

URGENT ACTION

EXECUTION SET DESPITE UNRELIABLE TESTIMONY

Brent Brewer is scheduled to be executed in Texas on November 9, 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 a letter in your own words or using the sample below as a guide to one or both government officials listed. You can also email, fax, call or Tweet them.
- [Click here](#) to let us know the actions you took on **Urgent Action 93.23**. It's important to report because we share the total number with the officials we are trying to persuade and the people we are trying to help.

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 November 9. 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 never assessed him testified that he would commit future acts of criminal violence if allowed to live. The same psychiatrist made the same prediction based on the same methodology at the 2009 resentencing. This kind of “expert” testimony, influential on juries, had long 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 similar case, 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. Brent Brewer’s lawyers did not challenge the psychiatrist’s testimony’s admissibility at trial, so the matter was not preserved for appeal. The defense lawyers also failed to present a comprehensive case about Mr. Brewer’s background that may have altered the sentencing decision.

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.

In 2007, Brent Brewer’s death sentence was overturned because of inadequate jury instructions at the 1991 sentencing. At the 2009 resentencing, 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, which represented a critically important mitigating factor concerning Mr. Brewer’s decision-making capability.

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.

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 this 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”.

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 defense objected and had a hearing.

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”.

PREFERRED LANGUAGE TO ADDRESS TARGET: English (or your preferred language)

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

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