

# DNA retesting denied for Texas death row inmate

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**1 June 2000**

The Texas Court of Criminal Appeals rejected on Tuesday by a 6-3 vote a plea by death row inmate Ricky Nolen McGinn for DNA retesting in his case. McGinn is scheduled to die by lethal injection on Thursday, June 1 for the 1993 rape and beating death of his 12-year-old stepdaughter Stephanie Rae Flanery.

The appeals court ruling comes within days of statements by Republican presidential candidate and Texas Governor George W. Bush that he supports DNA testing if it can confirm guilt or innocence in a death penalty case. "If the DNA testing helps to settle a case, or erase any doubts or concerns, we would support that," Bush commented on May 26.

Attorneys representing Ricky McGinn recently won the recommendation of the condemned man's trial judge for a retesting of hair and semen removed from the victim in the case. State District Judge Steve Ellis in Brownwood referred the trial judge's request to the appeals court, which rejected it on procedural grounds. The court is only authorized to review cases if it is presented with new facts or proof of innocence. Maurie Levin, an attorney from the Texas Defender Service who is working on McGinn's appeals, commented, "You need the evidence to show you're innocent, but you can't get into court without the evidence."

McGinn's lawyers contend that some items of evidence in his case were not collected and tested properly, and that some DNA testing was not conducted because the technology available at the time was not adequately developed. Levin commented, "Testing could be performed that would provide conclusive proof, one way or the other, of guilt or innocence."

Ricky McGinn and his family maintain that he is innocent. In a statement posted on a web site in McGinn's defense, his brother Mikel McGinn points to

details casting doubt on his guilt: "My brother was arrested on Sunday and charged with capital murder for the disappearance of his 12-year-old stepdaughter who disappeared on Saturday evening. The culvert where the highway patrolman, Cappochino, found her body had been searched on Sunday afternoon and my brother was already in jail.... When found, the girl was lying in fresh blood." Mikel McGinn also says that the patrolman who found the girl's body changed his story three times.

While Governor Bush insists that every condemned inmate in Texas "has had full access to the courts," Mikel McGinn raises that his brother has received shoddy legal counsel. His present lawyer, Richard Alley, has been reprimanded several times, once for filing false documents while his license was suspended. He also contends that Brown County Sheriffs officers visited McGinn in the Huntsville prison trying to get him to confess to other crimes, reportedly telling him: "You're going to die anyway, so why don't you confess to these other murders so we can clear our books?"

Bush maintains that all of the 130 death row inmates executed during his term as governor have been guilty, and the Texas state appeals court has reversed only eight death penalty cases in the last five years. While the Texas governor cannot order the DNA retesting in McGinn's case, he does have the authority to grant a 30-day reprieve. Although under Texas state law the governor can only commute a death sentence if it is recommended by the Texas Board of Pardons and Paroles, all of the members of the board are Bush appointees and he could undoubtedly influence them to recommend a pardon. McGinn's lawyers are petitioning the 5th US Circuit Court of Appeals in New Orleans to order the additional DNA testing.

Four other men are scheduled to be put to death this

week in the US. On Wednesday, May 31, Robert E. Carter is set to die by lethal injection in Texas, and Bennie Demps is scheduled to be put to death in Florida. James Robedeaux, a Native American, is scheduled to be executed in Oklahoma on Thursday, June 1.

Barring any last-minute stays, the state of Alabama plans to execute Purnell Ford on Friday, June 2. Ford was scheduled to be put to death in July 1999, but was granted a reprieve due to questions as to his mental competency. He was tried and convicted for the 1983 murder of a handicapped woman and her daughter. Ford was diagnosed with mental disorders at age six and was periodically institutionalized from ages 9 to 15. He insisted on representing himself at his trial, and wore a white sheet wrapped around him like a toga during closing arguments, insisting he was a prophet. Although he dropped his appeals, an attorney with the Equal Justice Initiative has been allowed to represent him in competency hearings.

Thirty-nine people have been executed so far this year in the US, including 19 in Texas. There are 15 more executions scheduled in Texas between now and August 31, including 7 in June alone. Since the death penalty was reinstated in 1976, 637 people have been put to death nationwide. According to the Death Penalty Information Center, 87 inmates since 1973 have been exonerated and taken off death row, many as a result of DNA testing such as that being requested by Ricky McGinn.



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