



Archdiocese of Galveston-Houston

Office of the Archbishop

August 27, 2007

The Honorable Rick Perry  
Governor's Office  
P.O. Box 12428  
Austin, Texas 78711

Dear Governor Perry,

On behalf of the Archdiocese of Galveston-Houston, I urge you to recommend clemency for Kenneth Foster who is scheduled to be executed on August 30, 2007. Although Mr. Foster did not murder, intend to murder, or know that a murder was to take place, he was sentenced to death under the "law of parties" for the murder of Michael LaHood. I have tremendous sympathy for the family of Mr. LaHood and in no way wish to downplay the suffering they have endured as a result of his death. But my faith tradition also compels me to ask for mercy for Kenneth Foster.

The Catholic Church fully believes that those who commit terrible, violent crimes must be incarcerated, both as just punishment and in order to protect society. We stand in solidarity with victims and their loved ones. However, when it comes to matters of life and death, morality and common sense call for justice, mercy, and for careful safeguards.

In the parable of the Good Samaritan, Jesus teaches that a true neighbor is one who shows mercy (Luke 10:37). Showing mercy does not mean neglecting to administer justice or punish people for their crimes. Showing mercy does mean exhibiting compassion toward all of our brothers and sisters, and providing them with an opportunity for atonement and rehabilitation. The facts of Kenneth Foster's case clearly provide an opportunity to extend clemency, in order to show mercy.

Mr. Foster, along with two other co-defendants, was present at the time that Mauriceo Brown committed the murder of Michael LaHood. Mr. Foster, who drove the four away from the crime scene, was given the death penalty under the "law of parties" which states, "a person is criminally responsible for an offense committed by the conduct of another if, acting with intent to promote or assist the commission of the offense, he solicits, encourages, directs, aids or attempts to aid the other persons to commit the offense (Section 7.02 of the Texas Penal Code.)" Brown, who did not contest that he was the shooter, was executed for his crime last year. The other two co-defendants, Julius Steen and Dwayne Dillard, received life sentences and were never prosecuted for murder.

Intent is a key factor to this case, as the law of parties can only be applied to a person who acts with intent. The jury decision that Foster did act with intent was based on the ambiguous trial testimony of co-defendant Steen. However, in an affidavit, Steen stated that he did not believe Foster knew in advance about Brown's intent to commit a crime. Without prior knowledge of the crime, Foster could not have acted with intent, and so the law of parties should not have been applied to his case.

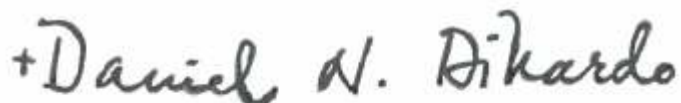
Mr. Foster's attorney appealed, using the 1982 Supreme Court ruling *Edmund v. Florida*, which stated that the death penalty cannot be given to someone "who does not himself kill, attempt to kill, or intend that a killing take place." However, Mr. Foster's final writ explains that the district court rejected his appeal based on a Fifth Circuit decision that has since been held inapplicable to Mr. Foster's case.

As Christians, we are taught that mercy triumphs over judgment (James 2:13). But displays of mercy are not reserved for the religious. The Texas Department of Criminal Justice (TDCJ) states in its mission that it works to promote positive change in offender behavior and to reintegrate offenders into society. The Catholic Church also believes that the criminal justice system should work to foster a justice that focuses on reconciliation, and if possible, encourages the re-insertion of the condemned person into society (*Compendium of the Social Doctrine of the Church*).

Our society has the means of effectively rendering criminals harmless in order to provide them with an opportunity for reform, yet the death penalty denies them this opportunity. It is our teaching that if bloodless means are sufficient to defend human lives against an aggressor and to protect public order and the safety of persons, which is the case in our society, public authority should limit itself to such means, because they better correspond to the concrete conditions of the common good and are more in conformity to the dignity of the human person (*Catechism of the Catholic Church*).

I continue to pray for the LaHood family. I pray for Kenneth Foster, his family and all those affected by Michael LaHood's death. And, because of my conviction that mercy truly does triumph over judgment, I urge you to recommend clemency for Kenneth Foster.

Yours in Christ,

A handwritten signature in black ink that reads "+Daniel N. DiNardo". The signature is written in a cursive, slightly slanted style.

Most Reverend Daniel N. DiNardo  
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