

The Justice Institute

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**JUSTICE
DENIED**

The Magazine for the
Wrongly Convicted

July 18, 2008

Governor Bob Riley
State Capitol
600 Dexter Avenue
Montgomery, Alabama 36130

RE: Issuance of a stay and ordering DNA testing for death row prisoner Thomas Arthur

Dear Governor Riley,

We like to think that the legal system gets it right when a person is convicted of murder and sentenced to prison or death. However, all human systems are fallible. That is why there are more than 675 documented cases nationally of a person's exoneration after being convicted of murder, and 258 of those people were sentenced to death. (Source: The Innocents Database, http://forejustice.org/search_idb.htm (11 of these 675 are Alabama cases.)

The circumstances of Thomas Arthur's 1991 murder conviction and death sentence strongly suggest that his case is one in which the system did not get it right. Several key issues illustrate this:

1. The only direct evidence placing Mr. Arthur, a Caucasian, at the crime scene was the testimony of Judy Wicker, the wife of the murdered man. However, Ms. Wicker told police investigators at the crime scene and she testified at her trial for her husband's murder, that she was raped by the African-American intruder who killed her husband. After almost ten years of imprisonment she recanted her statements and trial testimony by testifying at Mr. Arthur's 1991 trial that she hired him to commit the murder. Ms. Wicker was promptly paroled from her life sentence after providing her testimony.
2. The trial judge denied the defense's request for forensic testing of crime scene evidence. There are sophisticated DNA techniques now available to analyze the evidence that includes Ms. Wicker's clothing and rape kit, a wig and hair samples, vacuum sweepings from the Wicker's home, a pillow case, hair samples from a shoe, blood, bullet cartridges and a bullet. DNA testing could both exclude Mr. Arthur as the source of DNA on the evidence, and identify the person or persons who are the source of that DNA.
3. Mr. Arthur's trial attorney did not interview witnesses who could have corroborated his alibi. Eleven years after Mr. Arthur's trial his *pro bono* lawyers obtained affidavits from two credible alibi witnesses who swore that on the morning of Troy Wicker's murder they saw and talked with Mr. Arthur in Decatur, about an hour from the Muscle Shoals crime scene. The exculpatory evidence provided by those alibi witnesses has never been subjected to examination in any state or federal court proceeding.

4. Mr. Arthur's court-appointed attorney was entrusted with the responsibility to investigate the case, interview witnesses, review the state's evidence, research legal issues, file all necessary pre-trial motions, and provide effective representation during his capital murder trial, and the sentencing hearing that followed. To accomplish his crucial responsibilities in the most complex type of criminal case a lawyer can undertake, Mr. Arthur's counsel was paid the princely sum of \$1,000. No competent lawyer will represent a person in a contested divorce involving property and children for that amount. We submit that on its face \$1,000 is inadequate for Mr. Arthur's trial counsel to have provided him with effective representation.

These are only four of many compelling issues in Mr. Arthur's case. However, they illustrate it is reasonable to doubt the correctness of Mr. Arthur's conviction. DNA testing of the evidence could provide new evidence conclusively excluding Mr. Arthur's presence at the crime scene, and that an African-American male was present. Those new facts would prove Ms. Wicker's testimony at Mr. Arthur's trial was false, they would support the alibi witnesses who swore Mr. Arthur was in Decatur at the time of the murder, and they would confirm that Mr. Arthur's trial counsel provided ineffective representation. The essence of this brief analysis is that Mr. Arthur's actual innocence of Mr. Wicker's murder can be established, but the trigger to do that is DNA testing of the crime scene evidence.

As Alabama's governor you have the authority to order DNA testing of the physical evidence in Mr. Arthur's case. As your Attorney General, Mr. Troy King, clearly stated in a February 16, 2006 brief filed with the federal Eleventh Circuit Court of Appeals, "If the Governor wants DNA testing, the Governor gets DNA testing." (*Grayson v. King*, No. 05-15725-P (11th Cir.), Brief for Defendants/Appellees, 02/16/2006.)

Thomas Arthur asserts his innocence of Mr. Wicker's murder, there is no physical evidence tying him to the crime scene, and Ms. Wicker supported his innocence claim until she had a choice few people could resist – die in prison or walk out of prison by identifying Mr. Arthur as the perpetrator. The circumstances of Mr. Arthur's conviction are similar to those present in known cases of false conviction. That Mr. Arthur's conviction has not been corrected can be attributed to the fact that the merits of his post-conviction arguments challenging his conviction have not been reviewed by any state or federal court.

For the above reasons we encourage you to issue a stay of Mr. Arthur's scheduled July 31, 2008 execution, and to order DNA testing of all available crime related evidence.

Sincerely,

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