

High court eases path for convicts claiming innocence

By: E. Thomas Wood, Posted: Friday, January 23, 2009 12:00 am

A ruling yesterday by the Tennessee Supreme Court may make it easier for convicted felons to present evidence of their innocence on appeal. But in the specific case the court ruled on, an East Tennessee man is still scheduled to be executed. The court held unanimously that its own rules ought to be modified so that post-conviction appeals can use actual innocence as a defense, though only when the prisoner has scientific evidence that he or she did not do the crime.

The ruling came on an appeal by death row inmate James A. Dellinger, who was convicted of killing a drinking buddy in 1992 in Maryville. Dellinger had presented a lower court with forensic evidence calling into question the time of the killing and therefore his responsibility for it.

The Supreme Court concurred in the appellate court's rejection of Dellinger's evidence as unconvincing, and it upheld his death sentence. He is scheduled to die by lethal injection on June 3.

But the court took the opportunity to clarify state law regarding appeals made after the one-year period following conviction when they are normally allowed. Earlier decisions in Tennessee have kept inmates from presenting a case for innocence after that year has lapsed.

This time, though, the justices said they "can discern no rational basis for precluding new scientific evidence of actual innocence" just because of the one-year rule.

"The court's ruling that 'claims of innocence' can be raised as soon as possible is a common-sense result," commented David L. Raybin, an attorney with Hollins, Wagster, Weatherly & Raybin P.C. who was not involved in the case but whose practice includes criminal defense. "The court clearly wants to grapple with whether the person has established actual innocence rather than dwell on procedural questions."

Raybin called the Dellinger case "important" because it "answered some knotty procedural questions which tended to clog up the appellate courts with resulting inordinate delays." While noting that the ruling does make it simpler to appeal on the grounds of innocence, Raybin predicted the ruling will not "open the floodgates" to a host of new cases brought by prisoners because the court still requires clear and convincing evidence of possible innocence.

"I think that, at the end of the day, the court wants a person who has significant proof of innocence to have their day in court and not die (perhaps literally) on a procedural vine," Raybin said.

The Innocence Project, a New York-based legal organization that has helped more than 200 American prisoners exonerate themselves since 1992, including 17 who served time on death row, filed a defense brief in the Dellinger case. Its local counsel, Patricia Head Moskal, told The City Paper last night that she had not yet been able to review the decision and could not comment.