

# URGENT ACTION

## FLORIDA SETS EXECUTION OF 'NON-TRIGGERMAN'

**Fifty-eight-year-old William Van Poyck, sentenced to death in 1988 for the murder of a prison guard, is due to be executed in Florida on 12 June. Claims persist that he received inadequate legal representation at trial and that he was not the "triggerman". The alleged gunman died in prison in 1999, apparently beaten to death by guards.**

On 24 June 1987, Florida prison guard Fred Griffis was shot dead as he and another guard were transporting an inmate to a doctor's office outside the prison. The two men involved in aiding the escape attempt, **William Van Poyck** and **Frank Valdes**, were arrested after a police chase, charged with murder and both sentenced to death.

At his trial, William Van Poyck admitted that he had planned the escape bid, but said that he had not shot Fred Griffis. He was sentenced to death. In 1990, the Florida Supreme Court ruled that there was insufficient evidence to find Van Poyck guilty of first-degree premeditated murder as it had not been proved that he was the "triggerman". However, the Court held that the evidence was sufficient to convict him of first-degree felony murder, which while not affecting his guilt, was "a factor that should be considered in determining the appropriate sentence". It said that his role in a crime in which he would have known lethal force could be used made the death sentence proportional.

The appeal courts have rejected the claim that William Van Poyck's legal representation at trial was constitutionally inadequate, including the defence failure to present the full evidence of his background of childhood abuse and mental health problems. The lead lawyer, who had never previously handled a capital case, had left preparation for the sentencing phase until conclusion of the guilt phase, in the apparent belief that the judge would allow a one to three week break between the stages. In the event, the sentencing phase began the day after the guilt phase, which the lawyer admitted left him "caught with [his] pants down", i.e. unprepared. His co-counsel testified after the trial that they were unprepared for the penalty phase and that they should have spent more time preparing mental health evidence. In 1997, three judges on the Florida Supreme Court dissented from the 4-3 decision rejecting the inadequate legal representation claim, arguing that "even the meager mitigation evidence presented by counsel was not put together until after the penalty phase began, and even then counsel conceded he had to 'scramble' to put anything on...The undisputed facts in this case present a blatant example of counsel's failure to investigate and prepare a penalty phase defense."

Frank Valdes died in 1999 from massive injuries sustained during an alleged beating by guards in his isolation cell in the high-security X-Wing of Florida State Prison. His injuries included 22 broken ribs and a fractured sternum, nose and jaw, and there were boot marks on his face, neck, abdomen and back. In 2002, three guards were acquitted in the case and charges ranging from conspiracy to murder were dropped against five others (see <http://www.amnesty.org/en/library/info/AMR51/076/2002/en>).

### **Please write immediately in English or your own language:**

- Acknowledging the seriousness of the crime and that you are not seeking to downplay the suffering caused;
- Expressing concern at the failure of the trial lawyer to investigate and present full mitigating evidence;
- Noting evidence that William Van Poyck was not the gunman, evidence relevant to the sentencing decision;
- Calling for the execution of William Van Poyck to be stopped and clemency granted.

### **PLEASE SEND APPEALS BEFORE 12 JUNE 2012:**

Governor Rick Scott

Office of the Governor, The Capitol, 400 S. Monroe St. Tallahassee, FL 32399-0001, USA

Email: [Rick.scott@eog.myflorida.com](mailto:Rick.scott@eog.myflorida.com)

Salutation: Dear Governor

Also send copies to diplomatic representatives accredited to your country.

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### ADDITIONAL INFORMATION

In their 1997 dissent, the three state Supreme Court judges referred to the “vast array of mitigating circumstances of the most serious nature that should have been thoroughly investigated and presented at the original penalty phase” and which had been presented in an appeal brief. The judges provided “a flavour” of this evidence, including as it related to William (Billy) Van Poyck’s time in juvenile detention facilities as a child and to his mental illness as an adult: “Billy was sent to youth hall for the first time at age 12. Shortly after he arrived there, he was raped. Two years later, he was sent to the Florida School for Boys at Okeechobee. At Okeechobee, Billy was hog tied, drenched in water and left over night in the ‘wet room,’ and frequently sent to the ‘ice cream room,’ where he was given thirty licks with straps and paddles, the process being repeated if he cried out during the beating. He also saw other children be sexually abused, and was placed under the supervision of older and larger offenders. The substandard conditions at Okeechobee are well documented... dangerous, overcrowded conditions in the dormitories, where status offenders were not separated from violent offenders, nor smaller children from larger, leading to frequent physical and sexual assaults on the younger and smaller children; the absence of any attempt to treat or rehabilitate youthful offenders; and the fact that small, middle class white boys without a history of institutionalization (like Billy Van Poyck when he was first sent to Okeechobee) were at the greatest risk... Approximately two years after Billy was sent to adult prison, he suffered a breakdown. For most of the next several years he received psychiatric treatment and medication, including ‘industrial strength’ dosages of antipsychotic medications, and two admissions to the Florida State Hospital in Chattahoochee...” The three judges argued that “Knowing what we do now, we should not give our approval to a sentence of death predicated upon a patent case of ineffective assistance of counsel. In doing so we are simply providing additional support to the already considerable body of evidence that the death penalty process is seriously flawed by the legal system’s tolerance of incompetent counsel.”

The courts have also rejected claims that the trial lawyer was ineffective for failing to present evidence that Frank Valdes was the gunman, including that Valdes had blood on his clothes matching Fred Griffis’s blood type while Van Poyck did not; that the murder weapon had been purchased by Valdes’s girlfriend and that Valdes had been in possession of the weapon when he and Van Poyck had left to commit the crime. After the federal courts upheld the death sentence, William Van Poyck’s lawyers sought to have DNA testing of evidence from the crime in an effort to bolster his “non-triggerman” claim. The request was denied by the state Supreme Court in 2005 on the grounds that such evidence would have made no difference to the outcome. One of the judges dissented, arguing that “there is a vast difference in the importance of the defendant being the triggerman in a shooting death for purposes of evaluating the defendant’s guilt (where it is not essential), compared with an assessment of a defendant’s culpability for purposes of evaluating whether he should receive the death penalty”. He pointed out that the trial prosecutor had himself argued to the jury at the sentencing phase that “it is important who the triggerman is... It’s important to your deliberations... So, ladies and gentlemen, even though he says he was not the triggerman, I submit the evidence shows that he was”. The dissenting judge wrote: “On the face of this record, how can we possibly now conclude that the identification of the triggerman is irrelevant to the determination of whether the death penalty should be imposed? The prosecutor has already answered that question for us”.

The same judge again dissented from the majority’s denial of relief in 2007, after lawyers presented an affidavit signed by a former prison inmate alleging that Frank Valdes had “repeatedly and consistently” said that he had shot Fred Griffis. The former inmate said he had not come forward until after he was released in 2004 because he feared for his life, a fear bolstered by the killing of Frank Valdes in 1999. The dissenting judge argued that “the majority has essentially substituted its views for those of the sentencing jury in concluding that the identity of the actual killer would make no difference to a jury considering life or death”.

On 3 June 2013 William Van Poyck’s new lawyers returned to the Florida Supreme Court in an attempt to win a stay of execution on the claim of inadequate legal representation, coupled with the “non-triggerman” issue. The Court has yet to rule.

Name: William Van Poyck

Gender m/f: male

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