

23 January 2002

Further information on EXTRA 57/01 (AMR 51/125/2001, 21 August 2001) and updates (AMR 51/137/2001, 18 September 2001; AMR 51/148/2001, 11 October 2001) - Death penalty / Legal concern

USA (Ohio) John Byrd, white, aged 37 (m)

John Byrd has been given a new execution date for the 1983 murder of Monte Tewkesbury. On 7 January 2002, the Sixth Circuit Court of Appeals lifted the stay of execution it had granted last October. Ohio's Attorney General promptly sought a new execution date, which has now been set for 19 February 2002 at 9pm local time.

The Sixth Circuit issued the stay last October so that a federal magistrate could hear evidence into John Byrd's claim of innocence. US Magistrate Judge Michael Merz held a hearing in November, and subsequently ruled that Byrd had failed to prove that he had not killed Tewkesbury. He recommended that the Sixth Circuit reject the innocence claim, which it did.

Monte Tewkesbury, 40, was wounded during a robbery of the store where he worked. He was stabbed once, lived long enough to describe the robbers as two masked men, and died two hours later. At about that time, police stopped a van with John Byrd, John Brewer and William Woodall inside. All three were charged with murder, with Byrd charged as the actual killer, making him alone liable to the death penalty. Woodall, who was the getaway driver, and Brewer were tried separately and both received prison terms.

Since the convictions, John Brewer has repeatedly claimed that it was he, not John Byrd, who stabbed Tewkesbury. Other inmates have stated that Brewer confessed to them. Other evidence also points to Brewer as the killer: for example, a shoeprint on the counter in the store matched Brewer's shoes - Tewkesbury was behind the counter when he was stabbed.

The evidence that it was Byrd who stabbed Tewkesbury came from a jailhouse informant, Ronald Armstead, who claimed that Byrd confessed to the killing in jail. When a three-judge panel of the Sixth Circuit upheld Byrd's death sentence in 2000 by two votes to one, the majority noted: "All agree that Armstead's testimony was vitally important to the jury's determination". The third judge added that his testimony "provided the only meaningful distinction between Byrd and co-defendant John Brewer".

The jury, at Byrd's trial, was told that Armstead had no cases pending against him, and therefore it had no reason to believe that he had anything to gain from his testimony. This was not true. At the time of the trial, Armstead had a pending parole violation hearing at which he faced up to 15 years in prison. In the event, Armstead was paroled two months after Byrd's trial, with the support of the prosecutor's office. Prior to the trial, the same office had vigorously opposed parole for Armstead; during the trial, the prosecutors went out of their way to vouch for Armstead, describing him as one of "our people" and "real genuine", believed by the state and therefore to be believed by the jury. Since the trial, several jail inmates from the time have signed affidavits claiming that Armstead's testimony was false.

At the hearing before the magistrate in November 2001, John Brewer repeated his claim that he, not Byrd, had stabbed Monte Tewkesbury. The prosecution argued that he should not be believed, that he was confessing in order to help his friend. A number of other current or former inmates testified that Brewer had confessed to them that he had killed Tewkesbury, and that Armstead had given false testimony.

Magistrate Judge Merz ruled that Brewer was "not to be believed" because he had been shown to have lied on other occasions. However, he accepted that a number of the other witnesses were credible. Nevertheless, under US law, which limits federal review of state court decisions, he ruled that this evidence should have been raised earlier.

Amnesty International opposes the death penalty in all cases, irrespective of issues of guilt or innocence. The UN Safeguards Guaranteeing Protection of the Rights of Those Facing the Death Penalty states: "Capital punishment may be imposed only when the guilt of the person charged is based upon clear and convincing evidence leaving no room for an alternative explanation of the facts". Amnesty International remains concerned that the execution of John Byrd will violate this safeguard. Regardless of the credibility of John Brewer's confession, John Byrd was convicted primarily on the word of a less than credible jailhouse informant.

Prior to his previous execution date, John Byrd had chosen to die in the electric chair rather than by lethal injection in order to protest the brutality of capital punishment. In November, Ohio adopted legislation removing electrocution as an option and making lethal injection the sole method of execution in the state.

RECOMMENDED ACTION: Please send appeals to arrive as quickly as possible, in English or your own language, in YOUR OWN WORDS:

- expressing sympathy for the family and friends of Monte Tewkesbury;
- expressing concern that John Byrd was convicted primarily on the word of a jailhouse informant whose credibility is in serious doubt;
- arguing that there remain too many doubts surrounding this conviction for even death penalty supporters to have confidence in it;
- calling for commutation of the death sentence, in line with international safeguards relating to capital punishment.

APPEALS TO:

Governor Bob Taft, 30th Floor, 77 South High Street
Columbus, Ohio 43215-6117, USA

Telegrams: Governor Taft, Columbus, Ohio, USA

Fax: + 1 614 466 9354

E-mail: Governor.Taft@das.state.oh.us

Salutation: Dear Governor

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

You may also write (not more than 250 words) to "Letters to the Editor" at:

The Dispatch, 34 S. 3rd St., Columbus 43215, USA

Fax: + 1 614 461 8793. E-mail: letters@dispatch.com

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PLEASE SEND APPEALS IMMEDIATELY.