

Georgia parole board issues 90-day stay of execution for death row inmate

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The Georgia State Board of Pardons and Paroles temporarily halted the execution of Troy Anthony Davis on Monday, issuing a 90-day stay of execution less than 24 hours before he was scheduled to die by lethal injection.

Davis, 38, was convicted in 1991 of the 1989 murder of Mark Allen MacPhail, a Savannah, Georgia police officer. Davis had already been placed on “death watch” in preparation for his execution at the state prison in Jackson.

In issuing the stay, the board said it would “not allow an execution to proceed in this state unless and until its members are convinced that there is no doubt as to the guilt of the accused.”

Davis still faces execution if the board does not commute his sentence to life in prison, with or without parole, before the 90 days are up. If his sentence is commuted, he would be only the ninth man in Georgia to receive clemency since 1976.

In the course of the nine-hour closed-door hearing, the defense presented witnesses who testified to Davis’s innocence. One of them, Tonya Johnson, has stated she saw the real killer run from the crime scene and stash two guns in an abandoned house. She told the *Atlanta Journal-Constitution* she had not come forward earlier because “I was scared.”

Four other witnesses also testified. Others supporting Davis at the hearing were Davis’s mother, representatives of Amnesty International USA and Georgia Democratic Representative John Lewis. Davis’s supporters have submitted 4,000 letters in support of his clemency bid, and insist he is innocent.

The board commented that “those representing Troy Anthony Davis have asserted that they can and will present live witnesses and other evidence to the members of the board to support their contention that there remains some doubt as to his guilt.”

Davis’s case and his still uncertain fate serve both as an indictment of the barbarity of capital punishment and of the death penalty system as practiced in the US. Despite a preponderance of evidence pointing to his innocence—including recantations of key testimony and evidence of police coercion of witnesses—the court system has consistently denied his appeals.

Today’s parole board ruling was the first indication that his defense team may be able to present exonerating evidence in his case. On Friday, Georgia Superior Judge Penny Haas

Freeseemann denied a retrial in Davis’s case, refusing to hear testimony the defense says would clear him. Defense attorneys had said following Friday’s ruling that they would appeal to the Georgia Supreme Court.

In large part due to the Anti-terrorism and Effective Death Penalty Act (AEDPA), signed into law by Bill Clinton in 1996, the ability of Troy Davis and hundreds of other death row inmates in the US to appeal their cases has been severely curtailed. In Davis’s case, his defense has never been able to present on appeal new compelling evidence that points to his innocence.

Officer MacPhail, 27, was shot and killed in the parking lot of a Burger King in the early morning hours of August 19, 1989. McPhail died as a result of blood loss from two gunshots, one to his head and one to his body. The murder followed an assault by the shooter on a homeless man in the fast-food restaurant parking lot in an argument over a beer. McPhail was shot after responding to the assault.

Davis says he witnessed the crime, but did not kill McPhail. Sylvester “Red” Coles, an acquaintance of Davis who was on the scene, accused him of being the shooter. The defense says evidence now points to Coles firing the fatal shots.

The state’s entire case against Troy Davis was built on testimony assembled by the police and prosecutors, much of which was obtained under coercion, and from jailhouse interviews. There was no physical evidence linking him to the shooting, and the murder weapon has never been found.

Seven of the nine main witnesses who testified against Davis have since recanted their testimony. Earlier this month, two of the jurors who sentenced Davis to death signed sworn affidavits saying that he should not be put to death in light of this recanted testimony. A review of some of the central testimony leading to Davis’s conviction, and its subsequent recantation, exposes a prosecution case of no substance.

Kevin McQueen, who was held in the same jail as Troy Davis following the fatal shooting, told police that Davis confessed to killing MacPhail. In a sworn affidavit on December 5, 1996, he wrote: “The truth is that Troy never confessed to me or talked to me about the shooting of the police officer. I made up the confession from information I had heard on TV.”

