

URGENT ACTION



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16 May 2011

UA 141/11

Imminent execution

USA (OHIO)

Shawn Hawkins (m)

Shawn Hawkins, a 42-year-old African American man who has been on death row in Ohio for half of his life, is due to be executed on 14 June. The state parole board has voted for the death sentence to be commuted, but the governor is not bound to follow their recommendation.

On the morning of 12 June 1989, the bodies of Terrance Richard, 18, and Diamond Marteen, 19, were found in Terrance Richard's car in a residential street in Mount Healthy, near Cincinnati, Ohio. Both had been shot in the head at close range with a .25 calibre gun. The murder weapon was never found. Police were led to 20-year-old Shawn Hawkins by Henry Brown, then aged 17, who would become the state's only alleged eyewitness to the crime. In interviews with police, his version of events changed multiple times and at trial Brown said that he had witnessed the murder of Terrance Richard only and identified Shawn Hawkins as the killer. Shawn Hawkins told police that he had seen and spoken with both victims on 11 June in order to arrange a drug deal. He had got into Richard's vehicle to discuss the deal.

Among the non-victim fingerprints found in the car were three that were never identified and two attributed to Shawn Hawkins, including one partial thumbprint. Shawn Hawkins was charged with the murders. Henry Brown, who himself was a suspect, was given full immunity from prosecution in exchange for his testimony against Shawn Hawkins. Shawn Hawkins testified at the trial and denied that he had any involvement in the murders. A number of witnesses provided alibi evidence in support of his innocence claim. However, the jury convicted Shawn Hawkins of both murders, and the trial moved into a sentencing phase. Shawn Hawkins' trial lawyer had not prepared a mitigation case for the sentencing. He instead berated the jurors for their decision to convict Hawkins, urging them not to make another mistake by voting for execution. The sentencing phase lasted one day, 10 January 1990, and the following day the jury voted that Shawn Hawkins should be executed.

Since the trial, Shawn Hawkins has continued to maintain his innocence, and his appeal lawyer has presented further evidence casting doubt on the conviction, including calling into question the way in which the thumbprint had been handled and analysed by the authorities. In addition, mitigating evidence that the trial lawyer failed to investigate has been presented on appeal. In 2004, a federal magistrate judge concluded that the death sentence should be overturned because of the trial lawyer's failure to present such evidence and in 2005 a US District Court agreed. However, in 2008 the Court of Appeals for the Sixth Circuit reversed the ruling. In May, the Ohio clemency board voted by 7-0 that Governor John Kasich should commute the death sentence in this "troubling" case, adding that the Board members were "not confident in the death sentence in this case". Among those who had contacted the board was one of the original trial jurors who stated "I wish it was more overwhelming that he was guilty".

BACKGROUND INFORMATION

The international community has agreed safeguards for capital cases in those countries that still retain the death penalty. One of these concerns the burden of proof on the death penalty state: "Capital punishment may be imposed only when the guilt of the person charged is based upon clear and convincing evidence leaving no room for an alternative explanation of the facts".

When the Ohio Supreme Court upheld Shawn Hawkins's death sentence in 1993, Justice Paul Pfeifer dissented, arguing that "The truth of what really happened in the early morning of June 12, 1989 died with Diamond Marteen and Terrance Richard". He wrote that "given that the only testimony naming Shawn as the actual killer came from Henry Brown, we can never be sure what role Shawn really played". One of the reasons for clemency given by the Ohio parole board was the "many conflicting

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statements” of this key witness, Henry Brown, including during the appeals process. The board added that there were a number of other individuals who may have been involved in the crime, but “may not have been fully investigated” by the police.

In his dissent, Justice Pfeifer had argued that the “residual doubt” about Shawn Hawkins’ guilt, coupled with his young age at the time of the crime, should have led to reversal of the death sentence. Then, in 2004 and 2005, two federal judges concluded that the death sentence could not stand because of the defense counsel’s performance at the sentencing phase of the trial. In 2004, the magistrate judge noted that the trial lawyers had been guilty of an “utter disregard for a reasonably substantial investigation” of mitigating evidence and that they had failed to conduct “even a minimal amount of investigation” into the defendant’s background: “Counsel did not obtain records, did not speak with family and friends to investigate [Hawkins’] psychological and social history, nor did they request that any family members or friends testify on Hawkins’ behalf”. The magistrate judge noted that the trial lawyer’s “strategy” instead consisted of criticizing the jury for its decision to convict, and “conveying to the jurors that they did not do their job and threatened retribution by telling them ‘what goes around comes around’”. In its unanimous vote for clemency, the Ohio parole board noted among its reasons that “not only was no mitigation presented during the sentencing phase, but trial counsel chastised and alienated the jury”.

On appeal, Shawn Hawkins’ lawyers have presented evidence of his dysfunctional childhood, physical and substance abuse within the family, his depression and several suicide attempts at a young age. The magistrate judge concluded that “it is quite conceivable, that had the mitigation evidence been discovered and presented by trial counsel, at least one juror would have concluded that the balance of aggravation and mitigating circumstances did not warrant death”. The US District Court judge agreed and concluded that she did not have confidence in the jury’s sentencing decision as a result of the “constitutionally ineffective” defence representation. The Sixth Circuit, however, overturned her ruling, arguing that Shawn Hawkins had not proved that he had been prejudiced by his trial counsel’s failures.

Since 2007, three states in the USA have legislated to abolish the death penalty. When signing the abolitionist bills into law the three state governors all pointed to the risk of irrevocable error as a reason to support abolition. Since Shawn Hawkins has been on death row, more than 90 prisoners have been released from death rows around the country on grounds of innocence. In each case, at trial the defendant had been found guilty beyond a reasonable doubt. The system is clearly capable of error.

Amnesty International opposes the death penalty in all cases, unconditionally, regardless of questions of guilt or innocence, the crime in question, or the method of execution. There have been 1,248 executions in the USA since judicial killing resumed there in 1977, including 14 so far this year. Ohio has executed 44 people since resuming executions in 1999, including three this year.

RECOMMENDED ACTION: Please send appeals to arrive as quickly as possible:

- Calling on the governor to commute Shawn Hawkins’ death sentence;
- Acknowledging the seriousness of the crime for which Shawn Hawkins was sentenced to death;
- Welcoming the unanimous vote for clemency by the Ohio Adult Parole Authority;
- Expressing concern at the trial lawyer’s failure to investigate or present mitigating evidence;
- Noting the continuing doubts that surround the conviction of Shawn Hawkins.

APPEALS TO:

Governor John Kasich, Riffe Center, 30th Floor, 77 South High Street, Columbus, OH 43215-6117

Fax: 1 614 466 9354

Email: <http://governor.ohio.gov/ShareYourIdeas.aspx>

Salutation: Dear Governor

PLEASE SEND APPEALS IMMEDIATELY.

Check with the AIUSA Urgent Action office if sending appeals after 14 June 2011.