

Killer to appeal sentence again

05/11/02

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The Wilson County man convicted of killing his 13-month-old daughter will appeal to the Tennessee Supreme Court, his attorneys said yesterday.

On Thursday the state Court of Criminal Appeals upheld a sentence of life in prison for Brian Kelley in the 1999 smothering and killing of his daughter, Erin Elaine Kelley. A Wilson County jury handed down the sentence the following year. Kelley told police that God had instructed him to sacrifice his daughter.

David Raybin, who represents Kelley, said the appeal would be based on arguments that Kelley is insane and that the jury and appeals court were wrong according to evidence presented.

Raybin also argued last month before the state Supreme Court in the Christopher Flake case. Flake, a Memphis man, killed two men and wounded another in 1997 after he became convinced the Mafia and foreign agents were invading a church. Flake has been sentenced to life in prison without parole.

"The Supreme Court tends to grant review to cases raising the same issue, and until the Flake case is decided, this area of the law is uncertain," Raybin said. "We felt the evidence that Mr. Kelley was insane was overwhelming.

"It was a horrible crime, very emotional and I can understand ... " Raybin said about the feeling of the jury.

"But why else would he have killed his daughter unless he was convinced Jesus Christ would be resurrected the next day, if he wasn't insane? It was the most overwhelming case of insanity I've seen in 30 years."

The appeals court said there were differences in the Kelley and Flake cases.

"The decision is correct and follows current law and is supported by the evidence," said Robert Hibbett, an attorney for the state who argued for the prosecution in Kelley's appeal.