

URGENT ACTION

BOARD VOTES FOR CLEMENCY, NOW TO GOVERNOR

The Ohio parole board announced on 16 March that it had voted to recommend that the Governor of Ohio commute William Montgomery's death sentence. The governor can accept or reject the recommendation. The execution remains scheduled for 11 April.

The Ohio parole board held a clemency hearing on **William Montgomery's** case on 8 March 2018. The board heard about how the prosecution had withheld a police report indicating that the victim, Debra Ogle, had been seen alive by a number of her friends four days after the time that the state had asserted that William Montgomery had killed her. The board also heard evidence of juror confusion at the trial, as described in post-conviction affidavits by two jurors who admitted that they had had difficulty understanding the law and how to apply it to their decision-making at both stages of the trial. An issue raised on appeal, and again at the clemency hearing, concerned another juror who had been allowed to sit on the jury despite having shown signs of being mentally unfit to serve.

The board voted six to four to recommend that Governor Kasich commute the death sentence to life imprisonment without the possibility of parole. In the board's clemency report issued on 16 March, the six in the majority gave as their reasons for voting in favour of clemency the doubts that had been raised by and about the former jurors. This, coupled with the prosecution's failure to disclose the police report, the majority said, raised "a substantial question as to whether Montgomery's death sentence was imposed through the kind of just and credible process that a punishment of this magnitude requires".

In 2011, the US Court of Appeals for the Sixth Circuit overturned the US District Court's order for a new trial. Three of the five dissenting judges said that the evidence against William Montgomery was "anything but" strong, and the other two argued that the majority decision to reverse the District Court's order "provides a disincentive for prosecutors to comply with the law" and that, "no one has seriously contested the fact that the prosecutor suppressed the evidence simply because it was inconsistent with his theory of the case... Montgomery is entitled to a jury trial free of gross prosecutorial misconduct". They added that "one can only wonder whether, had his counsel known of the existence of some affirmatively exculpatory evidence, such as the testimony of witnesses who saw Ogle days after the prosecution claimed she was murdered – and perhaps combined it with other evidence, such as the coroner's report stating Ogle died on the day she was allegedly seen, not days before – a different result might have obtained in this case. We will never know, because the state made sure that did not happen".

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

- Noting the Board's vote for clemency for William Montgomery was based on the majority's substantial doubts about the integrity of the capital proceedings that resulted in his death sentence;
- Reiterating that six federal judges have held that he should receive a new trial because the withheld police report directly contradicted the state's theory of the case and severely undermined confidence in the verdict;
- Urging the Governor not to allow the execution to proceed and to grant clemency.

PLEASE SEND APPEALS BEFORE 11 APRIL 2018 TO:

Governor John Kasich,

Riffe Center, 30th Floor, 77 South High St

Columbus, OH 43215-6117, USA

Fax: +1 614 466 9354

Email: www.governor.ohio.gov/Contact/ContacttheGovernor.aspx (please use the AI USA details: 5 Penn Plaza, 16th Floor, New York, NY 10001, Phone: 212 807-8400 Fax: 212 627-1451 Twitter: @JohnKasich)

Salutation: Dear Governor

Also send copies to diplomatic representatives accredited to your country. HIS EXCELLENCY WOODY JOHNSON, U.S. Embassy London, 33 Nine Elms Lane, , SW11 7US, Phone: (0)20 7499-9000

Please check with your section office if sending appeals after the above date. This is the first update of UA 47/18. Further information: <https://www.amnesty.org/en/documents/amr51/7973/2018/en/>

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ADDITIONAL INFORMATION

On 8 March 1986, the body of Cynthia Tincher was found in her car in Toledo, Ohio. On the same day, her flatmate Debra Ogle was reported missing. Her body was found on 12 March in a wooded area in Toledo. Both women had been shot. William Montgomery and Glover Heard were each charged with both murders. Glover Heard avoided the death penalty by pleading guilty to complicity to murder in exchange for testimony against his co-defendant and a prison sentence of 15 years to life. William Montgomery was brought to trial in September 1986. The state's theory was that he killed Debra Ogle on 8 March while robbing her, and then shot Cynthia Tincher to prevent her identifying him as having been with Debra Ogle. The jury convicted William Montgomery of the aggravated murder of Debra Ogle and the murder of Cynthia Tincher. He was sentenced to death for the Ogle murder and to 15 years to life for the Tincher murder.

Six years later, a police report came to light that Debra Ogle had been seen alive by several of her friends early on 12 March 1986, four days after the time the state asserted that William Montgomery had killed her. In 2007, a US District Court judge found that the police report would have "severely undercut Heard's credibility and destroyed the State's timeline of the case" as well as the "State's theory of Montgomery's motivation for killing Tincher". He ordered the state to retry William Montgomery. The state appealed. A three-judge panel of the Sixth Circuit Court of Appeals, by two votes to one, upheld the retrial order on the grounds that the report undermined confidence in both the conviction and sentence. The state again appealed. In 2011, the full Court of Appeals overturned the District Court order. Five of the 15 judges dissented. If three judges had voted the other way, William Montgomery would have likely received a new trial. In May 2012, the US Supreme Court refused, without comment, to take the case.

While the state has sought to cast doubt on the sighting of Debra Ogle on 12 March 1986 described in the police report, in 2012 William Montgomery's lawyers obtained an investigative report from forensic experts concluding that "there is considerable support for the hypothesis that the victim Debra Ogle died around March 12, 1986". The clemency board was also presented with forensic evidence casting doubt on the state's theory that Debra Ogle had been killed on 8 December.

Since 1973 in the USA, more than 160 wrongful convictions in capital cases have been discovered, including nine in Ohio. Police and prosecutorial misconduct, as well as inadequate defence representation, have been frequent contributors to such errors. In a dissent in 2015, two US Supreme Court Justices wrote that "crimes at issue in capital cases" can be "accompanied by intense community pressure on police, prosecutors, and jurors to secure a conviction. This pressure creates a greater likelihood of convicting the wrong person". They said the frequency with which the death penalty has been "wrongly imposed" was "striking", and another reason why the Court should reconsider the constitutionality of the death penalty itself.

There have been 1,471 executions in the USA since they resumed in 1977 under new capital laws approved by the Supreme Court in 1976. Ohio accounts for 55 of these executions. There have been six executions in the USA so far this year. Amnesty International opposes the death penalty, unconditionally. Today 142 countries are abolitionist in law or practice.

Further information on UA: 47/18 Index: AMR 51/8099/2018 Issue Date: 21 March 2018