

URGENT ACTION



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03 September 2008

UA 240/08 Death penalty/Legal concern

USA (Texas) Charles Dean Hood (m), white, aged 38

Charles Hood is scheduled to be executed in Texas on 10 September. He was sentenced to death in 1990 for the murders of Ronald Williamson and Tracie Lynn Wallace in 1989. Twenty years old at the time of the crime, Charles Hood has been on death row for nearly 18 years.

Police found the bodies of Tracie Wallace and her boyfriend Ronald Williamson in Williamson's home in Plano, near Dallas, on 1 November 1989. Both had been shot. Charles Hood, who had been living in the house, was arrested in Indiana in Ronald Williamson's car. He was brought to trial in Collin County in Texas, and after the jury convicted him on 29 August 1990, the trial moved into a sentencing stage, at which the prosecution presented its arguments for execution and the defense presented mitigating evidence. As the US Supreme Court reiterated in a Texas case in 2007, "we have long recognized that a sentencing jury must be able to give a reasoned moral response to a defendant's mitigating evidence – particularly that evidence which tends to diminish his culpability – when deciding whether to sentence him to death." (*Brewer v. Quarterman*).

Hood's jury heard evidence of his mental impairments and other information about his background. In a near-fatal accident at the age of three, Charles Hood had been run over by a truck and was hospitalized for five months. He was left with permanent physical injuries, and his parents noted behavioral changes too. As a child, he developed a fear of school that was diagnosed as a phobia of being inside buildings. The jury heard evidence that his parents administered "whippings" during his adolescence, sometimes in an attempt to get him to go to school. Hood had learning disabilities, and required special education classes at school. He dropped out of school after failing seventh grade (age 12-13 level), and he later failed the US Army entrance examination three times. At the age of 18, his reading and math skills were assessed at falling below the sixth grade level (age 11-12), and his language and writing skills put at the level of an eight- or nine-year-old. At the age of 19, Hood was described in an Indiana Department of Corrections report as acting "like a little kid who has been maintained in a fostered [sic] dependency situation," and was "somewhat neurotic," phobic, "very immature emotionally," and "highly dependent." The jury also heard evidence that a psychiatrist had concluded that Charles Hood had significant brain impairment, causing learning disabilities, impaired judgment and poor impulse control. He had diagnosed Hood with "neurophysiological brain dysfunction with probable left temporal cortical and deep temporal limbic brain dysfunction."

After hearing the sentencing phase evidence, the jurors were required to answer two questions ("special issues"), on deliberateness and dangerousness; firstly whether the defendant had acted deliberately and with the reasonable expectation that the death of the victims would result, and secondly whether there was "a probability that the defendant would commit criminal acts of violence that would constitute a continuing threat to society." Affirmative answers to these questions would automatically result in a death sentence.

The Texas sentencing scheme had been ruled unconstitutional by the US Supreme Court in 1989. In the case of death row prisoner John Penry, the Court found that the "special issues" had given the jury nowhere to give effect to Penry's mitigating evidence by saying "no" to the death penalty. At the time of Charles Hood's trial, the Texas legislature had not yet amended the capital statute to comply with the *Penry* ruling, and Hood's jury was asked the same questions as Penry's had been. As in other trials conducted in that intervening period, the trial judge issued the

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jury with a “nullification” instruction, telling the jurors that they could vote against the death penalty if they believed it was an inappropriate punishment in the light of any mitigating circumstances. However, the jury verdict form did not mention mitigating evidence, only asking for answers to the two questions, without any explanation as to how the jurors could vote against the death penalty if they believed the answer to both questions was “yes.”

In 2004 and 2007, the US Supreme Court overturned four Texas death sentences on questions relating to whether the juries had been prevented by the Texas statute (before it was changed, post-*Perry*) from giving effect to the mitigating evidence. In *Smith v. Texas*, for example, the Supreme Court found that the nullification instruction had not cured the constitutional violation; rather, “in essence the jury was instructed to misrepresent its answer to one of the two special issues” if it wanted “to take account of the mitigating evidence”. In *Tennard v. Dretke*, the Court held that on the “deliberateness” question, the evidence of the defendant’s low intellectual functioning short of mental retardation had “mitigating dimension beyond the impact it has on [his] ability to act deliberately.” On dangerousness, in *Abdul-Kabir v. Quarterman* the Court ruled that the evidence of the defendant’s childhood neglect and lack of self-control “did not contradict the State’s claim that [he] was a dangerous person, but instead sought to provide an explanation for his behavior that might reduce his moral culpability” – that “his violent propensities were caused by factors beyond his control.” In its decision to uphold Hood’s death sentence, a federal district court noted that the mitigating evidence of Hood’s mental impairment was a “double-edged sword” because, despite reducing his moral culpability, the jury could have decided that it increased the probability of his future dangerousness.

In 2005, after the Supreme Court’s *Tennard* ruling, a Texas trial court found that the jury instructions at Hood’s trial had been constitutionally inadequate and recommended a new sentencing. However, the Texas Court of Criminal Appeals rejected this on procedural grounds. Hood’s lawyers asked it to reconsider, including in light of the Supreme Court’s 2007 decisions, but the Court denied this on 14 May 2008.

There have been 1,119 executions in the USA since judicial killing resumed there in 1977, 413 of them in Texas. In late 2007, the UN General Assembly passed a landmark resolution calling for a worldwide moratorium on executions. Amnesty International opposes the death penalty in all cases, unconditionally. There is no such thing as a humane, fair, reliable or useful death penalty system (see *The pointless and needless extinction of life: USA should now look beyond lethal injection issue to wider death penalty questions*, <http://www.amnesty.org/en/library/info/AMR51/031/2008/en>).

RECOMMENDED ACTION: Please send appeals to arrive as quickly as possible (please include Charles Hood’s prisoner number, #982, in your appeals):

- expressing sympathy for any relatives of Ronald Williamson and Tracie Lynn Wallace, and explaining that you are not seeking to excuse the manner of their deaths or to downplay the suffering caused;
- opposing the execution of Charles Hood;
- expressing concern that the jury may not have been able to give effect to the mitigating evidence presented at the 1990 trial, as the US Supreme Court has found in a number of cases tried before the Texas special issues scheme was amended by the state legislature following the Court’s 1989 *Perry* ruling;
- noting that a Texas court found that the jury instructions at Hood’s trial were constitutionally inadequate, and that he should have a new sentencing, but that this was overruled on procedural grounds;
- noting that executive clemency is not restricted by procedural considerations, as a court may be;
- calling for Charles Hood to be granted clemency and for his death sentence to be commuted.

APPEALS TO:

Rissie Owens,
Presiding Officer, Board of Pardons and Paroles
Executive Clemency Section
8610 Shoal Creek Boulevard
Austin, TX 78757

Fax: 1 512 463 8120
Salutation: Dear Ms Owens

Governor Rick Perry
Office of the Governor
P.O. Box 12428
Austin, TX 78711-2428
Fax: 1 512 463 1849
Salutation: Dear Governor

PLEASE SEND APPEALS IMMEDIATELY.

Check with the AIUSA Urgent Action office if sending appeals after 15 October 2008.