

Supreme Court throws out Texas man's death sentence

By Larry Margasak
The Associated Press

WASHINGTON — Jurors who sentenced a retarded killer to death did not get clear instructions about how to weigh the defendant's mental abilities against the severity of his crime, the Supreme Court ruled Monday.

The ruling overturned the death sentence of Johnny Paul Penry, whose lawyers claim their client has the mind of a 7-year-old and likes to play with coloring books.

The case, sent back to a federal appeals court, does not answer a larger question about whether execution of the mentally retarded is constitutional. The court has agreed to use a different case to review that question next fall.

The vote was 6-3 on the crucial question of the instructions, although the court was unanimous in ruling that a Texas court properly admitted evidence of Penry's future dangerousness.

Penry was convicted of murdering Pamela Moseley Carpenter in Texas in 1979. She was the sister of former Washington Redskins place-kicker Mark Moseley.

Justice Sandra Day O'Connor, writing for the majority, said the instructions to the jury were "constitutionally inadequate" to protect Penry's rights and did not follow previous court instructions in death penalty cases.

The instructions left no vehicle for expressing the view that Penry did not deserve the death penalty based on mitigating evidence, she said.

The Texas Legislature recently passed a bill banning the execu-

tion of mentally retarded persons. Gov. Rick Perry hasn't said whether he will sign it.

The Supreme Court made headlines last fall when it accepted Penry's latest appeal, in part because death penalty opponents say juries too often get inadequate instructions and in part because of Penry's own notoriety.

Penry has been in the forefront of the debate over capital punishment almost from the moment he confessed to killing Carpenter.

After a complicated and highly publicized passage through the Texas courts, the Supreme Court accepted his first appeal and in 1989 used his case to establish two related tenets of capital punishment practice.

The court ruled then that execution of the mentally retarded is constitutional, but juries considering the death penalty must understand how to weigh retardation as a mitigating factor.

Penry's case returned to the Texas courts, where his lawyers claim the second jury that sentenced him to death got no better instructions than the first.

That is the question the Supreme Court agreed to review in his case, but it soon became a side-light.

One day before the justices heard arguments in Penry's case in March, they raised the stakes much higher by agreeing to hear a separate North Carolina case that asks the same question Penry did 12 years ago: Does executing the mentally retarded violate the Eighth Amendment prohibition of cruel and unusual punishment?

If the court reverses itself with that case and declares that the retarded must be spared, the issue of proper death penalty jury instructions would be irrelevant.

At issue for the court this time was whether the Texas jury that imposed Penry's second death sentence understood its options. Texas authorities claimed the instructions were clear, and that the jury knew it could impose a life sentence instead of death.

Penry's lawyers claimed the instructions failed the test the Supreme Court set out with its 1989 ruling in what has become known as Penry I.

Texas resentenced Penry in 1990, using the same verdict form as in the first trial. The form asked whether Penry deliberately killed the woman, whether he was provoked and whether he was a continuing threat to society.

The judge added an instruction that if other circumstances warranted a life sentence instead of death, jurors should answer "no" to one of those questions even if the actual answer was "yes." The jury answered "yes" to all questions.

Texas authorities and the family of his victim remain convinced he understood his crime and should die for it.

Penry was on parole for rape when he was arrested in 1979 and charged with murdering Carpenter, 22. Carpenter was stabbed in the chest with scissors she had been using to make Halloween decorations, but was able to describe her attacker before dying.

State legislators doubt session will end by the projected date

Lawmakers must still pass the state's major budgets, and many departments will suffer shortfalls

By Sue Ryan
Oregon Daily Emerald

This time of year usually signifies the end of the legislative session, but the Oregon State Legislature won't be wrapping up anytime soon.

"The speaker of the House sent out a letter that adjournment will be June 8. No one believes that," Rep. Phil Barnhart, D-Eugene, said. "The bets I've heard around here are for the last day in June."

The legislative session convened in January and normally concludes its business in June. This year, however, the Legislature still has to approve a budget for the state.

"We've not passed all of the major budgets," said Sen. Susan Castillo, D-Eugene. "If discussion drags out we'll be here until the Fourth of July."

Legislators foresee that many departments across Oregon will face shortages in their budgets, including the Oregon University System.

"OUS has asked for \$96 million;

fiscal says they'll give them \$35 million," Rep. Vicki Walker, D-Eugene, said. "There is a long way to go between those two numbers."

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**Sen. Susan Castillo
D-Eugene**

Underfunding is predicted to affect other state operations, especially the court system. Barnhart said the justice system budget will be \$69 million short, and that department heads are getting worried about the situation — enough so that some are lobbying representatives directly.

"The chief justice of the state of Oregon does not come to the junior legislator from the party out of power unless he's desperate," said Barnhart. "And we are nearing desperate."

In addition to the budgets, legislators are also working on what Castillo refers to as go-home bills. These are the last bills legislators

have on their schedule before closing the session and heading home.

"There is an Oregon child plan the governor wants passed. It will help families with newborns," she said. "We are going to have a bill on doing some transportation funding. We were hoping to do some things on initiative reform, but that has failed in committee."

Two bills affecting higher education students, Senate Bill 325 and Senate Bill 332, have passed both the House and the Senate and are awaiting the governor's signature. Sponsored by Kitzhaber, SB 325, if signed, will give students liability insurance coverage for off-campus activities. SB 332 will authorize the Oregon Student Assistance Commission to seek payments from any person who lies about having an academic degree.

Most of the legislative committees have closed for the session and can only be reopened by the speaker of the House or the Senate president. Legislators consider any bills that fail to make it out of committee dead.

"An example is campus police carrying guns," Walker said. "It has not come out of committee onto the floor, so it looks like we won't see that one at this point."

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