

URGENT ACTION

JUROR RACISM CLAIM AS EXECUTION DRAWS NEAR

Keith Tharpe is scheduled to be executed in Georgia at 7pm on 26 September. He was sentenced to death for the murder of his sister-in-law in 1990. His appeal lawyers are trying to get back into court to argue that juror racism infected his 1991 trial.

Keith Tharpe was arrested on 25 September 1990 and charged with the murder of his sister-in-law, Jaquelin Freeman, who was shot dead earlier that day. He was brought to trial in January 1991. During jury selection, the defence challenged the prosecutor's dismissals of five of eight prospective African American jurors and raised evidence of this prosecutor's history of discriminatory jury selection tactics. The judge nevertheless accepted the prosecutor's "race-neutral" reasons for the dismissals and the trial proceeded before a jury with two African Americans serving on it. Keith Tharpe is African American, as was Jaquelin Freeman.

On 16 May 1998, Keith Tharpe's appeal lawyers conducted an interview with a white male former juror on the case. In an affidavit, one of the two lawyers recalled that the former juror "stated that there are two kinds of black people in the world – 'regular black folks' and 'niggers'." She said that according to him, "if the victim in Mr Tharpe's case had been one of the niggers, he would not have cared about her death". The second lawyer also signed an affidavit recalling the former juror reflecting on whether "niggers even have souls. I don't know. You tell me"; and that he "felt that because a black person doesn't have a soul, giving one the death penalty was no big deal". She recalled a second meeting with the former juror on 25 May 1998 to have him sign an affidavit documenting his prior statements. She stated that at this meeting, the former juror referred to one of the two African Americans on the jury, and who the lawyers were trying to locate, as a "nigger".

The affidavit signed by the former juror was filed in court on 26 May 1998 and faxed to the state's lawyers that same day. The following day, he signed another statement, this time for the state. In it, he claimed he had been drunk when he signed the prior affidavit and that he had been misled by the lawyers about the purpose of their visit. He claimed that his statements had been "taken out of context", but did not deny his previous repeated use of the word "nigger", only asserting that the word had not been used "by any juror during jury deliberations" and that "race was never an issue" at the trial. In their affidavits, the lawyers maintained that they had clearly identified themselves and the purpose of their visit, and that the former juror "did not appear to be tired or alcohol-impaired at any time throughout our visit", but "alert and animated", including as he was signing the affidavit.

The state court ruled that the affidavits were inadmissible under Georgia law, and that therefore juror misconduct had not been proven. The court ruled that the claim had anyway been defaulted because it had not been raised earlier. The federal courts have upheld this. Keith Tharpe's lawyers are seeking to return to court, arguing that two recent US Supreme Court decisions involving racism invalidate the inadmissibility and procedural default rulings. The Georgia parole board is due to hold a clemency hearing on the case on the morning of 25 September.

Please write immediately in English or your own language, in your own words:

- Calling for Keith Tharpe's death sentence to be commuted;
- Expressing deep concern at evidence of a juror's racist views uncovered on appeal, and at the fact that the courts did not consider it because of procedural issues;
- Explaining that you are not seeking to downplay the seriousness of violent crime or its consequences.

PLEASE SEND APPEALS BEFORE 26 SEPTEMBER 2017 TO:

State Board of Pardons and Paroles

2 Martin Luther King, Jr. Drive SE, Suite 458, Balcony Level, East Tower, Atlanta, Georgia 30334-4909, USA

Fax: +1 404 651-6670

Email: webmaster@pap.ga.gov

Salutation: **Dear Board Members**

Also send copies to diplomatic representatives accredited to your country. HIS EXCELLENCY WOODY JOHNSON, Embassy of the United States of America, 24 Grosvenor Square W1A 6AE, tel: 020 7499 9000. *There is at present no general embassy email address*

Please check with your section office if sending appeals after the above date.

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ADDITIONAL INFORMATION

The first affidavit signed by the former juror reads: "I also knew the girl who was killed, Mrs Freeman. Her husband and his family have lived in Jones County a long time. The Freemans are what I would call a nice Black family. In my experience I have observed that there are two types of black people: 1. Black folks and 2. Niggers. For example, some of them who hang around our little store act up and carry on. I tell them, 'nigger, you better straighten up or get out of here fast'. My wife tells me I am going to be shot by one of them one day if I don't quit saying that. I am an upfront, plainspoken man, though. Like I said, the Freemans were nice black folks. If they had been the type Tharpe is, then picking between life or death for Tharpe wouldn't have mattered so much. My feeling is, what would be the difference? As it was, because I knew the victim and her husband's family and knew them all to be good black folks, I felt Tharpe, who wasn't in the 'good' black folks category in my book, should get the electric chair for what he did. Some of the jurors voted for death because they felt that Tharpe should be an example to other blacks who kill blacks, but that wasn't my reason. The others wanted blacks to know why they weren't going to get away with killing each other. After studying the Bible, I have wondered if black people even have souls. Interracial marriages started in Genesis. I think they are wrong." The former juror changed "interracial marriages" to "integration", and signed the affidavit.

Two days later, after the state had received a copy of this affidavit, the former juror signed another one for the state, refuting the first and asserting that on the day he signed it "I had been drinking about seven or more beers that afternoon and did not pay particular attention when she was quickly reading the statement. I just wanted to get rid of them [the lawyers]... After I signed it, one of the girls took the statement, stamped it, and signed it." He later gave testimony in which he reiterated that he had been drunk, but did not dispute the racist sentiments recorded in the first affidavit. The state court ruled the juror testimony inadmissible under a Georgia law which prohibits courts from considering juror testimony which "impeaches" their verdict. Because the evidence was inadmissible, the court ruled, Keith Tharpe could not prove his claim of juror racial bias.

Keith Tharpe's lawyers are arguing that two recent Supreme Court rulings should allow him back into court on the juror issue. In *Buck v. Davis* on 22 February 2017, the Court ended Texas's attempt to use procedural arguments to defend Duane Buck's death sentence despite the introduction of racist testimony at his trial. In *Pena-Rodriguez v. Colorado* on 6 March 2017, the Court blocked Colorado from using its rule protecting jurors from "impeachment" if fair trial rights had been violated: "Where a juror makes a clear statement indicating that he or she relied on racial stereotypes or animus to convict a criminal defendant, the Sixth Amendment requires that the no-impeachment rule give way in order to permit the trial court to consider the evidence of the juror's statement and any resulting denial of the jury trial guarantee." On 5 September 2017, the US District Court ruled that the *Pena-Rodriguez* decision did not apply retroactively to Keith Tharpe's case and that his claim of juror racism remained procedurally barred from review, and "nothing in *Buck* alters this outcome". The decision is now before the US Court of Appeals.

The claim that Keith Tharpe has intellectual disability that renders his execution unconstitutional has been rejected by the courts. Although state and defense experts agreed he had an IQ of about 70 accompanied by adaptive deficits, state experts did not find these deficits significant enough to diagnose him with full intellectual disability, and under Georgia's law requiring a defendant to prove intellectual disability beyond a reasonable doubt, the state court ruled that the claim failed. Under the deferential standard for federal review of state court decisions under US law, the federal courts have upheld this finding.

Amnesty International opposes the death penalty unconditionally. There have been 1,460 executions in the USA since 1976, when the US Supreme Court approved new capital statutes. Of the 70 executions in Georgia, 64 (91 per cent) were for crimes involving white victims. A third of those executed were African American. Seventeen of these 23 executions were for crimes involving white victims. None of Georgia's 70 executions were of white defendants convicted of killing black victims.