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Court denies appeal, upholds death sentence for killer Martini

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The state Supreme Court yesterday upheld the death sentence of a man who kidnapped a Bergen County businessman and then shot him three times -- even after receiving ransom money.

In a 6-1 ruling, the court found the trial court judge gave flawed but proper instructions to the jury considering John Martini Sr.'s fate. The instructions did not constitute an error that would lead to reversal. In 1991, Martini was sentenced to die for killing Fair Lawn resident Irving Flax three years earlier.

The decision is the latest -- and is believed to be the last -- in a long road of appeals for Martini and came just four days before his 76th birthday. Even with the ruling, no execution is imminent. The state has imposed a moratorium on the death penalty while a commission studies the issue.

Martini's lawyers said they were exploring further appeals. This was Martini's third trip to the state Supreme Court for a post-conviction relief issue. The U.S. Supreme Court previously declined to hear the case.

"Technically, he's done with everything," said Bergen County Assistant Prosecutor Catherine Foddai, who argued the appeal.

Yesterday's ruling was based on allegations that the judge improperly implied it was preferred for the jurors to all agree on whether there were mitigating factors that would lead them to a punishment other than death. Further, because the issue had not been raised on earlier appeal, he had ineffective counsel.

The majority found that while there is a flaw in the model jury charges many judges use, there was nothing wrong with Martini's case viewed on the whole. He was not denied due process, especially since the judge said multiple times that unanimity was not required, Justice John E. Wallace wrote. However, because of the flaw, the court ordered judges to stop using some language when issuing jury charges and referred the issue to a court committee.

"We are satisfied that the instruction properly conveyed to the jury that each juror must individually determine whether a mitigating factor exists. Indeed, the trial court made it clear that the jury need not be unanimous," Wallace wrote in a 19-page decision.

Justice Virginia A. Long was the lone dissenting court member. She found that it was "likely that the jurors were improperly influenced toward consensus." A single juror may have been dissuaded from voicing up. "That is not a tolerable outcome," she wrote.

Martini's attorneys said they were going to consult with the inmate about how to proceed.

"We're very disappointed," said Tom Rosenthal, spokesman for the state Office of the Public Defender. "We're going to explore what options are still available."

Alan Zegas, who once represented Martini, said that because a man's life was at stake, the court should allow further proceedings since the court found the jury instruction flawed.

"Death cannot be taken back, and if a problem exists and it has any possibility to prejudice the rights of the defendant to a fair trial, then death should never be ordered," Zegas said.

Foddai, while pleased with the decision, said she isn't asking for a death warrant yet because of both the moratorium and the fact that Martini's legal team might yet appeal another issue.

"I'm happy that we won. I am happy the court agreed with us, but I don't know that this is going to end it," Foddai said.

Flax's widow, Marilyn Flax, also said she applauded the high court decision. However, she added her joy is tempered because of the moratorium.

"He is really why the death penalty was designed, and he should have been executed many years ago," she said. She recently wrote Martini a letter, her first communication with him, because she wanted to make sure he knew just how she felt.

"I told him God created hell for a select few and he was one of them, and that's where he would be going," Flax said yesterday.

The case dates to Jan. 23, 1989. Martini had fled Arizona to avoid arrest in a double homicide. He arrived in New Jersey with a kidnap plan and schemed with a friend to hold Flax for a \$100,000 ransom. As Flax was leaving home, he was abducted.

Marilyn Flax paid \$25,000 to Martini at a diner. But even though he had the money, he shot Flax and left him in a car at the Garden State Mall in Paramus, just a few miles from his home.

While on death row, Martini pleaded guilty to two murders in Arizona and was convicted of one in Philadelphia.

In 1995, Martini stunned his lawyers by announcing he wanted to drop all appeals and be put to death. He said he couldn't stand sleepless nights in the noisy rat- and roach-infested prison. Further, as a Roman Catholic he said, he believed his death would bring peace to the Flax family and increase his chances of receiving absolution.

"I want to do it and get it over with," he once told a judge.

In another about-face, in 1999, just weeks from execution (The death warrant was already signed.) Martini said he didn't really want to die. This time he was swayed by pleas from his fellow death row inmates and a Catholic nun.

Since then, there have been a flood of state and federal appeals. In 2004, the U.S. Supreme Court declined to hear his case.

Yesterday's ruling comes at a time when the state Legislature is grappling with whether the death penalty should be abolished. It was reinstated in New Jersey 24 years ago, but has not been used. There are now nine men on death row.

The last execution the state carried out was on Jan. 22, 1963. Ralph J. Hudson, an Atlantic City man, was electrocuted for the stabbing death of his estranged wife.

Staff writer Robert Schwaneberg contributed to this report.

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