

URGENT ACTION

CANADIAN ON DEATH ROW IN USA SEEKS CLEMENCY

A Canadian man on death row in the US state of Montana for a double murder committed in 1982 is seeking clemency, having exhausted his court appeals. His clemency hearing has been set for 2 May, with written submissions to the parole board due by 11 April.

Harvey Madman Jr. and Thomas Running Rabbit Jr., Native Americans, were shot dead in north western Montana on 4 August 1982 soon after they had picked up three hitchhikers, **Ronald Smith**, Rodney Munro and Andre Fontaine, who had crossed from Canada the day before. The three then stole the car and were later arrested in other US states. Ronald Smith and Rodney Munro were charged with capital murder. The latter accepted a plea bargain, pleaded guilty to aggravated kidnapping, was sentenced to 60 years in prison, and released in 1998.

The prosecutor offered Ronald Smith a similar deal – if he pled guilty to murder he would not face the death penalty but be sentenced to life imprisonment and be eligible for release in some 17 years. He rejected the deal, pled guilty to capital murder, refused to present mitigating evidence, and asked for the death penalty, which the judge handed down in March 1983. Within weeks, Ronald Smith changed his mind, stating that he had been severely depressed when he made the plea but that he now wanted to live. In 1984 the judge affirmed the sentence, but this was overturned in 1990. Ronald Smith was re-sentenced to death in 1992, this was in turn reversed, and he was again sentenced to death in 1995. It is this death sentence, and the 1983 conviction, that has survived on appeal.

In 2010, the Ninth Circuit Court of Appeals ruled that Ronald Smith's trial lawyer had "failed to investigate the facts of the crime, failed to investigate Smith's mental state at the time of the crime, and failed to discuss possible defenses before Smith pled guilty". However, it ruled that Ronald Smith had not proved that his lawyer's failings harmed him. One of the three federal judges dissented, arguing that "it is hard to escape the fact that we would not be here if Smith had not succumbed to his semi-suicidal thoughts and instead accepted the plea bargain", and that with effective representation there was a "reasonable probability" he would have made a different decision.

Ronald Smith was 24 years old at the time of the crime and is now 54. In its ruling in 2010, the Court of Appeals noted that "by all accounts, Ronald Smith has reformed his life", building strong relationships with relatives and taking advantage of educational opportunities offered within the prison context. In addition, it noted that he has "expressed deep regret for his deplorable actions". However, the Court said that such issues were not for it but for "the wisdom of the executive branch" to consider in clemency proceedings.

Please write immediately, in English or your own language:

- Explaining that you are not seeking to downplay the seriousness of the crime or the suffering caused;
- Expressing concern at the abject failures of Ronald Smith's trial lawyer to assist his client;
- Noting the evidence of Ronald Smith's remorse and reform since the crime three decades ago;
- Urging the Board to recommend that Governor Schweitzer grant clemency to Ronald Smith.

PLEASE SEND APPEALS BEFORE 11 APRIL 2012 TO:

Chairman Michael E. McKee,

Montana Board of Pardons and Parole,
1002 Hollenbeck Road, Deer Lodge, MT 59722
USA

Fax: 011 406 846 3512

Email: <http://bopp.mt.gov/about/feedback.mcp>

Salutation: Dear Chairman McKee

Governor Brian Schweitzer,

Office of the Governor,
Montana State Capitol Bldg.,
PO Box 200801, Helena, MT 59620-0801
USA

Fax: 011 406 444-5529

**Email: <http://governor.mt.gov/contact/commentsform.asp>
(requires US postal address)**

Also send copies to:

Ambassador Gary Albert Doer, Embassy of Canada
501 Pennsylvania Ave. NW, Washington DC 20001
Phone: 1 202 682 1740 | Fax: 1 202 682 7726

Please check with AIUSA Urgent Action if sending appeals after the above date.

