

URGENT ACTION

TEXAS SET TO KILL ANOTHER YOUNG OFFENDER

Yokamon Hearn is scheduled to be executed in Texas on the evening of 18 July for a murder committed in 1998, when he was 19 years old. His lawyers maintain that he has a mental disability that would render his execution unconstitutional.

Yokamon Laneal Hearn was sentenced to death for the murder of 23-year-old stockbroker Joseph Franklin (Frank) Meziere, committed in Dallas in March 1998. Frank Meziere was shot in the head 10 times after being abducted by four youths who wanted to steal his car. All four were charged with capital murder. According to the prosecution, Yokamon Hearn had fired six of the 10 shots while another of the suspects, Delvin Diles, had fired four. After the Hearn trial, the prosecution offered Delvin Diles a plea deal under which he would waive trial by jury and avoid the possibility of the death penalty. Delvin Diles, aged 18 at the time of the shooting, pleaded guilty to capital murder and was sentenced to life imprisonment in 1999. The other two co-defendants, aged 19 and 20 at the time of the crime, pleaded guilty to aggravated robbery and were sentenced to 10 years in prison.

In addition to Yokamon Hearn's youth at the time of the crime – he was 19 years old – there is evidence that he has a developmental mental disability. His lawyers assert that this impairment amounts to "mental retardation" and that his execution would therefore be unconstitutional under the June 2002 US Supreme Court decision *Atkins v. Virginia* which prohibited the execution of offenders with such a disability. Yokamon Hearn's "Atkins claim", however, has run into the problem that he has achieved IQ scores higher than what is normally considered to be an indicator of "mental retardation". His lawyers have obtained expert opinion that, despite his IQ scores, his disability nonetheless amounts to retardation and that he should still qualify for *Atkins* relief. The courts have disagreed.

In sworn statements given in 2006, Yokoman Hearn's three co-defendants described him as a teenager in 1998 who was a follower not a leader. Their statements and other evidence of his conduct during and after the murder are supportive of claims that his actions were those of an immature and impaired individual rather than the result of a planning and calculating intellect. Delvin Diles recalled that it had been his idea, not Hearn's, to kill Frank Meziere. The other two recalled that before they went to commit robbery there had been no plan to kill anyone. Since resuming executions in 1982, Texas has killed at least 70 people in its execution chamber who were aged 17, 18 or 19 at the time of the crimes in question. More than half of these teenagers were African American, of whom 70 per cent were convicted of crimes involving white victims. Yokamon Hearn is one of at least 40 prisoners now on death row in Texas for crimes committed when they were 18 or 19. More than half of them, like Yokamon Hearn, are black. Frank Meziere was white.

Please write immediately, in English or your own language, citing Yokamon Hearn's Inmate No. #999292:

- Explaining that you are not seeking to excuse the murder of Frank Meziere or to downplay the suffering caused;
- Noting evidence of Yokamon Hearn's mental disability and that he was only 19 at the time of the crime;
- Opposing the execution of Yokamon Hearn and calling for his death sentence to be commuted.

PLEASE SEND APPEALS BEFORE 18 JULY 2012 TO:

Clemency Section, Texas Board of Pardons and Paroles

8610 Shoal Creek Blvd. Austin, TX 78757-6814, USA

Fax: 011 512 467 0945

Email: bpp-pio@tdcj.state.tx.us

Salutation: Dear Board members

Governor Rick Perry, Office of the Governor,

PO Box 12428, Austin, Texas 78711-2428, USA

Fax: 011 512 463 1849

Salutation: Dear Governor

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

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ADDITIONAL INFORMATION

Yokamon Hearn was about 20 minutes from execution on 4 March 2004 when he was granted a stay by the US Court of Appeals for the Fifth Circuit to give the courts more time to consider his "Atkins claim". In the *Atkins* ruling, the US Supreme Court had not defined mental retardation, although it pointed to definitions used by professional bodies. Under such definitions, mental retardation is a disability, manifested before the age of 18, characterized by significantly sub-average intellectual functioning (generally indicated by an IQ of less than 70) accompanied by limitations in two or more adaptive skill areas such as communication, self-care, work, and functioning in the community. The Court left it to the states as to how to comply with the ruling. Today, a decade after the *Atkins* ruling, the Texas legislature has still not enacted a law to comply with it. In the absence of such legislation, in 2004 the Texas Court of Criminal Appeals (TCCA) issued temporary guidelines.

Success on Yokamon Hearn's *Atkins* claim became less likely in 2006 when his IQ was assessed as high as 93. However, his lawyers obtained expert opinion concluding that he had structural brain dysfunction, possibly as a result of Fetal Alcohol Syndrome caused by his teenage mother's alcohol abuse during pregnancy with him, and that his impairment still amounts to mental retardation. In 2008, a US District Court concluded that Yokamon Hearn had made a *prima facie* showing of mental retardation. This federal judge eventually sent the case back to the Texas courts where in 2010 the TCCA ruled against Yokamon Hearn, while noting that the Texas legislature had, eight years on, failed to enact legislation to enforce the *Atkins* ruling. The TCCA said that, "without significantly greater assistance from the legislature" it would adhere to its 2004 guidelines, including the "about 70" language in relation to IQ, which it took to represent a "rough ceiling, above which a finding of mental retardation in the capital context is precluded". The Fifth Circuit ruled against Hearn in January 2012, noting that the US Supreme Court had explicitly left it up to states as to how to comply with the *Atkins* ruling, and that "it would be wholly inappropriate for this court, by judicial fiat, to tell the States how to conduct an inquiry into a defendant's mental retardation".

In its 2005 ruling prohibiting the death penalty against anyone who was under 18 at the time of the crime (*Roper v. Simmons*) the US Supreme Court recognized the immaturity, impulsiveness, poor judgment and underdeveloped sense of responsibility associated with youth, as well as the susceptibility of young people to "outside pressures, including peer pressure." The Court also acknowledged that "the qualities that distinguish juveniles from adults do not disappear when an individual turns 18." Indeed, scientific research shows that brain development continues into a person's 20s. In 1993, in the case of a Texas death row prisoner who was 19 at the time of the crime, the Supreme Court had emphasised that: "youth is more than a chronological fact. It is a time and condition of life when a person may be most susceptible to influence and to psychological damage. A lack of maturity and an underdeveloped sense of responsibility are found in youth more often than in adults... These qualities often result in impetuous and ill-considered actions and decisions."

Before the *Atkins* ruling in 2002, Texas accounted for more executions of people with "mental retardation" than any other state in the USA. Before the *Roper* ruling in 2005, Texas accounted for more executions of people under 18 at the time of the crime than any other state. Texas accounts for some 37 per cent of the national judicial death toll, which currently stands at 1,296 since 1976 when the US Supreme Court allowed executions to resume under revised state laws. Amnesty International opposes the death penalty in all cases. Yokamon Hearn is scheduled to become the 483rd person to be put to death in Texas since it resumed executions in 1982. There have been 19 executions in the USA so far in 2012, five of them in Texas.

For further information on Yokamon Hearn's case, see 'USA: Senseless killing after senseless killing: Texas inmate with mental disability claim facing execution for murder committed as teenager', June 2012, <http://www.amnesty.org/en/library/info/AMR51/042/2012/en>

Name: Yokamon Laneal Hearn (m)
Issues: Death penalty, Legal concern

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