

US Supreme Court clears way for execution of likely innocent death row inmate

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The US Supreme Court on Tuesday refused to hear the appeal of Georgia death row inmate Troy Davis. The case against Davis, convicted in the 1989 killing of an off-duty Savannah police officer, has gained worldwide attention, with demands by human rights activists and high-profile figures for his life to be spared.

The Court's refusal to hear the case paves the way for the state-sponsored murder of an individual who is very likely innocent of any crime.

The evidence that formed the basis of the prosecution case against Davis has fallen apart in the decade since his 1991 conviction. Seven of the nine witnesses who testified against him have come forward and recanted their previous incriminating testimony. On September 23, just hours before he was scheduled to die by lethal injection, the Supreme Court granted Davis a last-minute stay of execution. That stay has now been vacated with their rejection of his appeal.

In their appeal brief, Davis's attorneys had asked the Supreme Court to rule that the Eighth Amendment's ban on cruel and unusual punishment bars the execution of the innocent, and requires at the minimum a court hearing to assess the new evidence of those recanting their testimony. The high court has now turned down this final appeal, issuing a one-line order, without explanation or a recorded dissent, thus denying Davis the right to present this new evidence before the Court.

The Court's refusal to hear the case demonstrates the thoroughly reactionary character of this judicial body, and its endorsement of the barbaric practice of capital punishment. Because the Supreme Court's agreement to hear a case requires the votes of only four justices, it is clear that what is generally known as the liberal wing of the court—comprising Justices John Paul Stevens,

Ruth Bader Ginsburg, David Souter and Stephen Breyer—had no interest in forcing a hearing of Davis's appeal.

If any of the justices disagreed with the decision, they did so without comment. The court's right wing—led by the virulently pro-death-penalty stance of Chief Justice John Roberts and Justice Antonin Scalia—held the day.

Amnesty International USA Executive Director Larry Cox commented, "The Supreme Court's decision is truly shocking, given that significant evidence of Davis's innocence will never have a chance to be examined. Faulty eyewitness identification is the leading cause of wrongful convictions and the hallmark of Davis's case."

The Supreme Court action on Monday is all the more contemptible when considered in light of the details in Troy Davis's case. Davis, now 40, was convicted in the August 1989 shooting death of Mark MacPhail. The off-duty policeman was working at a Greyhound Bus station when he responded to an altercation at a nearby Burger King restaurant involving a homeless man.

When MacPhail gave chase to another man fleeing from the scene, the man turned and shot the officer several times, killing him. Davis, then 19, was at the scene along with another man, Sylvester "Redd" Coles. Both men are black, and were of similar age, height and weight.

Coles identified Davis as the shooter, and police proceeded to assemble a number of witnesses who identified Davis as the gunman, or who said he had told them he shot MacPhail. The testimony of these witnesses formed the entire basis of the prosecution's case against Davis. There was no murder weapon produced by authorities, and the prosecution did not present any DNA or other physical evidence linking him to the crime.

The statements of the witnesses who have come forward since the trial and recanted make clear that their testimony was in many cases coerced and made out of fear of reprisals by police. Coles—who could face prosecution if Troy Davis were exonerated—is the state’s key witness against Davis.

Davis’s attorneys commented on the threadbare nature of the evidence against their client: “The only remnants of the state’s case against [Davis] are the self-serving testimony of Redd Coles and [a bystander’s] dubious in-court identification of Mr. Davis that occurred two years after the crime.”

With the Supreme Court’s refusal to hear his appeal, Davis and his attorneys have exhausted virtually all legal avenues to halt his execution. His case has been reviewed by a state appeals judge, a federal district judge, the US Court of Appeals in Atlanta and the Georgia Supreme Court. This latter court was divided 4-3 in the case, with the dissent saying Davis should have a new trial on the basis of the recanted testimony.

“The trial of this case has all the integrity of a professional wrestling match,” Stephen Bright of the Southern Center for Human Rights in Atlanta told the *Atlanta Journal-Constitution*. “It was deeply flawed, yet there’s no way to correct it.”

Davis’s only prospect now for avoiding execution is to be granted clemency by the Georgia Board of Pardons and Paroles, which has twice rejected doing so. A Chatham County judge will proceed to set a timeframe for his lethal injection to be scheduled by the Georgia Department of Corrections.

The day before refusing to take Troy Davis’s case, the Supreme Court denied an Ohio death row inmate’s request for a stay of execution. Attorneys for Richard Cooley had argued he should not be executed because he was obese and the lethal injection procedure would cause him cruel and unusual suffering. Cooley, who was convicted of the 1986 rape and murder of two college students, was executed Tuesday morning.

The Supreme Court ruled 7-2 in mid-April to reject the challenge of two Kentucky death row prisoners, who argued that execution by lethal injection exposes those condemned to die to the risk of cruel and unusual punishment.

Hearing the case in early January, the high court justices debated the pros and cons of the grisly lethal injection procedure, in which a series of three toxic

chemicals is injected into a prisoner’s arm—one inducing unconsciousness, one halting the breathing muscles and the final causing cardiac arrest.

Pondering the possibility that the gruesome procedure could inflict pain, Justice Scalia commented at the time, “This is an execution, not surgery.... Where does that come from, that you must find the method of execution that causes the least pain?”

In the majority opinion issued in the case on April 16, Chief Justice Roberts wrote, “Some risk of pain is inherent in any method of execution—no matter how humane.... [T]he Constitution does not demand the avoidance of all risk of pain in carrying out executions.” In other words, if one accepts the state’s right to impose the death penalty, extreme suffering—even excruciating pain—should not be a barrier.

The Court’s ruling against the lethal-injection challenge was clearly aimed at removing an obstacle to the resumption of state-sponsored killings, which had been on hold since September 2007 while they considered the case. The Court’s decision opened the way for a renewed round of executions, with 26 condemned prisoners sent to their deaths since the beginning of May.

On Tuesday, Texas executed Alvin Kelly, a former truck repair shop owner who was convicted of fatally shooting a couple and their infant son. Kelly maintained his innocence until the end. Another Texas death row prisoner, Kevin Michael Watts, is scheduled to be executed this Thursday, October 16.

Between now and mid-March 2009, there are 21 executions scheduled in the US. Seventeen of these are set to take place in Texas, with one each in Florida, Ohio, Louisiana and Wyoming.



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