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ADDITIONAL INFORMATION

In its March 2010 decision, the US Court of Appeals for the Ninth Circuit found that Ronald Smith's trial lawyer "did not ensure that Smith fully understood the alternative courses of action available to him". The Court continued: "Although Smith's lawyer was on notice that Smith had been a habitual drug user and that he wanted to die – both facts that might have developed into mitigating circumstances with the right investigation – Smith's lawyer conceded that he did not discuss with Smith 'anything that would have operated as a viable defense in the case'". Given such failure of legal representation, it might be considered extraordinary that Ronald Smith still faces execution. The unusual reference by the Ninth Circuit to the issue of his rehabilitation could be interpreted as signaling to the executive that the court would not consider clemency an inappropriate outcome.

In her dissent from the majority ruling that Ronald Smith had not been prejudiced by his appointed lawyer's failures, Judge Betty Fletcher noted that this attorney, who had never worked on a death penalty case before, had provided "pitifully little assistance" and an "alarmingly poor performance". He had apparently spent zero hours on investigation and just over six hours on research, and had interviewed only four or five people from a list of 35 potential witnesses provided to him by the prosecution. He did not visit the crime scene or hire an investigator, "did nothing" to explore possible defenses to the capital murder charges, and never sought Smith's mental health or other records, or a psychiatric evaluation of his client. Judge Fletcher pointed to evidence that Ronald Smith's decision to plead guilty had been the product of severe depression, and had followed months of solitary confinement in harsh conditions in pre-trial custody and death threats against him from other inmates because of his crime. The record, Judge Fletcher argued, "clearly demonstrates that, once Smith told [his lawyer] that he wanted to plead guilty and seek the death penalty, [the lawyer] gave up on him". The fact that Ronald Smith decided within three weeks of being sentenced to death that he did not want to die, she wrote, "strongly suggests that he was not so resolute as [his lawyer] claimed to believe".

Given the evidence that Ronald Smith had been drinking heavily on and before the day of the murders as well as consuming large amounts of LSD, Judge Fletcher argued that there had been a possible defense of 'voluntary intoxication', as well as one of "mitigated homicide" given evidence that he was emotionally disturbed at the time of the crimes. Not only did she conclude that Smith had been prejudiced by his lawyer's inadequate assistance, she also argued that the Court of Appeals should have reviewed the constitutionality of executing a man who had spent so long on death row. In her view, "Smith has suffered 27 years on death row, living in solitary confinement and under the constant threat of execution. Executing Smith after all this time would go far beyond what is necessary to satisfy society's moral outrage over his horrible crimes. It is hard to see how Smith's execution today would have any deterrent effect. Executing Smith would not advance the purposes underlying the death penalty and thus would violate the Eighth Amendment [of the Constitution, banning 'cruel and unusual' punishments]".

According to Ronald Smith's lawyers, his childhood was marked by physical abuse at the hands of his father and mother, and he grew up in an environment of alcoholism. Ronald Smith himself began drinking around the age of 11. He came into conflict with the law as a child, and from the age of 16 was held in an adult facility with adult offenders. Since being on death row, he has established and maintained strong relationships with his family, including with his own daughter and his two grandchildren. Particularly over the past two decades, he is reported to have been a model inmate, earning the praise of prison staff, and to have consistently expressed his remorse for his actions in 1982 when he killed Harvey Madman and Thomas Running Rabbit.

Amnesty International opposes the death penalty in all cases, regardless of questions of guilt or innocence, the facts of the crime, or the method of execution. Today, some 140 countries are abolitionist in law or practice. There have been 1,283 executions in the USA since judicial killing resumed there in 1977, including three in Montana, most recently in August 2006. There have been six executions in the USA so far in 2012, carried out in Arizona, Florida, Mississippi, Oklahoma and Texas.

Name: Ronald Allen Smith (m)
Issue(s): Death penalty

UA: 73/12
Issue Date: 5 March 2012
Country: Canada