

PUBLIC

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Further information on UA 14/07 (AMR 51/014/2007, 18 January 2007) – Death penalty / Legal concern

USA (North Carolina) Marcus Reymond Robinson (m), black, aged 33

On 25 January 2007 in Raleigh, North Carolina, Wake County Superior Court Judge Donald Stephens blocked the execution of Marcus Robinson, who was scheduled to be put to death at 2am local time on 26 January. He was sentenced to death in 1994 for a murder committed when he had just turned 18 years old.

Judge Stephens' order followed an appeal filed by lawyers for Marcus Robinson and fellow death row inmate James Thomas (see UA 18/07, 24 January, <http://web.amnesty.org/library/Index/ENGAMR510182007>). Their petition for injunctive relief cited a decision taken by the North Carolina Medical Board on 17 January 2007 prohibiting doctors from participating in executions in the state. Under the terms of the decision, medical professionals would not be disciplined for being present at an execution, but are prohibited from administering the lethal drugs or assisting with the execution. The lawyers argued that the absence of a physician monitoring and supervising the condemned prisoner's medical condition created the risk that the execution would cause pain and suffering that would violate the constitutional ban on cruel and unusual punishment.

Following a hearing, Judge Stephens noted that the state correctional authorities had not challenged the legal authority of the Medical Board to prohibit the participation of doctors in executions. He also noted that the authorities had chosen to comply with the Medical Board's decision so that physicians would no longer directly participate in executions. According to Judge Stephens' order, the correctional authorities have said that "although a physician will be present during an execution, that physician will not supervise or participate in the injection of any drugs or the monitoring of the prisoner's medical condition". The state further asserted that its current execution procedures could be lawfully carried out without the participation of a physician, but rather by using other trained personnel.

Judge Stephens noted that the state's current position differed from the position taken in previous executions, and that the change was "significant". However, he further noted that this change in execution protocol had only been approved by the Secretary of Corrections and the Warden of Central Prison (where death row is housed). The judge wrote: "The court is of the opinion that the Secretary of Corrections and the Warden may not significantly alter the existing protocol for the manner and method of executions, which protocol has previously received court approval as constitutional, without first submitting such substantial changes to the Governor and the Council of State for review and approval." Without such approval, Judge Stephens wrote, the execution would violate state law. (The Council of State is made up of elected members of the cabinet: the Lieutenant Governor, the Secretary of State Elaine Marshall, the Attorney General, the Commissioner of Agriculture, the Commissioner of Insurance, the Commissioner of Labor, the Superintendent of Public Instruction, the State Treasurer, and the State Auditor).

As a result of the order, Marcus Robinson's stay of execution is indefinite, and executions in North Carolina are effectively on hold. This follows the recent *de facto* moratoriums on executions in Florida and California while the authorities attempt to "fix" their lethal injection protocols (see *USA: New Year's resolution: End a cruel and outdated punishment*, December 2006, <http://web.amnesty.org/library/Index/ENGAMR512052006>). In six other states — Arkansas, Delaware, Maryland, Missouri, Ohio and South Dakota — almost all executions are being stayed by the courts in the face of lawsuits challenging lethal injection procedures. In Illinois and New Jersey there are formal moratoriums on executions. In New Jersey, a study commission set up by the state legislature has concluded that the death penalty should be abolished (see *New Jersey Death Penalty Study Commission recommends abolition*, 3 January 2007,

<http://web.amnesty.org/library/Index/ENGAMR510032007>). There are also other signs that the USA is slowly turning against capital punishment (see *USA: The experiment that failed: A reflection on 30 years of judicial killing*, 16 January 2007, <http://web.amnesty.org/library/Index/ENGAMR510112007>).

There is strong public support for a moratorium on executions in North Carolina. Approximately 1,000 faith group congregations, businesses and community groups have passed resolutions calling for a moratorium, including almost 40 local governments in the state. In addition, more than 40,000 people in North Carolina have signed the moratorium petition.

RECOMMENDED ACTION: Please send appeals to arrive as quickly as possible, in your own words, in English if possible:

- noting the order issued by Judge Stephens;
- urging the Governor to use this opportunity to support a full moratorium on executions in North Carolina, noting the widespread public support for such a measure.

APPEALS TO:

Governor Michael F. Easley

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Salutation: **Dear Governor**

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

PLEASE SEND APPEALS IMMEDIATELY. Check with the International Secretariat, or your section office, if sending appeals after 9 March 2007.