

Texas Courts Should Grant New Trial in Death Penalty Case

Nicaraguan national Bernardo Aban Tercero is scheduled for execution on August 26, 2015

Despite an Inter-American Commission on Human Rights (IACHR) opinion recognizing serious due process violations in his case, Tercero is scheduled to be executed, having been on death row in Texas since 2000, when he was convicted and sentenced to death for intentional murder during the course of a robbery. Tercero committed the robbery with an accomplice, who was indicted in absentia with Tercero but was never arrested or tried.

Tercero had deficient capital counsel at trial, sentencing, and at every stage of his post-conviction proceedings. His trial attorneys never conducted a comprehensive investigation into his social history, as required by the American Bar Association (“ABA”) Guidelines on minimum standards of representation in a capital case. All of Mr. Tercero’s habeas lawyers, who were required by ABA and Texas State Bar Guidelines to undertake independent investigations of his social history and of the adequacy of trial counsel, failed to conduct any of those required investigations.

The state was aware of Tercero’s deficient counsel. Tercero’s state appellate and habeas lawyers were among a list of the “worst of the worst” capital lawyers identified in a 2006 Austin American-Statesman article. The poor quality of counsel was apparent from the filings themselves, in which lawyers repeatedly abandoned claims or failed to raise claims that were appropriate for the type of proceeding. Tercero himself filed repeated motions requesting new counsel, which the courts routinely denied — including, in at least once instance, with an admonition to file all future requests *through* the very lawyers he was trying to replace.

Recent investigations have uncovered important mitigating evidence never presented at trial, including a family history of hereditary mental illness, indications that Tercero may be mentally ill, and evidence of pesticide exposure, which go to Tercero’s cognitive capacity and eligibility for execution. These facts relate to legal claims that should have been investigated and presented during the early phases of Tercero’s proceedings. It appears very likely that had this evidence been presented earlier, he would not have been sentenced to death or would have been found to be ineligible for the death penalty.

Numerous questions remain about Tercero’s background, trial representation, and legal eligibility for the death penalty. Because Tercero’s post-conviction counsel were repeatedly deficient, he never received a full investigation into his case or his social history. His new lawyer, who was newly appointed in May 2015, is beginning a more comprehensive investigation but needs more time to fully develop the record in this case, including information about his background and cognitive functioning.

The Inter-American Commission on Human Rights determined that these repeated deficiencies in Tercero’s counsel violated his right to due process and to a fair trial.

For more information contact Mary Elizabeth Margolis at margolisme@humanrightsfirst.org