

URGENT ACTION

EXECUTION SET AFTER 25 YEARS ON DEATH ROW

Don Davis is scheduled to be executed in Arkansas on 17 April. He has been on death row for 25 years, having been sentenced to death in 1992 for a murder committed during a burglary in 1990. Twenty seven years old at the time of the crime, he is now 54.

On 12 October 1990, Jane Daniel's husband returned home to find that she had been shot dead. It was established that the murder weapon had been stolen from a neighbor's home earlier that day. The gun, a fingerprint, and items taken from both homes were eventually linked to **Don Davis**. Because it was likely that the defendant's mental state would be an issue during proceedings, the trial judge ordered an assessment by a psychiatrist, who concluded that Don Davis was not "insane" at the time of the crime, but that his attention deficit hyperactivity disorder (ADHD) "could have contributed to the commission of the alleged offense". The judge ordered further evaluation at the state hospital, which concluded that he was competent to stand trial.

The defence lawyer requested funds to hire an independent psychiatric examiner, naming the expert he wished to retain (at a cost of \$2,000). He argued that questions about his client's mental condition would be a significant factor at the sentencing phase and that, under a 1985 US Supreme Court ruling (*Ake v. Oklahoma*), he was entitled to such independent expertise to help him develop and present mitigating evidence. However, the judge refused to authorize the funds. The case went to trial, and on 6 March 1992 Don Davis was convicted of capital murder. At the sentencing, the defence presented the psychiatrist who had conducted the original court-ordered assessment. He testified generally about the sort of problems faced by people with ADHD, including when combined with unstable upbringings and substance abuse. Don Davis had been abandoned by his parents, lived with his grandmother until he was 13 and was then placed in a children's home. He had begun abusing alcohol and drugs by the age of 12.

On appeal, the state courts denied the claim that the trial judge was wrong to have denied the independent psychiatric assistance Don Davis could not himself afford. In 2005, a three-judge panel of the US Eighth Circuit Court of Appeals upheld the death sentence, by two votes to one. The dissenting judge noted that the examination conducted by the original psychiatrist did "not come close to satisfying the requirements of *Ake*", which demanded "a full and thorough examination" followed by the expert working "side by side with the defendant and defense counsel to build a defense strategy". Here, there could be "no question" that the psychiatrist "only provided meager assistance to the defense", his examination could "best be described as cursory" and his conclusions "preliminary and undeveloped". He "did not conduct even the most rudimentary psychological testing, conducted no additional interviews, and was not provided an opportunity to review relevant medical, educational and psychological records from Davis's past". Even under the deference federal courts are required to give state court rulings under US law, upholding the death sentence was an unreasonable application of *Ake v. Oklahoma*, argued the dissenting judge.

Please write immediately in English or your own language:

- Calling for clemency for Don Davis and for his death sentence to be commuted;
- Expressing concern that he was denied the expert psychiatric assistance at trial he was too poor to afford;
- Explaining that you are not seeking to condone violent crime or to downplay its consequences.

PLEASE SEND APPEALS BEFORE 17 APRIL 2017 TO:

The Honorable Asa Hutchinson, Governor of the State of Arkansas
State Capitol, Suite 250, 500 Woodlane St, Little Rock, AR 72201, USA
Fax: +1 501 682 3597

Email: <http://governor.arkansas.gov/contact-info/> (NB this requires an address in the USA, please use AIUSA's address: 600 Pennsylvania Ave. SE, 5th Floor, Washington D.C., Zip code: 20003; Telephone: 202 544 0200

Salutation: **Dear Governor**

Also send copies to diplomatic representatives accredited to your country. MR. LEWIS LUKENS, Chargé d'Affaires ad interim, American Embassy, 24 Grosvenor Square, London W1A 6AE, tel: 020 7499 9000. Salutation: Dear Mr. Lukens

Please check with your section office if sending appeals after the above date.

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ADDITIONAL INFORMATION

Don Davis is said to have become a stabilizing influence on the others on death row, concerned about his fellow prisoners' well-being and welfare. He is said to have numerous interests, including politics, art, music and nature.

Like many states, Arkansas has faced problems sourcing chemicals for its lethal injection protocols and implementing protocols that courts find constitutional. On 23 June 2016, the Arkansas Supreme Court upheld the state's three-drug execution protocol, which uses a barbiturate or midazolam as a sedative, vecuronium bromide as a paralytic agent, and potassium chloride to induce fatal cardiac arrest. After the US Supreme Court declined to intervene in February 2017, Governor Hutchinson set execution dates for the eight men on whose behalf the legal challenge to the protocol had been brought: Bruce Ward and Don Davis on 17 April; Ledelle Lee and Stacey Johnson on 20 April; Marcel Williams and Jack Jones on 24 April, and Jason McGehee and Kenneth Williams on 27 April. See <https://www.amnesty.org/en/documents/amr51/5816/2017/en/>.

There have been six executions in the USA this year, bringing the total to 1,448 since judicial killing resumed in the USA in 1977 under new capital statutes approved by the US Supreme Court in 1976. The last execution in Arkansas – its 27th since 1977 – was carried out in 2005. In Arkansas the Governor has independent clemency authority even without a clemency recommendation from the parole board. Don Davis is not seeking a hearing before the board.

Forty-eight per cent of all executions in the USA since took place in the 10 years from 1997 to 2006, but since then executions and death sentencing have generally declined. Five states have legislated to abolish the death penalty since 2007 – New Jersey (2007), New Mexico (2009), Illinois (2011), Connecticut (2012) and Maryland (2013). Also, in 2007 the last death sentence in New York State was commuted, following a 2004 court ruling that its capital law violated the state's constitution. In 2016, the Delaware Supreme Court in 2016 ruled that Delaware's capital sentencing law was unconstitutional.

Amnesty International opposes the death penalty unconditionally, regardless of the crime, the offender, or the execution method chosen by the state. The death penalty is inherently cruel and degrading, and incompatible with human dignity. To end the death penalty is to abandon a destructive, diversionary and divisive public policy, which not only runs the risk of irrevocable error, but is also costly, to the public purse as well as in social and psychological terms. The death penalty has not been proved to have a special deterrent effect. It tends to be applied in a discriminatory way in the USA, on grounds of race and class. It denies the possibility of rehabilitation, prolongs the suffering of the murder victim's family, and extends the suffering to friends and relatives of the condemned. It diverts resources that could be better used to work against violent crime and assist those affected by it. Today some 141 countries are abolitionist in law or practice.