

URGENT ACTION

ALABAMA'S THIRD EXECUTION OF 2024 IMMINENT

Keith Gavin is scheduled to be executed in Alabama on 18 July 2024. He was convicted in 1999 of a murder committed in 1998 and sentenced to death on a jury vote of 10-2 for the death penalty. In 2020, a federal judge found that his legal representation at the sentencing phase had been constitutionally inadequate, but in 2022 the Court of Appeals reversed this decision. International legal standards require that anyone facing the death penalty be provided effective legal assistance at all stages of the case. This standard was not met. We urge the Governor to commute this death sentence.

TAKE ACTION: WRITE AN APPEAL IN YOUR OWN WORDS OR USE THIS MODEL LETTER

The Office of Governor Kay Ivey

State Capitol

600 Dexter Avenue

Montgomery, AL 36130, USA

Email: <https://contact.governor.alabama.gov/contact.aspx>

Fax: +1 334 353 0004

Dear Governor

Keith Gavin is scheduled to be executed on 18 July 2024. I am appealing for your intervention to stop the execution.

I urge you to consider how little mitigation evidence was presented to the jury for their life-or-death decision-making at the sentencing phase of Keith Gavin's trial in 1999. Yet there was much evidence available about his formative years in the public housing projects of Chicago, and his exposure to violence in the home and outside it. The jury heard none of this humanizing and mitigating evidence because the defence lawyers simply failed to investigate and present it. Instead, they presented effectively what amounted to a bare plea for mercy from a minister and the defendant's mother.

In 2020, in a long and detailed opinion, a US District Court judge found that the appeal lawyers had "clearly established" that Keith Gavin's legal representation at the sentencing had been constitutionally inadequate, even applying the "highly deferential" – "doubly so" – lens through which she had to review the issue. The lawyers had been "totally unprepared for the penalty phase"; if they had provided the "wealth of mitigating evidence" revealed in post-conviction proceedings, she said, there was a good chance that the jurors would have voted for life rather than death. While the Court of Appeals reversed this decision, the power of executive clemency is not required to defer to a clearly troubling outcome and can be used to commute Keith Gavin's death sentence.

International human rights standards require that anyone facing the death penalty be provided with effective legal assistance at all stages of the proceedings and that this should go "above and beyond the protections afforded in non-capital cases". I submit that this standard was not met here.

I urge you to grant clemency and to commute Keith Gavin's death sentence.

Yours sincerely,

ADDITIONAL INFORMATION

Keith Gavin, now aged 63, was convicted in 1999 of the murder of a delivery driver who was fatally shot in his van on 6 March 1998 in Centre, a city in Cherokee County, Alabama. Keith Gavin, then 37 years old, was arrested on the day of the shooting. The murder weapon, a gun belonging to Keith Gavin's cousin, who had been with Keith Gavin in Centre, was found a few days later. The cousin was also charged in the murder, but this was later dropped, and the cousin testified as a key witness for the state. The murder was made a capital crime because of Keith Gavin's 1982 conviction for another murder, for which he was on parole in March 1998.

The defence put only two witnesses on the stand at the sentencing phase, a Jehovah's Witness minister and Keith Gavin's mother, while at the same time betraying its own lack of preparation. When the defence lawyer presented the minister, whom he had met once in a break during the trial's first phase and spoken to for five minutes, he got his name wrong in front of the jury. The minister, who had first met Keith Gavin in jail and visited him weekly in the months before the trial, volunteered damaging testimony that Keith Gavin "was blaming everybody except [himself]", even "blaming God for some of the things that happened", and said that "if Keith is given an opportunity to continue to live, he has the potential to cultivate a deeper relationship with God", and that "there are occasions even today where mercy might override just cold justice". The defendant's mother's testimony began with an apology from the defence lawyer: "I didn't really have an opportunity to prep you for your testimony today, but I know that you would like to address the Court and the jury about your feelings about Keith". She testified that her son had always been exposed to the faith of Jehovah's Witnesses and that he "could really be a great source of help to others and to our Creator" and asked the jury to spare his life. After 75 minutes out of the courtroom for deliberation, the jury returned to recommend the death penalty by 10 votes to two. The judge accepted the recommendation in January 2000.

After the trial, appeal lawyers discovered much mitigation evidence not heard by the jury, including multiple psychological risk factors from Keith Gavin's childhood and adolescence, including his exposure to violence at home and in the community. He was one of 12 siblings growing up in a dilapidated apartment in Chicago's notorious public housing projects; his closest siblings all had histories of incarceration and drug dependencies. He was subjected to more paternal beatings than the others because he "accepted responsibilities for things he had not done because he felt he was strong enough to accept the whippings". Outside the home, the exposure to violence took the form of pervasive gang activity. Seven of the 12 children ultimately joined gangs, and several became victims of gang violence. At 17, Keith Gavin was taken to a hospital after gang members beat him using guns and baseball bats. Also, because he had spent most of his adult life in prison, his lawyers were given the name of, and were advised to engage, an expert on the psychological effects of institutionalization. They did not do so. On appeal, this expert has testified that Keith Gavin's 17 years in prison after his 1982 conviction had had a profound effect on him, including being stabbed by gang members early on. His young age (22) when he went to prison and his traumatic childhood influenced his degree of institutionalization, and the expert said that while he adjusted to prison over time, it was difficult for him to adjust to life after release on parole, which came two months before the shooting took place.

Even so, two of the jurors voted for life. The appeal lawyers argued that if the jury had heard about the defendant's "youth in the gang-infested Chicago projects and the abuse he suffered, along with the rest of the available mitigation evidence presented in post-conviction proceedings, those two votes in Gavin's favour could easily have turned into seven or more". In 2020, a US District Court judge agreed, and decided that, even under the highly deferential standards she had to apply both to the lawyers' performance and to state court decisions, Keith Gavin had been denied his constitutional right to effective legal representation at the sentencing and was prejudiced by this: "Counsel were totally unprepared for the penalty phase of Mr Gavin's trial", she wrote. If the lawyers had conducted the necessary investigation, "they could have uncovered the wealth of mitigating evidence" provided on appeal. She concluded that the lawyers "were deficient", and if they had offered the sort of evidence presented in post-conviction proceedings, "a reasonable probability exists that he would have been sentenced to life imprisonment rather than death". In 2022, the US Court of Appeals for the 11th Circuit reversed this ruling, deciding that the District Court had erred in not deferring to the Alabama court's decision that the mitigation efforts had been reasonable.

An investigation by the appeal lawyers uncovered that the jury had engaged in premature deliberation on sentencing and had taken a vote on it before the penalty phase had even begun. The jury foreman revealed that before the guilt phase vote, one of the jurors had asked the others if they thought he would vote differently because he and the defendant were both Black, and he wanted them to know that he was going to vote for death. Each juror then wrote down their vote, on both guilt and sentence. The vote then was 10-2 for death, the same as it was after the sentencing phase. The appeal courts have rejected the claim that this premature deliberation constituted juror misconduct.

There have been 1,591 executions in the USA since 1976, 74 of them in Alabama. Two of the nine executions in 2024 have been in Alabama. Amnesty International opposes the death penalty unconditionally in all cases.

PREFERRED LANGUAGE TO ADDRESS TARGET: English. You may also write in your own language.

PLEASE TAKE ACTION AS SOON AS POSSIBLE UNTIL: 18 July 2024.

NAME AND PRONOUN: Keith Gavin (He, him)

LINK TO PREVIOUS UA: n/a