

Georgia Supreme Court denies new trial for convicted cop killer: 4/14/08

The Georgia Supreme Court on Monday once again rejected a new trial for condemned cop killer Troy Anthony Davis.

Davis sits on Georgia's death row for the Aug. 19, 1989, murder of Savannah police Officer Mark Allen MacPhail. But, since Davis' trial, seven state witnesses have recanted their testimony and others have come forward and implicated another man, Sylvester Coles, in the killing.

In March, by a 4-3 vote, the state Supreme Court turned down Davis' bid to have this testimony presented at a hearing for a new trial. On Monday, again by the same vote, the court denied Davis' request that the court reconsider its earlier opinion.

Jared Feuer, southern regional director for Amnesty International USA, which strongly opposes Davis' execution, expressed disappointment.

"Mr. Davis could be put to death despite witness testimony that has unraveled since the initial trial and the failure to produce any murder weapon or physical evidence that links him to the crime," Feuer said. He called on the state Board of Pardons and Paroles to hold a hearing on the case and commute the death sentence.

After the state Supreme Court issued its ruling in March, the parole board said it would not grant a hearing for Davis unless his execution appeared to be imminent. Board spokesman Kim Patton-Johnson said Monday the board has not changed that position.

Because the U.S. Supreme Court is considering a challenge to lethal injection in a case from Kentucky, there has been a de facto moratorium on executions nationwide. For this reason, it is unlikely the state parole board will schedule a clemency hearing for Davis until his execution has been scheduled.

In its decision released Monday, the state Supreme Court did, however, vacate its initial opinion and substitute it with a new one.

In the March opinion, Justice Harold Melton, writing for the majority, addressed all the witnesses who had recanted their testimony except for Larry Young, a homeless man who was approached by Coles the night of the killing. Coles, according to testimony, asked Young for a beer and, when Young refused, followed him and cursed at him.

Davis and another man circled around Young and, according to trial testimony, Davis struck Young in the head with a pistol. MacPhail, working off duty nearby, approached the fracas and, witnesses testified, Davis shot and killed him.

Young's testimony at trial that Davis struck him was extremely damaging to Davis because it put the gun in Davis' hand. But in an affidavit signed in 2002, Young said he "just couldn't tell who did what" and could not say who struck him with the pistol.

Melton, in Monday's ruling, said Young's recantation fell short of what is needed for a new trial. Young's new expression of uncertainty, Melton wrote, fails to show that Davis was not the perpetrator of the killing and fails to show that his testimony was fabricated.

Melton, joined by Justices George Carley, Harris Hines and Hugh Thompson, said in March the court's majority could not disregard the jury's verdict in the case.

Most of the witnesses who recanted "have merely stated they now do not feel able to identify the shooter, " Melton wrote. He said the four justices in the majority could not ignore the trial testimony, "and, in fact, we favor that original testimony over the new."