Monty Holmes testified against Troy Davis in a preliminary

pre-trial hearing, after being coerced by police to implicate him in the crime. In his August 17, 2001 affidavit he wrote: "I told them I didn't know anything about who shot the officer, but they kept questioning me. I was real young at the time and here they were questioning me about the murder of a police officer like I was in trouble or something. I was scared.... [I]t seemed like they wouldn't stop questioning me until I told them what they wanted to hear.... I signed a statement saying that Troy told me that he shot the cop."

Holmes did not appear at the trial out of fear that if he contradicted his previous statements and told the truth he would face perjury charges. His earlier statements were presented at trial without the opportunity for the defense to cross-examine him.

Dorothy Ferrell, who was on parole at the time of the shooting, was also badgered by police to implicate Davis. In her November 29, 2000 affidavit she said she thought that if she didn't repeat her testimony at trial she would be "sent back to jail." "I had four children at the time," she recalled, "and I was taking care of them myself. I couldn't go back to jail. I felt like I didn't have any choice but to get up there and testify to what I said in my earlier statements."

Darrell Collins, a friend of Davis and only 16 at the time, was with him on the night of the murder. The day after the shooting 15-20 officers came to his house, "a lot of them had their guns drawn." He was taken to the police station where he was questioned at length by the police, who threatened him with being an accessory to murder if he did not implicate Davis.

In his sworn statement on July 11, 2002, Collins wrote, "After a couple of hours of the detectives yelling at me and threatening me, I finally broke down and told them what they wanted to hear. They would tell me things that they said had happened and I would repeat whatever they said."

Larry Young, the homeless man assaulted in the parking lot, told police at the time that he did not know who had shot MacPhail. He suffered a large gash to his face, and police on the scene refused him treatment and locked him in the back of a police car for about an hour and then took him to the police station for three hours of interrogation.

Young wrote in a sworn affidavit on October 11, 2002, "I couldn't honestly remember what anyone looked like or what different people were wearing. Plus, I had been drinking that day, so I just couldn't tell who did what. The cops didn't want to hear that and kept pressing me to give them answers." Young testified at Davis's trial, naming him as the man who had assaulted him, but only identifying him by his clothing.

Troy Davis's ability to present this new evidence in the appeals process, like that of numerous other death row inmates, has been severely hampered by federal funding cuts. In 1995, Congress eliminated \$20 million in funding to post-conviction defender organizations like the Georgia Resource Center, which was preparing Davis's appeal at the time. Six of the center's lawyers left as a result of the cuts, as well as three of

its investigators.

Beth Wells, executive director of the center at the time, wrote in an affidavit, "The work conducted on Mr. Davis's case was akin to triage, where we were simply trying to avert total disaster rather than provide any kind of active or effective representation.... There were numerous witnesses that we knew should have been interviewed, but lacked the resources to do so."

The effect of the Anti-terrorism and Effective Death Penalty Act of 1996 serves to further strangle effective appeals in capital cases. The measure places strict time limits on the presentation of new evidence. Citing the law in Davis's case, Georgia courts contend new evidence cannot be considered because five of the witnesses did not recant their testimony until after his state appeals had been exhausted.

Since the US Supreme Court reinstated the death penalty in 1976, more than 100 individuals have been exonerated and released from jail on grounds of innocence. A study conducted at New York's Columbia Law School in 2000, "A Broken System: Error Rates in Capital Cases, 1973-1995)" concluded that US death sentences are "persistently and systematically fraught with error," including serious errors requiring judicial remedy in 68 percent of cases.

The most common problems included incompetent defense and suppression of evidence by police and prosecutors, the type of misconduct exemplified in Troy Davis's case. The details of his case, and those who have been exonerated, strongly suggest that innocent men and women on death row have been have been executed.

Since 1976, 1,087 men and women have been executed in the United States. These have included foreign nationals, the mentally impaired and those convicted of crimes committed as juveniles. The poor, minorities and immigrants are disproportionately represented. The US is one of only a handful of industrialized countries that still carries out the brutal practice.



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