

URGENT ACTION

EXECUTION RE-SET AFTER 30 YEARS ON DEATH ROW

Thomas Arthur, aged 75, is due to be executed in Alabama on 25 May. This is his eighth execution date since 2001, three times coming within a day of being killed. He maintains his innocence. This would be the first execution under the current Alabama governor.

On 1 February 1982, police arrived at the home of Judy and Troy Wicker in Muscle Shoals, in north-western Alabama. Troy Wicker was dead in bed, shot through his right eye. Judy Wicker lay on the floor by the bed with traces of blood on her; her sister knelt by her. Judy Wicker told police that she came home after taking her children to school to find an African American man in the house, that he raped her, knocked her unconscious, and shot her husband. Police found four .22 bullet casings, but never the murder weapon itself.

Judy Wicker was charged with the murder for insurance. **Thomas Arthur**, who began a relationship with her during a work release program while serving a prison sentence for a 1977 murder, was also charged. Judy Wicker was convicted in 1982 and sentenced to life in prison. At a separate 1982 trial, Thomas Arthur was sentenced to death. He was granted a retrial in 1985. Sentenced to death at a 1987 retrial, his conviction was again overturned in 1990. The prosecutor then approached the parole board to inquire whether Judy Wicker could obtain early release in exchange for testifying against Thomas Arthur (until now she had said he was not involved). The lawyer who represented Judy Wicker at this meeting was subsequently hired as a prosecutor and prosecuted Thomas Arthur at his retrial. The state's key witness was Judy Wicker. She was paroled about a year later, after 10 years in prison.

Thomas Arthur was concerned about his state-appointed lawyers' trial preparation. The judge allowed him to represent himself, with the lawyers as co-counsel. Thomas Arthur was convicted on 5 December 1991 after a three-day trial. At the sentencing on the same day, he asked for a death sentence, telling the jury that he had twice been sentenced to death in the case and that his conviction would be overturned on appeal. After a 90-minute sentencing phase, the jury voted 11-1 for death. On 24 January 1992, the judge accepted this recommendation, finding that the aggravating factor of Thomas Arthur's prior murder conviction outweighed the mitigation.

No physical evidence links Thomas Arthur to the crime. Hair samples and fingerprints from the crime scene were tested, but did not match his. He was convicted on circumstantial evidence and the testimony of Judy Wicker, who had committed perjury either at her 1982 trial (when she testified he was not involved) or at his 1991 retrial (when she said he was the gunman). In recent years, the state has denied defence requests for advanced DNA testing on a wig it says the attacker wore, and said that a rape kit from the crime was destroyed. At the 1991 trial, Judy Wicker said that two others were involved in the murder (her sister and her sister's boyfriend). Neither was prosecuted.

Please write immediately in English or your own language:

- Noting Thomas Arthur has not asked the governor for clemency, but calling on her to stop his execution;
- Noting that during the time that Thomas Arthur has been on death row, evidence of arbitrariness and error in the US capital justice system has mounted, and the use of the death penalty has declined as concern has grown;
- Noting his disproportionate punishment compared to the other persons said to be involved in the murder;
- Expressing concern that the state has blocked advanced DNA testing in this case.

PLEASE SEND APPEALS BEFORE 25 MAY 2017:

Governor Kay Ivey

Alabama State Capitol, 600 Dexter Avenue, Montgomery, Alabama 36130, USA

Fax: +1 334 353 0004

Email: <http://governor.alabama.gov/contact> (NB this requires a US based address, please use AI USA address: 5 Pennsylvania Plaza, 16th Floor, New York, NY 10001, Phone: 212 807 8400)

Salutation: Dear Governor

Also send copies to diplomatic representatives accredited to your country. MR. LEWIS LUKENS, Chargé d'Affaires ad interim, American Embassy, 24 Grosvenor Square, London W1A 6AE, tel: 020 7499 9000. Salutation: Dear Mr. Lukens Please check with your section office if sending appeals after the above date.

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ADDITIONAL INFORMATION

In addition to the testimony of Judy Wicker, the prosecution linked Thomas Arthur to the crime through testimony alleging that he obtained .22 bullets from an acquaintance the day before the crime. Another witness testified that Thomas Arthur had thrown an object into the river on the day of the murder. Some \$2,000 was found in his personal belongings after the murder, which the state claimed Judy Wicker gave him from the \$90,000 insurance payment she received for her husband's death. In 2002, two alibi witnesses signed affidavits pointing to Thomas Arthur having been an hour's drive away from the crime scene at the time of the murder. However, the state obtained its own affidavits from the two men contradicting their original statements. In 2006, the US Court of Appeals ruled that affidavit evidence was not reliable enough to warrant a federal evidentiary hearing.

Like other states, Alabama has had problems sourcing chemicals for its three-drug lethal injection protocol, for which it now uses midazolam as the anaesthetic component. In 2015, in *Glossip v. Gross*, the US Supreme Court upheld the use of midazolam, but the drug continues to face scrutiny in the face of evidence that it can be ineffective in inducing unconsciousness prior to injection of the other two drugs (which paralyze and then induce cardiac arrest). If ineffective, the prisoner would endure, in the words of a Supreme Court Justice in 2017, "a nightmarish death: The condemned prisoner is conscious but entirely paralyzed, unable to move or scream his agony, as he suffers what may well be the chemical equivalent of being burned at the stake... What cruel irony that the method that appears most humane may turn out to be our most cruel experiment yet... Like a hangman's poorly tied noose or a malfunctioning electric chair, midazolam might render our latest method of execution too much for our conscience – and the Constitution – to bear." Justice Sonya Sotomayor was dissenting from the Court's refusal to review Thomas Arthur's challenge to Alabama's protocol. She argued that he had met the challenge for a successful appeal set by the Court in *Glossip*; "He has amassed significant evidence that Alabama's current lethal-injection protocol will result in intolerable and needless agony, and he has proposed an alternative – death by firing squad. The Court of Appeals, without considering any of the evidence regarding the risk posed by the current protocol, denied Arthur's claim because Alabama law does not expressly permit execution by firing squad". This decision "permits States to immunize their methods of execution – no matter how cruel or how unusual – from judicial review and thus permits state law to subvert the Federal Constitution".

The 2015 *Glossip* ruling was notable for a dissenting opinion from two Justices calling on the Court to consider the constitutionality of the death penalty per se, in view of the arbitrariness and error that have become its hallmarks over the past 40 years. There have been 1,452 executions in the USA since judicial killing resumed in 1977 under new capital statutes approved by the US Supreme Court in 1976. Alabama accounts for 58 of these executions. It was one of five states which executed in 2016, a year which saw the lowest national judicial death toll for 25 years. There have been 10 executions in the USA this year. Amnesty International opposes the death penalty, unconditionally. Today some 141 countries are abolitionist in law or practice.

Alabama Governor Robert Bentley resigned on 10 April 2017 and pled guilty to certain misdemeanours. Lieutenant Governor Kay Ivey was sworn in as governor on 10 April, saying: "Today is both a dark day for Alabama yet also one of opportunity. I ask for your help and patience as we together steady the Ship of State and improve Alabama's image. Those are my first priorities as your 54th Governor." The execution of Thomas Arthur is set to be the first since she became governor. He would be only the third person aged 75 or older to be executed in the USA since 1976. He has not petitioned the governor for clemency, but has consistently maintained his innocence and continued to challenge his death sentence, and to seek DNA testing. According to the Innocence Project, DNA testing has been a substantial contributor in 349 exonerations in the USA, including of 20 prisoners who had originally been sentenced to death.