

In fourth date with death, Texas inmate executed by lethal injection

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Cleve Foster was executed Tuesday after the US Supreme Court refused to grant him a stay. The Texas death row inmate had faced three previous execution dates in the course of a year, but had been granted last-minute reprieves.

The high court ruling came down about two hours before Foster was set to be put to death. He had already been moved to a small cell steps away from the death chamber at the Texas State Penitentiary at Huntsville. At around 6 p.m. local time, Foster was strapped to a gurney, where he received a lethal dose of pentobarbital.

Cleve Foster, 48, a former Army recruiter, was convicted and sentenced to die for the fatal shooting of 30-year-old Nyaneur “Mary” Pal, a Sudanese immigrant, whose body was found by pipeline workers in a Tarrant County ditch on Valentine’s Day 2002.

Foster had consistently maintained his innocence, and claimed he had deficient legal counsel at both his 2004 trial in Fort Worth and in his early appeal process. Foster was convicted along with one of his army recruits, Sheldon Ward, who had numerous times claimed that he acted alone and that Foster was not involved in the murder. Ward died of cancer in 2010 while on death row.

Foster, a native of Kentucky, spent close to two decades in the Army, reaching the rank of sergeant first class. Court martial proceedings were initiated against him after allegations that he gave alcohol to underage students as a recruiter in Fort Worth and had sex with an underage potential recruit. He was denied reenlistment and had been out of the Army for only a short time when the murder took place.

The US Supreme Court halted Foster’s execution three times—in January, April and September 2011. The

first time he had already been served his final meal and was just 10 minutes from execution. The second time he received news of the reprieve just as he was about to have dinner. Foster commented to the Associated Press, “You can’t take your eyes off that door,” referring to the steel door condemned prisoners must pass through on the way to the death chamber.

In arguments before the high court, Foster’s attorney Maury Levin told the justices, “The state’s case against him ... was circumstantial and threadbare. It was only because of trial counsel’s ineffectiveness that he was convicted and sentenced to death on such sparse evidence.”

Levin also contended that Foster’s earlier appellate lawyers were negligent in “failing to perform the investigation necessary to adequately assert his powerful claim of innocence, or raise the trial ineffectiveness claims.” She also appealed to the Supreme Court to stop the execution in light of a ruling the justices made earlier this year in an Arizona case that allowed review of a condemned inmate’s habeas corpus claims.

Texas prosecutors claimed to have “plentiful evidence of Foster’s guilt.” Assistant Texas Attorney General Stephen Hoffman noted in a court filing, “The case against Foster may be ‘circumstantial,’ but it was hardly ‘threadbare.’” Lower Texas courts had denied Foster’s appeals.

Before the 2002 murder, Foster and Ward were seen talking with Mary Pal at a Fort Worth bar. A gun in the motel room where Ford lived was identified as the murder weapon. Prosecutors claim that evidence showed Foster actively participated in Pal’s killing, and that he lied and gave contradictory stories about his sexual activities with the victim.

The two men were convicted separately. Ward was

convicted as the triggerman. Foster was convicted under a Texas “law of parties,” which holds that a person can be charged with a crime if that person knows or could have anticipated that a crime would occur, even if he or she has no direct physical connection to the crime or any intent to commit it.

Pal’s blood and tissue were found on the murder weapon and DNA evidence showed that both men had sex with her. Foster maintained, however, that he was passed out from sleeping pills and woke up to find Pal having sex with him, and that he was asleep at the time Pal would have been murdered. “I was not there,” he stated from death row, “That’s what I’ve been screaming for years.”

In his last failed appeal, Foster argued that Ward’s statements that he acted alone proved his innocence. He argued that he received ineffective legal counsel at his murder trial because his attorneys did not present key evidence to the jury, including a note Ward had written at the time taking sole blame for the murder.

Foster also said his trial lawyers did not use a blood-splatter expert in an effort to dispute the state’s theory that Foster and Ward had carried out the murder in one location and carried the body of the victim to another. The prosecution had contended that Ward would have been incapable of carrying the body to where it was dumped, and that Foster must have participated in the body’s disposal.

Foster was the ninth condemned prisoner to be sent to death this year in Texas. His execution follows the September 20 execution of Robert Wayne Harris, 40, of Dallas. Since the Supreme Court reinstated the death penalty in 1976, Texas has executed 486 individuals, more than any other US state. Those sent to their deaths have included women, those convicted of crimes as juveniles, the mentally disabled, and foreign nationals denied their consular rights.



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