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AP New Jersey

Despite court ruling, NJ execution remains distant

By JEFFREY GOLD

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NEWARK, N.J. -- A state Supreme Court ruling upholding the death sentence of John Martini Sr.

has brought him no closer to execution.

A state moratorium on the death penalty is only part of the reason.

Indeed, although Martini in past years has come closer to execution than any other death row inmate, New Jersey has yet to put any inmate to death since reinstating the capital punishment in 1982.

Martini, who has been on death row since Dec. 13, 1990, and for several years sought to die but ultimately resumed appeals, has nearly exhausted court options. But in light of Tuesday's ruling by New Jersey's highest court, he may ask U.S. Supreme Court to intervene.

The nation's highest court declined an earlier effort, but Martini can now point to the recent ruling, which identified a flaw in the judge's instructions to the Bergen County jury that imposed the death penalty. The state court said, however, the mistake was not sufficient to overturn the verdict.

"We have the position that there is no such thing as harmless error in a capital case," said Tom Rosenthal, a spokesman for the state public defender's office, which is representing Martini.

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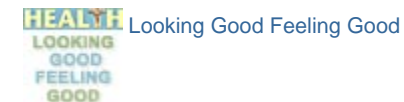
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Because of the moratorium, which will continue at least through the fall, the Bergen County prosecutor's office does not intend to ask a judge to issue a death warrant for Martini, Assistant Prosecutor Catherine A. Foddai said.

But even if the moratorium is lifted, procedures for conducting an execution remain incomplete due to a 2004 state appellate court ruling. The state Department of Corrections submitted revised regulations to the governor's office last year, but no action was taken, and they have lapsed, department spokesman Matt Schuman said. The process must now be repeated.

"They would again have to advertise in the New Jersey Register, invite public hearings, etcetera, etcetera," Schuman said.

Martini, whose 76th birthday is July 30, was convicted in 1991 of kidnapping Fair Lawn warehouse manager Irving Flax in 1989 and then murdering him after getting \$25,000 of the \$100,000 ransom.

Flax's widow, Marilyn Flax, said she wants Martini executed.

"I believe hell was created for a man like John Martini," Flax said. "I've tried to get on with my life.

Unfortunately, the system has kept me in a time warp."

"It's a double-edged sword: I was thrilled with the Supreme Court decision, and frustrated with what is going on in New Jersey," she said.

Flax said she intends to testify to the panel studying New Jersey's death penalty and urge that it not be abolished.

"I know part of their argument is whether we are spending too much on the death penalty," Flax said, speaking of death penalty opponents. But she added, "I never thought there should be a price tag on justice."

Martini is among nine men on New Jersey's death row. No executions were imminent when the Legislature and then-Gov. Richard J. Codey approved a moratorium on the death penalty in January until a special commission makes recommendations on whether it should be revised or

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abolished. The panel's report is due by Nov. 15. The last New Jersey execution was in 1963.

David A. Ruhnke, a Montclair-based defense lawyer who opposes the death penalty, said it is difficult to predict if the U.S. Supreme Court will accept the Martini case.

"It is certainly something that the defense is obligated to pursue," Ruhnke said.

Regarding the state's law, Ruhnke said, "In New Jersey, the climate seems particularly ripe to abandon our experiment with the death penalty." He questioned whether it has any deterrent value, asserting that the murder rates has been falling although no one has been executed in the 24 years it has been on the books.

In 1995, Martini demanded that appeals aimed at keeping him alive be dropped, but he reversed course in 1999 after an execution date was set. The death warrant was canceled as he pursued federal appeals.

Although all people sentenced to death are issued a death warrant at sentencing, those lapse during mandatory appeals. Officials could not recall any other death row inmate besides Martini getting an execution date after making appeals.

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On the Net:

New Jersey Supreme Court ruling: <http://www.judiciary.state.nj.us/opinions/supreme/a-36-05.pdf>

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