

Ruling could cause executions to surge or slow more

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Nobody really expected Donnie Johnson to be put to death Nov. 16.

He was convicted of stuffing a plastic bag down his wife's throat and suffocating her 20 years ago. But like four other death row inmates in Tennessee, Johnson got a stay of execution even though he's exhausted every appeal.

In each of the five cases, the execution was blocked because Tennessee is not putting anyone to death while the courts wait for resolution in the complicated case of Abu-Ali Abdur'Rahman.

Abdur'Rahman was sentenced to die for stabbing a Nashville drug dealer to death in 1986. But he claimed much later that he was the victim of a dishonest prosecutor who concealed evidence.

The question is whether Abdur'Rahman's case deserves a second look because he has new evidence of his innocence. Or does his appeal just raise the same issues other courts have already dealt with?

It's a complicated procedural question, but a favorable ruling for the state could start a string of executions in Tennessee, where there has been only one in 44 years.

"The reason why this case is so important from a procedural standpoint is: 'What exceptions do the courts want to make to let prisoners come in and make claims late?'" said David Raybin, a legal analyst who helped write Tennessee's death-penalty laws but is not involved in the case. "This has very little to do with guilt or innocence."

Death row inmates get one federal appeal in which they can bring up problems with the trial. But the 1996 Anti-Terrorism and Effective Death Penalty Act doesn't allow a second petition.

"It's our position he gets one and only one shot at the writ of habeas corpus," state Solicitor General Michael E. Moore said. Abdur'Rahman "had it all the way to the Supreme Court and lost. That ought to end the matter. This litigation has to have some end at some point."

In other words, the state has argued the court doesn't have to hear Abdur'Rahman's claims of prosecutorial misconduct because they weren't part of his initial federal appeal.

Bradley MacLean, who has represented Abdur'Rahman for eight years, said the procedural question is being debated in many federal circuits.

"Abu-Ali has never had his entire case heard and ruled on," MacLean said. "His claims (of prosecutorial misconduct) have never been fully addressed by any court."

The U.S. Supreme Court issued a stay two days before Abdur'Rahman's execution in April 2002 and heard arguments later that year. But the court declined to rule and sent the case back to the 6th U.S. Circuit Court of Appeals.

Tennessee Attorney General Paul Summers, who typically doesn't talk about pending cases, told The Associated Press a favorable ruling for the state could have a sweeping impact.

"It would be a giant step for us," he said. "Hopefully, it will put this issue to rest."

The 6th Circuit could issue a narrow ruling that applies only to Abdur'Rahman's case, but Raybin doesn't think that will happen. He said a ruling against Abdur'Rahman would break the logjam on death row.

"I would expect to see multiple executions in succession," Raybin said.

But a ruling for Abdur'Rahman would give death row inmates additional opportunities for appeal, Raybin said, delaying the already lengthy process.

It's been 11 months since the 6th Circuit heard arguments in the case with no decision.

"It can only indicate there can be some dissension or they may be waiting on other courts in other issues to help them," Raybin said.

Summers said the state uses a 13-step process to review death-penalty cases, giving those convicted every possible chance to contest the legality of the trial.

But Summers said the process, designed to last six or seven years, now drags on for more than 20.

"People who are against the death penalty will never believe the system is fair," he said. "Since they can't apparently defeat it on a wholesale basis, they'll try to do it on a retail basis — case by case, step by step — and try to wear the system out."

MacLean said awaiting a ruling is better than awaiting another execution day. Abdur'Rahman "remains hopeful. He's anxious just like I am. We both believe in the truth and justice in our position. That's what gives him strength."