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Further information on UA 240/08 (AMR 51/097/2008, 03 September 2008) Death penalty/Legal concern

USA (Texas) Charles Dean Hood (m), white, aged 38

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On 9 September, the Texas Court of Criminal Appeals issued a stay of execution for Charles Hood, who was scheduled to be executed on 10 September. He was sentenced to death in 1990 for the murders of Ronald Williamson and Tracie Lynn Wallace in 1989.

The Court of Criminal Appeals issued the stay in order to scrutinise the legality of the jury instructions at the punishment phase of the trial. The Court had dismissed an appeal based on this issue in 2007, but now stated that “developments in the law” rendered it “prudent” to reconsider its earlier ruling and issue the stay “so that we may accomplish this task”.

There have been further developments in relation to another aspect of the case. Doubts about the fairness of Hood’s trial had previously been raised by his appeal lawyers because of evidence that the judge and the prosecutor were having an affair at the time (see update to UA 149/08, AMR 51/064/2008, 18 June 2008). The evidence included a recently obtained affidavit from a former member of the prosecutor’s office stating that it was “common knowledge” that the judge and the prosecutor had had a six-year relationship from 1987 to 1993. In court-ordered sworn testimony submitted on 8 and 9 September 2008, the former prosecutor and former judge confirmed that they had had an intimate relationship for several years.

In a letter to Governor Rick Perry seeking a reprieve, and quoted in the Texas media, Hood’s lawyer wrote: “The intimate sexual relationship between the judge and the district attorney began several years prior to the trial of Mr Hood. While [the former prosecutor] and [the former judge] have different recollections as to when the affair ceased containing an intimate sexual component, there is no doubt that the relationship was sexual in the years immediately leading up to the time that [the judge] had jurisdiction over the case.” The lawyer wrote that the pair had confirmed in their depositions on 8 and 9 September that they had kept the relationship secret: “[The judge] never disclosed it to a single litigant or lawyer who appeared before her, and she never recused herself from hearing a single case because of her affair with the elected district attorney. Similarly, [the prosecutor] never disclosed the romantic relationship to any of his adversaries nor did he recuse himself or his office from prosecuting a single case because of his affair with [the judge]”

In an editorial on 6 September focussed on the issue of the alleged affair, the New York Times wrote: “the United States and Texas Constitutions both guarantee defendants the right to due process, which includes a trial before an impartial judge... Even supporters of capital punishment should be appalled at the prospect of executing a man after a trial that — if Mr Hood’s charges are true — was so grossly unfair.”

In its order of 9 September, however, the Texas Court of Criminal Appeals did not grant a stay of execution on this matter, dismissing it as not having met the requirements under Texas law for consideration by the court. The stay of execution was therefore granted on an issue that implicates only the sentencing phase of the trial, not the fairness of proceedings as a whole.

**No further appeals are requested at present. Many thanks to all who sent appeals.**