

URGENT ACTION

EXECUTION SET DESPITE UNRELIABLE TESTIMONY

Brent Brewer is scheduled to be executed in Texas on 9 November 2023. His 1991 death sentence was overturned in 2007, but he was resentenced to death in 2009. In 1991 and again in 2009, the prosecution relied on unscientific and unreliable, but influential, testimony of a psychiatrist who asserted that Brent Brewer would likely commit future acts of violence, a prerequisite for a death sentence in Texas. Nineteen years old at the time of the crime, Brent Brewer is now 53. He has been an exemplary prisoner, with no record of violence during his three decades on death row.

TAKE ACTION: WRITE AN APPEAL IN YOUR OWN WORDS OR USE THIS MODEL LETTER

Texas Board of Pardons and Paroles
P.O. Box 13401, Austin, Texas 78711-3401, USA
Email: bpp_pio@tdcj.texas.gov

Dear Board Member

Brent Ray Brewer (TDCJ #999000) is due to be executed on 9 November. I am appealing for your intervention.

Brent Brewer is reported to have shown exemplary conduct during his 30 years on death row. At the 1991 trial sentencing, a psychiatrist who had never met or assessed him testified that he would commit future acts of criminal violence if allowed to live. The same psychiatrist appeared at the 2009 resentencing, and made the same prediction based on the same methodology. Even before the 1991 hearing, this kind of "expert" testimony, influential on juries, had been discredited within the profession, including by the American Psychiatric Association.

I am concerned about the adequacy of the legal representation that Brent Brewer received at the 2009 resentencing. In a capital case with a similar timeline, the Texas Court of Criminal Appeals ruled that the trial judge should not have allowed the testimony of this same psychiatrist because his methodology was so unreliable. Here Brent Brewer's lawyers precluded such a ruling because by having not challenged its admissibility at trial, the matter was not preserved for appeal. The defence lawyers also failed to present the jury with a comprehensive mitigation case about Brent Brewer's background that would have helped to inform its sentencing decision.

International standards require that anyone facing the death penalty be provided "adequate legal assistance at all stages of the proceedings", "above and beyond the protections afforded in non-capital cases". A death sentence must not be based on "vaguely defined criminal provisions, whose application to the convicted individual depend on subjective or discretionary considerations, the application of which is not reasonably foreseeable". The Texas "future dangerousness" scheme has led to the use of "junk science", with unreliable and unjust outcomes, and contravenes the obligation upon prosecutors to ensure "due process and the smooth functioning of the criminal justice system".

The US Supreme Court has said that the finality of the death sentence creates a "qualitative difference" between the death penalty and other punishments, creating "a corresponding difference in the need for reliability in the determination that death is the appropriate punishment in a specific case". Without the unscientific, unreliable future dangerousness testimony, and with a full mitigation picture, the jury's decision may have been different.

Please recommend to Governor Abbott that he commute the death sentence of Brent Brewer.

Yours sincerely,

ADDITIONAL INFORMATION

Brent Brewer was sentenced to death after being convicted of the 1990 capital murder during a botched robbery of a 66-year-old man. He was fatally stabbed in his truck as he was driving 19-year-old Brent Brewer and his girlfriend ("KN"), 21, who had asked him for a lift. Weeks before the crime, Brent Brewer had been committed to a state hospital with depression and suicidal ideation. There he had met KN, who was in the hospital for drug rehabilitation treatment. In 1992, KN pled guilty to capital murder in the stabbing and was sentenced to life imprisonment.

In 2007, Brent Brewer's death sentence was overturned because of inadequate jury instructions at the 1991 sentencing. At the 2009 resentencing, the defence put two mitigation witnesses, the defendant's sister and mother, on the witness stand for a combined 28 minutes. A psychologist, who had been involved in the case on appeal in 1996, provided a report to the post-2009 appeal lawyers on mitigating evidence that could have had been presented in 2009. At the time of the crime, he wrote, Brent Brewer "suffered from major depression, severe anxiety," and "substance abuse, tied to his history of neglect, abuse, and family dysfunction". He "suffered from brain dysfunction," which the jury did not learn about, that represented a critically important mitigating factor concerning Mr Brewer's judgment and decision-making capability. Abandonment fears were of particular importance in understanding Mr Brewer's behavior at the time of the offense, as was his dependent relationship with his co-defendant, [K.N.]. Their relationship "helped to undermine his judgment and increase his impulsivity".

