

US judge overturns Mumia Abu-Jamal's death sentence

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A federal judge threw out Mumia Abu-Jamal's death sentence Tuesday, ruling that the former journalist and Black Panther member is entitled to a new sentencing hearing after spending nearly 20 years on death row for the December 1981 killing of Philadelphia police officer Daniel Faulkner.

In a long-awaited decision, US District Judge William Yohn cited erroneous instructions given to the jury during the sentencing phase of the trial in July 1982 and ordered that the state of Pennsylvania either conduct a new sentencing hearing within 180 days or sentence Abu-Jamal to life imprisonment.

At the same time, however, Yohn upheld the first-degree murder conviction and refused to grant Abu-Jamal a new trial to present evidence that he was framed by Philadelphia authorities. Abu-Jamal has maintained that he did not kill Faulkner. Philadelphia District Attorney Lynne Abraham announced she will appeal Yohn's decision to the 3rd US Circuit Court of Appeals.

Yohn ruled that the verdict form and the instructions issued by trial Judge Albert F. Sabo had led jurors to falsely believe they could only consider mitigating circumstances against the imposition of the death penalty if there was a unanimous opinion that such circumstances existed. Unlike the requirement that jurors come to a unanimous decision over the existence of aggravated circumstances—factors that weigh toward the imposition of the death penalty—the judge said federal law permitted jurors to consider mitigating circumstances without a unanimous agreement.

In his ruling Yohn said there was “reasonable likelihood that the jury believed that it was precluded from considering mitigating circumstances that were not unanimously found to exist.” According to Yohn, when the jury instructions and verdict sheet employed

in Jamal's case are considered it becomes apparent there is a “reasonable likelihood that the jury has applied the ... instruction [and form] in a way that prevents the consideration of constitutionally relevant evidence.”

In upholding this part of Abu-Jamal's appeal, Yohn ruled that the Pennsylvania high court's decision to uphold the death sentence “could not be justified under existing US Supreme Court precedent” and was “an unreasonable application of federal law.”

Commenting on Yohn's decision, Temple University law professor David Kairys said the ruling identified “a very clear error” that prevented Abu-Jamal from getting a fair sentence. “What really happened here is Mumia Abu-Jamal just got the same rules applied to him that apply to everybody else. They're not technicalities; they really go to the heart of whether the jury meant to impose the death penalty or not,” Kairys said.

The bulk of Yohn's 272-page ruling was a rejection of 28 of the 29 arguments Abu-Jamal's attorneys advanced in their habeas corpus appeal before the federal judge in October 1999. Yohn rejected new evidence the defense team had uncovered over the last two decades showing police manipulation of witnesses, recanted testimony and further evidence of Judge Sabo's disregard for Abu-Jamal's right to due process. Yohn cited the 1996 Anti-Terrorism and Effective Death Penalty Act several times, which all but requires federal courts to accept as correct the findings of fact of state courts.

In June 1995 then-Pennsylvania Governor Thomas Ridge, now President Bush's head of Homeland Security, signed Jamal's death warrant and set his execution for August 17, 1995. After several appeals the Pennsylvania Supreme Court issued a stay of

execution in order to hold hearings on new evidence presented by Jamal's attorneys. After this post-conviction appeal—overseen by Judge Sabo—was turned down, the state high court and US Supreme Court again denied Abu-Jamal's appeals. Ridge signed a second death warrant for December 2, 1999, but Judge Yohn granted a stay of execution pending the disposition of the appeal.

On November 21, Abu-Jamal was denied his petition for a reopening of Post Conviction Relief Act (PCRA) hearings by the state of Pennsylvania. In announcing her decision, Commonpleas Judge Pamela Dembe claimed her court lacked jurisdiction in the matter and denied all requests for discovery, depositions and further hearings. As the basis for her decision, the judge cited a reactionary 1995 amendment to the PCRA by the Pennsylvania state legislature, which requires defendants to file PCRA petitions within one year of conviction. The only exception is that new evidence may be presented for a new trial, but this must be presented within 60 days of a defendant learning of the new evidence. The judge's ruling states the courts are "guided by an understanding that finality is necessary in all litigation," not the truth and justice.

Abu-Jamal's petition was made in light of a confession to the shooting of officer Faulkner by one Arnold Beverly. In a sworn deposition, Beverly said that he and another man were hired by police officers connected with organized crime to kill Faulkner because he was interfering with the graft and payoffs made to allow illegal activity such as gambling, drugs and prostitution.

Abu-Jamal contends his appeal fell within the new PCRA restrictions because he had new attorneys who were prepared to present this evidence. Abu-Jamal stated that his previous attorneys, Leonard Weinglass and Daniel Williams, had suppressed the Beverly confession due to death threats and Williams was guided in his counsel by a desire to increase sales for a book he was writing on the case.

Abu-Jamal is an internationally known opponent of the death penalty who has exposed through his writings and radio broadcasts the brutal conditions facing America's nearly 4,000 death row prisoners. The overturning of his sentence takes place as six people this year have been exonerated and freed from death row due to new evidence, including DNA testing.

According to the Death Penalty Information Center, since capital punishment was reinstated in 1976 nearly 100 wrongful convictions of death row prisoners in at least 22 states have been exposed.

National polls show support for the death penalty in the US is declining. A Gallup poll this spring showed that 65 percent of Americans supported capital punishment, down from about 80 percent in 1994. Polls also show that Americans are increasingly concerned about how the death penalty is administered, particularly in light of prominent cases of wrongfully convicted death row inmates. An ABC News poll in April found that 51 percent of respondents supported a nationwide moratorium on executions while a commission studied the fairness of the death penalty.



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