed for executive clemency for Troy Davis. Among them are former US President Jimmy Carter, Archbishop Desmond Tutu and Pope Benedict XVI; the European Union, the European Parliament, and the Secretary General of the Council of Europe; former FBI Director William Sessions, and former and current members of US Congress Bob Barr, Carol Moseley Braun and John Lewis.

On 23 October, the European Union (EU) issued a statement renewing its call for Troy Davis to be granted clemency, referring to the “serious risk of a miscarriage of justice, with irreparable consequences”. Its statement continued: “The EU would point out that Mr Troy Davis’ situation has aroused intense emotion and large-scale mobilisation of the press, public opinion, community groups and eminent figures in the United States and across the world. None of these calls for clemency, with which the European Union has associated itself on several occasions, has yet been heeded. The EU strongly urges the competent authorities to respond positively”.

International standards prohibit the execution of anyone whose guilt is in doubt. Amnesty International opposes Troy Davis’s execution unconditionally, regardless of questions of guilt or innocence, as it does all use of the death penalty.

Since the USA resumed executions in 1977, 1,127 prisoners have been put to death, 43 of them in Georgia. In the same period, more than 100 people have been released from death rows around the country on grounds of innocence, many of them in cases in which witness testimony has been shown to have been unreliable. Several prisoners have gone to their deaths despite doubts about their guilt.

In late 2007, the United Nations General Assembly adopted a landmark resolution calling for a global moratorium on executions. There have been 28 executions in the USA this year.

For a full report on Troy Davis’s case, see *USA: ‘Where is the justice for me?’ The case of Troy Davis, facing execution in Georgia*, February 2007, <http://www.amnesty.org/en/library/info/AMR51/023/2007>.

No further action is requested at present. Many thanks to all who sent appeals