

URGENT ACTION

MULTIPLE CONCERNS AS MISSOURI EXECUTION SET

Marcellus Williams, aged 48, is due to be executed in Missouri on 22 August for a 1998 murder. He maintains his innocence of the crime. An African American, he was tried before an almost all-white jury. Two of the four federal judges to review his case have concluded that he received constitutionally inadequate representation at his sentencing.

On 11 August 1998, 42-year-old Felicia Gayle was stabbed to death in her home in University City, St Louis, Missouri. She was a former reporter with a local newspaper and married to a prominent doctor, who offered a \$10,000 reward for information after no arrests were forthcoming. Police charged **Marcellus Williams** with the murder over a year after the crime, based on information from a jailhouse informant who had shared a cell with him after he was arrested in an unrelated case. The informant told police that Marcellus Williams said he had committed the murder. Such informant testimony has repeatedly been shown to have contributed to wrongful convictions in the USA. Until this informant came forward in June 1999, the police had no leads on the case. Police then approached Marcellus Williams' former girlfriend who also implicated him in the murder.

During jury selection for the June 2001 trial, the prosecutor dismissed six of the seven African American would-be jurors, and the final jury comprised 11 white people and one black person. Felicia Gayle was white, and Marcellus Williams is black. The jailhouse informant and the defendant's former girlfriend testified for the prosecution. There was some circumstantial evidence, but no forensic or eyewitness evidence, linking Marcellus Williams to the crime. The jurors voted to convict him. At the end of the sentencing phase, at which they were given no evidence of his background of severe abuse, poverty and mental disability, they voted for the death penalty.

Marcellus Williams' appeal lawyers have challenged the credibility of the informant witnesses, whether the prosecution withheld information about them that could have been used by the defence, and whether the defence had failed to investigate them. Limited pre-trial DNA testing of evidence from the crime did not match Marcellus Williams' DNA, and his appeal lawyers have sought to have further DNA testing, arguing it could "reveal the identity of the real killer". In 2016, DNA testing was conducted on the handle of the knife used in the murder. According to the tester, a DNA profile sufficient to conclusively exclude Marcellus Williams as the contributor could not be developed. Another forensic DNA expert retained by the lawyers concluded that "Williams could not have contributed to the detected profile", and "the most reasonable explanation for the profile detected on the knife is that Marcellus Williams is not a contributor". The lawyers have also sought to obtain evidence and records from the unsolved murder of a woman who was killed in an adjoining suburb of St Louis a month before Felicia Gayle died. The similarities in the crimes led an investigator to opine that the murders were the work of a serial killer.

Please write immediately in English or your own language:

- Calling on the governor to stop the execution of Marcellus Williams and to commute his death sentence;
- Noting the circumstantial nature of the case, the lack of forensic or eyewitness evidence against the defendant, and the reliance on the notoriously unreliable form of evidence, jailhouse informant testimony;
- Expressing concern at the prosecutor's dismissal of African Americans during jury selection, and that the jury never heard mitigating evidence of the defendant's background of severe abuse, poverty and mental disability.

PLEASE SEND APPEALS BEFORE 22 AUGUST 2017 TO:

Office of Governor Eric Greitens

PO Box 720, Jefferson City, MO 65102, USA

Fax: +1 573 751 1495

Email (via website): <https://governor.mo.gov/get-involved/contact-the-governors-office> (If you would like to take action via this form, you can select "Outside the U.S." where it asks for your State, and input "00000" where it asks for your Zip code)

Twitter: @EricGreitens

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

Troubling jury selection tactics have occurred in other St Louis County trials. At the 2001 trial of Andre Cole, who was black, the prosecutor dismissed three African Americans during jury selection, resulting in an all-white jury. Andre Cole was executed in 2015. Herbert Smulls, black, was sentenced to death by an all-white jury in 1992 and executed in 2014. The prosecutor had dismissed the only remaining black prospective juror on the grounds that she worked as a mail sorter and that such workers were “disgruntled, unhappy people” who occupy “the bottom of the employment ladder”. Kimber Edwards, black, was sentenced to death by an all-white jury in 2002 after the prosecutor removed all three black prospective jurors (his death sentence was commuted in 2015). In relation to the second of these potential jurors, the prosecutor said he dismissed him because he worked for the postal service and the prosecutor “always struck postal workers”, because they were employees of “one of the biggest bureaucratic organizations” who had to follow rules, and jury service gave them the opportunity to “not follow the rules”.

Under the 1986 US Supreme Court decision *Batson v Kentucky*, prospective jurors can only be removed for “race neutral” reasons. If the defence makes a *prima facie* case of discrimination by the prosecution, the burden shifts to the state to provide race neutral explanations. In Marcellus Williams’s trial, the defence initiated *Batson* challenges in relation to three of the six African American would-be jurors dismissed by the prosecutor. On the first, the prosecutor explained that the individual’s earrings, his “bookish” glasses, goatee beard, and “loud” clothing indicated that he was “trying to be different” and was “liberal”, that his demeanour and appearance were similar to the defendant’s, and that he was a postal worker, and that clerks and mail handlers tended to be liberal, in the prosecutor’s view. On the second juror, the prosecutor said that he was dismissed because he was not “definite enough” on whether he could impose the death penalty. The third, according to the prosecutor, was dismissed because he had been fired from his job for physically attacking a fellow employee, and because he appeared upset after other individuals in the jury pool laughed at him. The reasons were all accepted as “race neutral” by the trial judge.

In 2010, a federal judge ordered that Marcellus Williams receive a new sentencing, having found that his trial lawyer had failed to present any mitigating evidence of how “Williams was subjected to brutally violent physical abuse by family members, he was a victim of sexual abuse, his family condoned and encouraged criminal behaviour, he came from an impoverished household, and he was exposed to guns, drugs and alcohol at a young age”. In 2004, a psychologist retained by the appeal lawyers diagnosed Marcellus Williams, among other things, with Post Traumatic Stress Disorder, the symptoms of which were “all ignored and left unabated and untreated” for years. In 2012, the US Court of Appeals for the Eighth Circuit reversed the ruling by two votes to one. The dissenting judge “strongly disagree[d]” with the majority view that under the deferential standard in US law for federal review of state court decisions “we must defer to [the Missouri Supreme Court’s] decision that Williams was not prejudiced” by his lawyer’s failure. The judge accused the majority of “an unreasonable deference to an unreasonable strategy based on unreasonable investigation”, which ignored the trial lawyer’s own admission during the appeal that his decision not to investigate his client’s background was not strategic as the majority suggested, but was because he “ran out of time” due to the fact that he had been involved in another capital murder trial at the time (the judge overseeing the Marcellus Williams trial had denied the defence request for a delay), and that if he had had the mitigation evidence he would have presented it to the jury.

There have been 1,456 executions in the USA, 88 of them in Missouri, since judicial killing resumed in 1977 under laws passed after June 1972 and approved by the US Supreme Court in July 1976. There have been 14 executions in the USA this year, including one in Missouri. Amnesty International opposes the death penalty in all cases, unconditionally. The death penalty in the USA is riddled with arbitrariness, discrimination and error. More than 150 people have been released from death rows since 1973 on grounds of innocence. Joseph Amrine, for example, was released in 2003 after spending 17 years on Missouri’s death row for a crime he did not commit, a black defendant convicted by an all-white jury on the basis of informant testimony (see <https://www.amnesty.org/en/documents/amr51/085/2002/en/> and <https://www.amnesty.org/en/documents/amr51/060/2003/en/>).