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## Case shows cracks in death penalty system

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After New Jersey reinstated capital punishment in 1982, Robert O. Marshall was the first murderer to have his death sentence upheld by the state Supreme Court.

That was in 1991, after the justices had overturned 27 previous death sentences because of shifting legal standards and blunders by prosecutors and judges. Finally, the state had a blueprint for a successful capital prosecution.

And Marshall's crime -- paying to have his wife murdered so he could collect \$1.5 million in insurance -- was infamous, the subject of a book and made-for-television movie. An independent report to the justices described Marshall as "a particularly depraved, cold-blooded killer" with "a total lack of remorse."

So when Ocean County Prosecutor Thomas Kelahe announced Friday he would drop the state's 22-year effort to execute Marshall by lethal injection, it raised larger questions: If the state cannot execute Marshall, can it execute anyone? Should it even try?

Opponents of the death penalty said no, calling Marshall's case symptomatic of a broken system that, so far, has failed to execute anyone. Supporters of capital punishment agreed the system needs reform, but blamed opponents and judges who have found ways to drag out appeals endlessly.

Marshall failed in dozens of appeals over more than two decades, but in 2004 a federal judge ruled he deserved a new death penalty hearing because his lawyer botched his first one in 1986. The U.S. Supreme Court recently allowed that decision to stand.

Kelahe explained he decided not to seek a new penalty phase trial for Marshall because of the "stark realization" that the defendant could appeal that jury's decision for another two decades.

"It is a classic case of a capital case going on for years and years, only to be reversed," Celeste Fitzgerald, executive director of New Jerseyans for Alternatives to the Death Penalty, said.

"This case, in particular, underscores the need to replace the death penalty with the strong and more certain punishment of life without parole. I think New Jersey is looking at the end of the death penalty in the near future."

Former Congressman Richard Zimmer, who headed a commission that in 1998 recommended streamlining death penalty appeals, called the Marshall case "all the more reason why there should be reforms to the process to make it work more quickly.

"There is no excuse for the process to have worked so slowly that it destroyed the possibility of the death penalty being a reality," Zimmer said. "It's a case where justice delayed is literally justice denied."

The decision sparing Marshall's life leaves 10 death-row inmates. One, John Martini, is down to his final appeal before the New Jersey Supreme Court, which heard arguments in March.

But even if the justices uphold Martini's death sentence for the 1989 kidnapping and murder of Fair Lawn businessman Irving Flax, the state has no procedures for carrying it out. Those regulations were invalidated by a state appeals court in 2004 and have yet to be revised.

There also is a moratorium on executions, until January 2007, while a commission studies whether capital punishment should be repealed. State Attorney General Zulima Farber has said she favors extending the moratorium.

Maureen Kanka of Hamilton Township, whose daughter Megan was raped and strangled by Jesse Timmendequas, still hopes to see him executed for that crime.

"I'd like to hopefully see him stay on death row," Kanka said. "I firmly believe the majority of New Jerseyans still support the death penalty."

Sen. Gerald Cardinale (R-Bergen), who sits on the Senate Judiciary Committee, said he favors the death penalty -- as do his constituents -- but doubts it will ever be carried out. He blames the courts.

"When judges don't like a situation they find a way to nitpick the will of the people," Cardinale said. "There's nothing wrong with our law. But there is a lot wrong with the independence we have given judges. It has degenerated into independence from the law."

Sen. John Adler (D-Camden), who chairs the Senate Judiciary Committee, said he personally would abolish the death penalty but such a significant change requires a "consensus" of legislative leaders and Gov. Jon Corzine.

"You can't undo a wrongful execution and you can't get that blood off society's hands, but you can release someone who is wrongfully imprisoned," Adler said.

On one point, Adler and Cardinale agree: Something must be done.

"The Legislature should take action promptly either to abolish the death penalty or say that's an appropriate punishment and establish a process that's constitutionally sound," Adler said. "It's way past time for us to make up our mind how to deal with truly heinous offenders."

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