

URGENT ACTION

CALL ON OHIO GOVERNOR TO RETHINK CLEMENCY

Gary Otte is scheduled to be executed in Ohio on 13 September. He was sentenced to death in October 1992 for two murders committed eight months earlier. Twenty years old when he was sent to death row, he is now 45. The governor has rejected clemency.

Robert Wasikowski, aged 61, and Sharon Kostura, 45, were shot dead in their apartments in Parma, Ohio on 12 and 13 February 1992 respectively. **Gary Otte** was arrested on 13 February and the following day confessed to the two murders. He waived his right to a jury trial, and in September 1992 was tried and convicted by a three-judge panel. At the sentencing phase in October 1992, after hearing some mitigating evidence of the defendant's difficult childhood, his depression and drug and alcohol dependence from an early age, the judges sentenced him to death.

It was established that Gary Otte had been drinking and using drugs around the time of the murders. However, the claim that his mental state, his below average intellectual functioning, exhaustion, suicidal ideation, and the effects of drug and alcohol withdrawal on him while in police custody rendering him unable to knowingly waive his "Miranda" rights (the right to remain silent, to have a lawyer present during interrogation) has been rejected on appeal. He was twice hospitalized during his early custody, once on the evening of 13 February 1992, and again in the early hours of 15 February shortly after he had given his first confession. When the US Court of Appeals upheld the death sentence in 2011, one of the three judges dissented: "These psycho-chemical reactions would diminish anyone's capacity to effectively engage in the higher-order mental processing required to waive a constitutional right. But Otte's below-average IQ left him with less capacity to spare. The effects of drugs, withdrawal, depression, and exhaustion on Otte's already diminished cognitive abilities were far too serious for me to agree with my colleagues that Otte's waiver was knowing and intelligent."

The appeal courts have also rejected the claim that Gary Otte's waiver of his right to a jury trial had been voluntary, knowing and intelligent. At a post-conviction hearing, a pharmacologist testified for the defence that in his opinion the anti-psychotic medication that Gary Otte was taking in the jail had left him without the cognitive capacity to waive his rights, but the state presented other expert testimony to rebut this. In addition, the claim that the trial lawyers should have presented more evidence in mitigation, including Gary Otte's poor school records, which included a notation that he was "seriously emotionally handicapped", was rejected.

In February 2017, the Ohio Adult Parole Authority voted against clemency after hearing information about Gary Otte's difficult childhood, marked by bullying, social alienation, depression, and drug and alcohol addiction. Gary Otte himself appealed for mercy, expressing his remorse for the crimes and his belief that he had changed in the years since and that he could have a positive impact on the lives of others if allowed to live, including teaching about the impact of bullying. On 1 September, Governor Kasich announced that he would deny clemency.

Please write immediately in English or your own language, in your own words:

- Urging Governor Kasich to reconsider his decision to deny clemency for Gary Otte;
- Explaining that you are not seeking to downplay the seriousness of violent crime or its consequences.

PLEASE SEND APPEALS BEFORE 13 SEPTEMBER 2017 TO:

[Governor John Kasich](#)

Riffe Center, 30th Floor, 77 South High Street, Columbus, OH 43215-6117, USA

Fax: +1 614 466 9354

Email (via website): <http://www.governor.ohio.gov/Contact/ContacttheGovernor.aspx>

Twitter: @JohnKasich

Salutation: Dear Governor

Also send copies to diplomatic representatives accredited to your country. HIS EXCELLENCY WOODY JOHNSON,

Embassy of the United States of America, 24 Grosvenor Square, London W1A 6AE, Tel: 020 7499 9000

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

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ADDITIONAL INFORMATION

In his 2011 dissent, US Court of Appeals Judge R. Guy Cole, argued that “Otte’s low IQ, side effects from alcohol withdrawal and his severe depression combined over multiple days of interrogation to prevent him from knowingly waiving his Miranda rights...The totality of the circumstances shows that Otte’s capacity was so diminished that he could not knowingly and intelligently execute a waiver. Otte was an alcoholic and drug abuser who drank an excessive amount of alcohol daily, and consumed marijuana and crack cocaine. The police arrested Otte at a bar the evening of February 13, 1992 after he had consumed beer and a large quantity of bourbon. He was interrogated for ninety minutes that night, but did not confess. After the interrogation, he was sent to the hospital for a psychiatric evaluation in the early morning hours of February 14th. At 4:00 p.m. that day, he was questioned again by the police and confessed to the murders for the first time. That evening he was taken to the hospital again. The intake notes from his hospital admission stated that Otte was shaking uncontrollably as a consequence of alcohol withdrawal and was treated with Librium, a drug that reduces some of the symptoms of withdrawal, but also has sedative effects. Otte’s expert testified that alcohol withdrawal causes serious discomfort which impairs cognitive functioning. Though the State’s expert disagreed with the conclusion of Otte’s expert he conceded that alcohol withdrawal was a very dangerous and potentially life-threatening medical condition. On the 16th, Otte waived his Miranda rights again, but remained significantly impaired because he did not receive his prescribed dose of Librium that day. He created a noose a few days later and was sent to the hospital for a suicide attempt or suicidal ideation...To the extent that the [police] officer’s impression of Otte’s acuity is relevant to the inquiry, the record convincingly establishes that the officers knew of Otte’s diminished capacity. Otte went back and forth to the hospital on multiple occasions to receive treatment for withdrawal as well as a psychiatric evaluation. It strains credulity too much to say that the officers knew nothing of this parade of red flags.”

When the parole board rejected clemency in February 2017, it concluded that while Gary Otte’s childhood may have been difficult, he had “consciously rejected the law-abiding, pro-social paths available to him”. To counter the arguments for clemency, the county prosecutor had related to the board the details of the crime and argued that Gary Otte’s trial lawyers had been effective. Gary Otte’s parents and other family members appealed for his life to be spared. Relatives of one of the murder victims appealed to the board to allow the execution to go forward.

Today, 141 countries are abolitionist in law or practice. Abolition of the death penalty is a goal under international law and the UN General Assembly has passed repeated resolutions calling for a moratorium on executions pending abolition. The USA is showing signs of moving against the death penalty. The annual numbers of executions and death sentences are at historic lows, and a number of states have abolished the death penalty or imposed moratoriums on executions in recent years.

Amnesty International opposes the death penalty unconditionally. There have been 17 executions in the USA this year, bringing the total nationwide to 1,459 since 1976, when the US Supreme Court approved new capital statutes. Ohio has carried out 54 executions since resuming judicial killing in 1999, including one this year. A quarter of these executions in Ohio – 13 – have been carried out during Governor Kasich’s time in office which began in January 2011. Due to term limits, he cannot stand for a third term and is due to leave office on 14 January 2019. Currently, there are six men scheduled to be put to death in Ohio before that date, including Gary Otte. Another 20 executions are currently scheduled to be carried out in Ohio after that (six in 2019, six in 2020, six in 2021 and two in the first four months of 2022).

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