In Texas, a prerequisite for a death sentence is a jury finding that the defendant will likely commit future acts of criminal violence. At Brent Brewer's resentencing, the prosecution presented a psychiatrist (Dr C.) who testified he would likely commit future violence, the same as he had said at the 1991 sentencing. In 2009, he added that despite Brent Brewer's lack of violent conduct during nearly two decades on death row, he still believed he would commit such acts in the future. As was the case in 1991, Dr C. had not met or evaluated the defendant. He testified by responding to hypothetical scenarios set by the prosecution, and opined that the defendant had no conscience, violence "doesn't seem to bother him", he would join a gang in prison, and had a "preference for a knife".

As long ago as 1983, the American Psychiatric Association (APA) informed the US Supreme Court (USSC) in a Texas capital case that "the unreliability of psychiatric predictions of long-term future dangerousness is by now an established fact within the profession". The Court did not dispute the APA's assertion but placed its faith, "at least for now", in the adversarial process "to sort out the reliable from the unreliable evidence and opinion about future dangerousness". Three Justices dissented, arguing that "when a person's life is at stake...a requirement of greater reliability should prevail. In a capital case, the specious testimony of a psychiatrist, colored in the eyes of an impressionable jury by the inevitable untouchability of a medical specialist's words, equates with death itself."

Brent Brewer's lawyers presented evidence of his good prison record but did not challenge the admissibility of Dr C.'s testimony before, or at a timely point in the 2009 proceeding. In a separate case on appeal in 2010, the Texas Court of Criminal Appeals (TCCA) found that Dr C's testimony was inadmissible under Texas law because it was insufficiently reliable, and the trial judge should have excluded it after the defence objected and had a hearing. That defendant was tried in 1990, had his death sentence overturned in 2007, and was resentenced to death in 2008. Dr C. testified in 2008 (as he had in 1990) that the defendant would pose a future danger even though he had a spotless disciplinary record during 17 years on death row. The TCCA said "we cannot tell what principles of psychiatry [Dr C.] might have relied upon because he cited no books, articles, studies or even other forensic psychiatrists... There is no objective source material in this record to substantiate [Dr C.'s] methodology as one that is appropriate...".

In 2011, the American Psychological Association and Texas Psychological Association filed a brief in the USSC in another Texas capital case at which Dr C. had testified. The brief asserted that "scientific research now reveals that unstructured 'expert' testimony on future dangerousness like [Dr C.'s], despite its lack of scientific basis, influences jurors more than opinions based on structured risk-assessment methods... These empirically demonstrated realities render the admission of testimony like Dr C. in capital cases especially problematic because they suggest a real risk of prejudice that cannot effectively be combated through tradition adversarial measures."

In 2020, in another Texas capital case, a brief filed in the USSC by experts in neuroscience, neuropsychology and related fields said that "it was now "well-established that a human brain continues to undergo profound changes through adolescence and young adulthood... in the areas and systems that are regarded as most involved in impulse control, planning, and self-regulation... [I]t is scientifically impossible reliably to predict the future dangerousness of an offender who commits a crime while under the age of 21".

Seventy-seven of the 583 people (13%) put to death in Texas from 1982 to 2023 were 18 or 19 at the time of the crime (in addition to 13 who were 17, before that practice was prohibited by the USSC in 2005). There have been 19 executions in five states in 2023: Alabama (1), Florida (6), Missouri (4), Oklahoma (3) and Texas (5). These five states account for 62% of the 1,577 executions in the USA since 1976. Texas alone accounts for 37% of the national total. Amnesty International opposes the death penalty unconditionally.

PREFERRED LANGUAGE TO ADDRESS TARGET: English. You may also write in your own language.

PLEASE TAKE ACTION AS SOON AS POSSIBLE UNTIL: 9 November 2023

NAME AND PRONOUN: Brent Ray Brewer (he/him)

ADDITIONAL TARGET

Ms Jane D Hartley

U.S. Embassy

33 Nine Elms Lane, London SW11 7US

Salutation: Your Excellency