

URGENT ACTION

STAY OF EXECUTION FOR DON DAVIS IN ARKANSAS

The execution of Don Davis, scheduled for 17 April in Arkansas, did not go ahead. Minutes before midnight, when the death warrant was set to expire, the US Supreme Court refused to lift the stay issued by the Arkansas Supreme Court that afternoon.

Don Davis was one of two men who had been scheduled for execution in Arkansas on 17 April and one of eight scheduled to be put to death in an 11-day period between 17 and 27 April. Litigation challenging the Arkansas lethal injection procedures led to a preliminary injunction order being issued by a federal judge on 15 April, which would have prevented the state from conducting any of the eight executions while that litigation continued. However, on 17 April the US Court of Appeals for the Eighth Circuit overturned the order by a vote of seven to one and granted the state's motion to vacate the stays of execution.

Lawyers for Don Davis had filed other appeals on issues specific to his case. They argued that he should be allowed back into court to present evidence that he has intellectual disability, and that his execution would therefore violate the 2002 US Supreme Court *Atkins v. Virginia* decision banning the execution of such individuals. This claim had not been raised in his original federal habeas corpus despite the *Atkins* ruling having already been handed down. The absence of this claim from his original petition meant that under US law there were high hurdles to being allowed to have the claim considered now. On 17 April, a three-judge panel of the Eighth Circuit voted two to one to say that he had not overcome such hurdles. The dissenting judge argued that he should be allowed to file a successor petition, given that the lawyers had presented evidence that he has intellectual disability as "defined in *Atkins* and in Arkansas".

On 17 April, the lawyers filed a motion in the Arkansas Supreme Court for a stay of execution pending the US Supreme Court's decision in an Alabama death penalty case pending before it, and due for oral argument on 24 April. That case centres on whether the Supreme Court's 1985 decision *Ake v. Oklahoma*, which established that an indigent defendant is entitled to meaningful expert assistance, requires that the expert be independent of the prosecution. Don Davis's trial lawyer had requested funds to hire an independent psychiatric examiner, pursuant to the *Ake* ruling. However, the judge refused to authorize the funds, and at the 1992 sentencing the defence had to rely on testimony presented from a psychiatrist who had conducted an initial original court-ordered assessment. 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 court-appointed psychiatrist did "not come close to satisfying the requirements of *Ake*".

On 17 April, the Arkansas Supreme Court granted a stay of execution, by four votes to three. The state appealed to the US Supreme Court which declined to intervene. Don Davis had already had his "final" meal, and witnesses were being moved towards the execution chamber when the US Supreme Court issued its decision.

No further action by the UA Network is requested at this time. Many thanks all who sent appeals.

This is the first update of UA 64/17. Further information: www.amnesty.org/en/documents/amr51/5938/2017/en/

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