

# Last minute stay delays Texas execution

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Four hours before he was to be put to death by lethal injection, the Texas Criminal Court of Appeals Wednesday afternoon issued a stay of execution for Napoleon Beazley, a young black man convicted of committing murder at the age of 17. The case has generated international attention because it highlights the barbaric practice—outlawed by the vast majority of the world's nations but permitted in 23 US states—of executing juvenile offenders.

The case has also gained notoriety because the murder victim, John Luttig, was a prominent east Texas oil man and the father of a politically powerful and conservative federal appeals judge in Virginia, J. Michael Luttig. On Monday, the US Supreme Court voted to allow the execution to proceed after three of the court's justices—Antonin Scalia, Clarence Thomas and David Souter—disqualified themselves because of professional and personal ties to Judge Luttig.

Over the last decade only a handful of other countries—including the Congo, Iran, Nigeria, Pakistan, Saudi Arabia and Yemen—have carried out executions of those who committed crimes as teenagers, and the US has put to death more than any. Since a 1989 Supreme Court ruling that upheld the death penalty for crimes committed by 16- and 17-year-olds, 14 men have been executed for crimes they committed as minors, half of them in Texas. Texas currently has 31 death row prisoners, including Beazley, who were 17 years old at the time of their crimes.

The stay of Beazley's execution will remain in effect until the state court issues further orders. If it finds no grounds to uphold the appeal the execution will go forward. The 6-3 decision by the state's highest criminal court, which had earlier upheld Beazley's conviction, was considered unusual for the Texas appellate judges, who regularly give a green light to the state's executioners. Pressure has been building over the past several weeks, however, to halt or overturn the execution, including appeals from the European Union, international human rights organizations, the American Bar Association and several Texas newspapers, including the *Dallas Morning News*. On Wednesday, the judge in the original trial took the unprecedented step of urging Governor Rick Perry to commute Beazley's sentence to life in prison because of his age.

After the Supreme Court ruling, and the 10-6 decision by the Texas Board of Pardons and Paroles for the execution to proceed, Beazley and his family were preparing for the inevitable. The young man, now 25, had said goodbye to his family and was writing a letter in a cell adjacent to the execution chamber when he was told the reprieve was granted. Prison officials reported that he stared blankly for a few seconds without reacting and then said, "I just want to think about this. I just have to comprehend this."

At the family's home in the small town of Grapeville, Texas, the young man's father, Ireland Beazley, said he was making arrangements at a local funeral home, and preparing to travel with his wife to a vigil outside the Huntsville death chamber, when he received the phone call about the reprieve. "All we know is that we don't have to go down there this evening," he said. "We don't have to pick up a body. The war, we understand, is not over. But we have won one battle."

Responding to the ruling, the prosecutor in the case could hardly contain his anger. Smith County Prosecutor Jack Skeen said, "We still hold the execution is proper and the just sentence in this case, and we will continue to seek and strive to see the imposition of this sentence."

Before the stay had been issued, Texas Governor Rick Perry told reporters he supports the law allowing 17-year-olds to be executed. "My son's 17," Perry said, "and I am comfortable that my son understands right from wrong and that the citizens of the state of Texas have sent a clear message that when you reach 17 years of age, you're going to be held responsible for your actions, just like you're an adult."

In June, Perry vetoed state legislation that would have banned the execution of the mentally retarded. A spokesman for the governor complained that most of the hundreds of letters the governor had received opposing Beazley's execution had come from residents from other states and people living in other countries.

In their ruling staying the execution, the state appellate judges announced they would review the 10 issues raised by Beazley's attorneys about the fairness of his 1995 trial and death sentence. In a petition filed Tuesday, defense lawyers charged that executing a juvenile offender is cruel and unusual punishment, forbidden by the Texas Constitution and a violation of an international treaty signed by the US. The petition also stated that the initial appellate lawyer appointed by the court had been incompetent, for failing to raise possible racial bias by members of the all-white jury as well as other key issues.

Appeals attorney Robin Norris acknowledged in an affidavit filed Tuesday that his investigation was inadequate and that he failed to research the legal issues surrounding the death penalty for juveniles. Moreover, he did not interview Beazley's two codefendants—Cedrick and Donald Coleman—who provided damaging testimony used by prosecutors to attain a death sentence.

