

URGENT ACTION

FATHER APPEALS FOR SON'S LIFE TO BE SPARED

Thomas Whitaker, aged 38, is due to be executed in Texas on 22 February. He was convicted in 2007 of the murder of his mother and brother in a shooting in which his father was badly wounded but survived. The father is appealing for clemency for his son.

On 10 December 2003, the Whitaker family – mother, father and two sons – went out to dinner in Fort Bend County, Texas. When they returned home, Christopher Brashear was inside. The parents – Patricia and Kent Whitaker were shot, as was their younger son Kevin Whitaker. Patricia and Kevin Whitaker died, but Kent Whitaker survived his serious gunshot wounds. He would later learn that it was his other son, **Thomas Whitaker**, who had planned the killings and known that Christopher Brashear was waiting inside the house to shoot the family.

On 5 March 2007 a Fort Bend County jury convicted Thomas Whitaker of capital murder. At the sentencing, the mitigation case was that he was remorseful, had offered to plead guilty in return for two life sentences, and that neither his father nor members of his mother's side of the family wanted him to be sentenced to death. The defence also noted that the state was not seeking the death penalty against Christopher Brashear (he was subsequently sentenced to life imprisonment in September 2007).

Thomas Whitaker's lawyers filed a clemency petition earlier this month, requesting that the death sentence be commuted. At the centre of the request is that the prisoner's father, who is also a victim of the crime, "desperately seeks clemency for his son". The clemency petition also points to evidence that the state had not only spared Christopher Brashear from the death penalty, but that it had originally been open to agreeing to life sentences for Thomas Whitaker, but that the negotiation with the defence lawyers had gone "very wrong". According to sworn statements given by those lawyers, the prosecutor had said that he would consider life sentences in return for a written confession from the defendant that was limited to the facts, without expression of remorse or contrition. When the defence lawyers presented the prosecutor with such a "proffer", the prosecutor rejected it on the grounds that it did not contain any expressions of remorse. While the prosecutor denied that he had agreed to forego the death penalty in exchange for a confession, it is undisputed that the prosecution then made use of the confession at trial (describing it as a "statement made in the course of plea discussions"), emphasising the absence of remorse in arguing for the death penalty. In 2015 a federal judge said this was "particularly troubling", but upheld the death sentence. The execution has been scheduled for the early evening of 22 February 2018.

The clemency petition includes letters from fellow inmates, who point to Thomas Whitaker's personal rehabilitation and the inspiration he has provided to others. Letters from a number of prison guards also support clemency.

Please write immediately in English or your own language, in your own words (cite Inmate No: 999522):

- Calling on the Texas authorities to commute the death sentence of Thomas Whitaker;
- Noting support for clemency from inmates, guards, and the prisoner's father, also a victim of the crime;
- Noting that the actual gunman received a life sentence and the very troubling claims surrounding the prosecution's alleged solicitation of the defendant's confession and its use in arguing for a death sentence.

PLEASE SEND APPEALS BEFORE 22 FEBRUARY 2018 TO:

Clemency Section, Board of Pardons and Paroles
8610 Shoal Creek Blvd., Austin,
Texas 78757-6814, USA
Fax: +1 512 467 0945
Email: bpp-pio@tdcj.state.tx.us
Salutation: Dear Board members

Governor Greg Abbott
Office of the Governor, P.O. Box 12428
Austin, Texas 78711-2428, USA
Fax: +1 512 463 1849
Email: <https://gov.texas.gov/apps/contact/opinion.aspx>
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 Tel: (0)20 7499-9000

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

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ADDITIONAL INFORMATION

In an opinion issued in March 2015, a US District Court judge wrote that he was concerned by the allegations about how the prosecution obtained the written confession (“the proffer”) which it then used in arguing for the death penalty against Thomas Whitaker. This federal judge noted that the appeal lawyers contended that the prosecution’s use of the proffer at trial “was repugnant to basic principles of fundamental fairness” and that the Texas Court of Criminal Appeals’ (TCCA) rejection of the claim that Thomas Whitaker’s due process rights had been violated was unreasonable. The federal judge further wrote that he “shares Mr. Whitaker’s concerns about the State’s decision to use the proffer at trial. Texas Rule of Evidence 410 -- like its federal counterpart -- assures all criminal defendants that they may enter into plea discussions without fear of supplying evidence that later may be used against them... The alleged facts here are particularly troubling, as [the prosecutor] purportedly directed that the proffered statement not include any expressions of remorse — the very feature of the proffered statement which he and his co-counsel then highlighted at trial as evidence that Mr. Whitaker was unrepentant, manipulative, and deserving of the death penalty.” However, under the deference that federal courts are required to give state court decisions under the 1996 Antiterrorism and Effective Death Penalty Act (AEDPA), the federal judge upheld the TCCA’s rejection of the claim that the prosecution’s alleged solicitation and use of the proffer at trial did not violate the defendant’s fair trial rights.

After hearing the sentencing phase evidence, on 8 March 2007, the jury found that there was a probability that Thomas Whitaker would commit acts of criminal violence that would constitute a continuing threat to society if he was allowed to live, even in prison. This so-called ‘future dangerousness’ question that must be answered in the affirmative before a Texas defendant can be sentenced to death, and is an aspect of the Texas death penalty that has drawn many claims of questionable tactics by prosecutors in their pursuit of an affirmative answer to this question. The letters from guards, inmates and others submitted with the clemency petition challenge such a jury finding in this case, as the petition itself points out

The clemency petition also states: “When Kent Whitaker closes his eyes, he remembers the killings and his own near-death. This Board [of Pardons and Paroles] can spare him from the indignity and cruelty of searing into him a new memory, the experience of watching his son be killed. The Board can and should spare us all from such a miserable and meaningless spectacle”.

There have been 1,468 executions in the USA since they resumed in 1977 under new capital laws approved by the Supreme Court in 1976. Texas accounts for 548 of these executions. There have been three executions in the USA so far this year, all three of them in Texas.

Amnesty International opposes the death penalty, unconditionally. Today 142 countries are abolitionist in law or practice.