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NJ Supreme Court sets aside death sentence

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TRENTON (AP) -- A hit man who said he was paid \$2,500 to shoot a Maplewood pizzeria owner to death 20 years ago had his death sentence set aside by New Jersey's Supreme Court today, the fifth time he appealed his sentence to the state's highest court.

In a 4-3 ruling, the court vacated Anthony DiFrisco's death sentence and sent the case back to trial court so he can be sentenced to life in prison.

After he is resentenced by the lower court, DiFrisco will be removed from Trenton State Prison's death row, where he has spent most of the past 18 years along with 10 other convicted murderers and where he has been housed consistently since 1993, when his last appeal was denied.

"I'm obviously very, very pleased. We have been working on this case for 12 years," said DiFrisco's public defender, Lawrence Lustberg. "It is a closely divided court that highlights the fact that there really is no social consensus in our highest court that this guy should die. Under those circumstances, I think there is no way he should be executed."

The successful appeal centered on complex procedural issues involving the type and timing of reviews afforded in capital cases.

The high court had narrowly affirmed the imposition of the death penalty and in a later review determined that the sentence was imposed properly. In the latest appeal, Lustberg successfully argued that if the two proceedings had been combined -- as such hearings are today -- a majority of justices would have voted for a life sentence.

"We thought it would be a close case, and we felt we would wind up on the winning side," said Kenneth Ply, who argued the case for the state. "But we have to live with the decision the Supreme Court makes. Basically, it's a matter of New Jersey procedural law. We don't see any appealable issue to the U.S. Supreme Court."

DiFrisco admitted he shot pizza shop owner Edward Potcher at close range four times on Aug. 12, 1986. He made the confession after being arrested in New York for various traffic violations and car theft. Court records show he believed he would be better served by implicating a "higher-up" in the murder.

DiFrisco said he was paid \$2,500 by Jack Franciotti to kill Potcher because he was going to inform police about illegal activities by Franciotti. He also said Franciotti forgave a \$500 drug debt.

The court records, however, say DiFrisco then backed out of a plan to call Franciotti to tape record a conversation implicating him in the murder. An Essex County grand jury subsequently indicted DiFrisco for murder.

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