Although physical evidence pointed Beazley's guilt, under Texas law prosecutors must prove the "future dangerousness" of a convicted defendant to get the death penalty. Donald Coleman testified that before the killing Napoleon had talked about

“wanting to hurt someone” and that he also said he wanted “to see what it feels like to see somebody die.” In recent affidavits, however, both brothers said they lied about Beazley’s comments as part of a deal with prosecutors to avoid the death penalty. The recanted testimony was crucial because prosecution psychiatric experts had used their statements during the sentencing phase as proof that the young man was dangerous.

Norris, who had never handled a death penalty appeal before, also said because of strict guidelines designed to restrict the number of appeals by death row inmates he had only 180 days to prepare Beazley’s case, as well as the appeals of four other condemned prisoners he had been assigned. At the time he took the case in December 1996, the court of appeals was having a very difficult time getting experienced lawyers to accept capital cases. The criminal bar was also complaining about limits on investigative and legal fees making it impossible to prepare adequate appeals. In an interview on Wednesday, Norris said that despite his few years as a defense attorney he had far more experience than some of the “baby lawyers” who are now being appointed.

Napoleon Beazley’s is but the latest case demonstrating how death row inmates—who are overwhelmingly poor and minorities—are processed through the justice system in Texas. On Monday, the 5th US Circuit Court of Appeals ruled that Texas death row inmate Calvin Burdine should get a new trial because his lawyer repeatedly fell asleep during his 1984 trial. The Texas attorney general had argued that a sleeping lawyer was not that different from lawyers who have defended Texas death row inmates while intoxicated, and that in many cases appellate courts have upheld such convictions.

During his trial, Beazley was portrayed by prosecutors as a ruthless killer and a crack cocaine dealer. But in fact, before becoming involved in the attempted carjacking and subsequent killing of John Luttig, Beazley had been a runner-up as Grapeland High School’s most popular student, the senior class president and a star football player. His father was the first black city councilman in the small town of Grapeland.

The rush to execute the young man even provoked Cindy Marie Garner, the district attorney in Beazley’s home county of Houston, to ask the state paroles and pardon board to spare him. Garner, a supporter of the death penalty, argued that the death penalty is too severe a punishment considering the youth’s background and the fact that he had no prior criminal record.

Several of those who have opposed Beazley’s execution, including the Houston County DA, believe prosecutors pushed for a death sentence in the case because of the prominence of the victim’s family. They say prosecutors and the trial judge sought to placate Judge Luttig, who moved his office and law clerks from Virginia to Tyler, Texas for the trial. According to court records, prosecutors once sought a recess so they could discuss jury selection with Judge Luttig. It is also unusual that a death row inmate’s appeals could be exhausted so quickly—in this case in less than five years—unless political pressure was applied.

J. Michael Luttig, the victim’s son, is a judge on the US Court of Appeals for the Fourth Circuit of Virginia, and is considered one of the most influential and conservative judges in the nation. He

was a clerk for right-wing Supreme Court Justice Antonin Scalia and as a deputy attorney general under President George H.W. Bush helped guide Clarence Thomas and David Souter through their Supreme Court confirmation hearings. Luttig is also thought to be one of President Bush’s top candidates for a Supreme Court nomination.

Beazley still has a pending motion before the US Supreme Court to review his case on the merits, including the question of whether the Constitution bars the execution of someone who was under the age of 18 when a crime was committed. With the stay of execution, however, the high court may avoid ruling on whether executing a juvenile offender is cruel and unusual punishment in violation of the Eighth Amendment. In 1989, the Supreme Court ruled 5 to 4 that it did not, in a majority opinion written by Justice Scalia.

The Texas appeal court’s ruling indicates a concern by state officials over growing international and domestic opposition to the death penalty. The results of an *International Herald Tribune* poll released this week showed widespread European opposition to President Bush’s support for the death penalty. In France, 67 percent of those polled opposed the US president’s backing for executions, while in Germany the percentage was 68 percent and in Italy, 73 percent. At the same time, the execution of juvenile offenders, the mentally retarded and those denied adequate defense counsel is generating growing opposition within the US.

The controversy over Beazley’s execution, however, has not shut down the Texas killing machine. On Thursday night, 39-year-old Jeffrey Doughtie was set to be put to death for a pair of 1993 murders. He was to be the eleventh death row inmate executed this year in Texas, and the forty-fourth nationwide.

*See Also:*

Bush administration widens reach of federal death penalty  
[23 June 2001]

Second US federal execution set for Tuesday morning  
[19 June 2001]

Ohio executes schizophrenic death row inmate  
[16 June 2001]

Execution Day in America  
[13 June 2001]



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