

# URGENT ACTION

## DIAGNOSED WITH CANCER, EXECUTION SCHEDULED

**Doyle Hamm, due to be executed in Alabama on 22 February after 30 years on death row, has received a stay of execution, but the state has appealed. He has been diagnosed with lymphatic cancer. The state of his veins may render his lethal injection unconstitutional.**

On the night of 24 January 1987, Patrick Cunningham was fatally shot during a robbery of the motel in Cullman, Alabama, where he was working on the front desk. After the shooting, a man and a woman who were stopped in a car seen earlier at the motel told police that **Doyle Hamm** had kidnapped them. They subsequently admitted to having been Doyle Hamm's accomplices and asserted that he had shot the victim. At Doyle Hamm's 1987 trial, the two testified for the prosecution in exchange for guilty pleas to lesser non-capital offences for which they received prison terms. Doyle Hamm was convicted of capital murder. After a one-day penalty phase at which his lawyer presented just 19 minutes of witness testimony (from two witnesses), no mental health expert and none of the evidence of brain damage that would be uncovered on appeal, the jury voted 11-1 for the death penalty.

The judge held a sentencing hearing on 9 November 1987. The judge found that Doyle Hamm was one of 10 children born to a father who was a "heavy drinker and had spent time in prison", who "tried to instil in his children the idea that if they did not steal they weren't a Hamm". The judge found that all seven of Doyle Hamm's brothers had served or were serving time in prison which in itself was an indication of the "terrible influence" their father's "irresponsible and deplorable" conduct had on their lives, and which "absolutely had a negative influence" on Doyle Hamm. The judge then accepted the jury's recommendation for the death penalty.

Doyle Hamm was 29 at the time of the crime. He will turn 61 on 14 February 2018. In 2014, doctors found a tumour behind his left eye and diagnosed him with lymphatic cancer. He was treated with radiation and medication. As a result of the cancer and treatment, and prior intravenous drug use, his veins are "severely compromised", and his lawyer argues that his lethal injection would cause severe and unnecessary pain and be unconstitutional.

On 6 February 2018, a US District Court judge found that the lawyer had "shown a substantial likelihood of success on the merits" of the constitutional claim, and issued an order staying the execution scheduled for 22 February. This is to allow her to appoint an independent medical expert to examine Doyle Hamm and provide an opinion on the current state of his lymphoma, the number and quality of accessible "peripheral" veins (in his arms, hands, legs or feet), and, if there were no such veins, whether enlargement of his lymph nodes would affect efforts at obtaining "central line access" into the jugular vein (neck), subclavian vein (near collarbone), or femoral vein (groin). The state had urged her to summarily dismiss the case. On 7 February, the state filed notice of its appeal to the Court of Appeals to have the stay of execution lifted. On 6 February, a clemency petition was filed before the Governor.

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

- Calling on the governor to commute Doyle Hamm's death sentence, regardless of whether the stay of execution granted by the District Court because of the serious medical condition of the prisoner remains in place;
- Expressing concern at the brevity of the mitigation phase of the trial, leaving the jurors without a full picture of who they were being asked to sentence, and its impact on him.

### **PLEASE SEND APPEALS BEFORE 22 FEBRUARY 2018 TO:**

Governor Kay Ivey

Alabama State Capitol, 600 Dexter Avenue

Montgomery, Alabama 36130, USA

Fax: +1 334 353 0004

Email: <http://governor.alabama.gov/contact> (use US detail)

**Salutation: Dear Governor**

**Also send copies to diplomatic representatives accredited to your country.** HIS EXCELLENCY WOODY JOHNSON, U.S. Embassy London, 33 Nine Elms Lane, London, SW11 7US, United Kingdom Phone: (0)20 7499-9000

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

**AMNESTY  
INTERNATIONAL**



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### ADDITIONAL INFORMATION

To retain the death penalty is to retain the ultimate cruel, inhuman and degrading punishment. The cruelty is not confined to the execution chamber. In 1890, the US Supreme Court recognized the “horrible” uncertainty a death row prisoner had to endure while waiting for execution. In that ruling, noted a Justice in a 2015, the Court was “describing a delay of a mere four weeks” between conviction and execution, whereas today “we must describe delays measured, not in weeks, but in decades”. Doyle Hamm has been kept in this condemned state for 30 years – more than 11,000 days and nights of “horrible” uncertainty. His lawyer says that despite his situation, Doyle Hamm has achieved “remarkable progress and success in his rehabilitation.”

In her 6 February 2018 ruling staying the execution, the Chief Judge of the US District Court for the Northern District of Alabama, Karon O. Bowdre, wrote that “no one disputes” either that Doyle Hamm has “a long and complicated medical history” or that his history of intravenous drug use “complicates the accessibility of his peripheral veins”. She found that “a genuine dispute of material fact exists about whether Mr Hamm has adequate peripheral venous access to allow [the state] to execute him without resorting to a central line. And a genuine dispute of material fact exists about whether Mr Hamm has lymphadenopathy [enlarged lymph nodes] in areas of his body that would make a central line placement extremely dangerous... If his medical condition is as he alleges, then his execution would be unnecessarily painful and dangerous”.

Doyle Hamm’s current lawyer has represented him for the past 28 years. In the clemency petition just filed with the governor, he states “Doyle Hamm currently faces two death sentences: one, at the hands of the State of Alabama; the other, very soon, at the hands of his cancer.” He describes his client as “extremely frail” and in “significant pain” for which he has been taking “heavy-duty pain medication”. He is “already near his deathbed and to seek to execute him “is simply a ghoulish pursuit”.

Twenty-seven years ago, in 1991, Doyle Hamm’s lawyer filed a post-conviction appeal under “Rule 32” of the Alabama Rules of Criminal Procedure. After a hearing in 1999, the trial court denied relief. The judge’s order was a verbatim adoption of the “Proposed Memorandum Opinion” that the state filed with the court one working day earlier. During oral argument in the US Court of Appeals for the 11<sup>th</sup> Circuit in 2014, one of the three judges said to counsel for the state: “it’s a bit odd, is it not, that the Alabama Rule 32 judge takes the State’s proposed findings and conclusions, 89 pages worth, and files them as the judge’s own within a day of receiving them, without even taking the time to take out the word ‘proposed’? That doesn’t engender much confidence in the Alabama State Court system, right? ... I’m telling you: I don’t believe for a second that the judge went through 89 pages in a day and then filed it as his own. As if he had gone through everything, went through his notes, the transcript, the exhibits, and the like. It just can’t be done! It just can’t be done.” The 11<sup>th</sup> Circuit judge then noted the level of deference that federal judges are required to give state court decisions under the 1996 Antiterrorism and Effective Death Penalty Act, adding “I’m telling you, that it sticks in my craw.” The three-judge panel upheld the death sentence in 2015, in which it “strongly criticize[d] the practice of trial courts’ uncritical wholesale adoption of the proposed orders or opinions submitted by a prevailing party”. This “strong” criticism was nevertheless an empty condemnation – reduced to a footnote, with the panel stressing that the trial judge’s “procedural shortcut has no bearing on our disposition of Hamm’s federal habeas appeal”. On the question of the trial lawyer’s performance at the 1987 sentencing, the panel acknowledged the “horribly abusive environment in which Hamm was raised” but decided the jury had been given enough information, despite the brevity of the mitigation presentation.

Alabama accounts for 61 of the 1,468 executions in the USA since the Supreme Court approved new capital laws in 1976. Amnesty International opposes the death penalty unconditionally, regardless of the crime or the execution method chosen.