
Court Snub Brings New Look at Death Case

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Sunday, January 14, 2007

(01-14) 12:11 PST Livingston,
Texas (AP) --

Life already had been tough for
LaRoyce Lathair Smith and Jennifer Soto by the time each turned 19.

Soto dropped out of school in Dallas in the ninth grade and was helping raise a younger brother. Smith was a special education student who had reached only the eighth grade by age 18. His father was in a biker gang, abused alcohol and crack cocaine and stole from the family.

Their paths crossed in 1990 when Smith got a job at a Taco Bell where Soto had risen to night manager after three years of work. Smith lasted less than two months, fired for mishandling cash. Less than three months later, Smith showed up at the restaurant after closing and asked to use the phone. Soto greeted him with a hug and let Smith and two companions in.

The act of kindness for a familiar face cost her life.

Smith was convicted of fatally stabbing and shooting Soto in an attempted robbery that netted him no money because Soto refused to open the restaurant safe, witnesses testified at his murder trial. A jury decided he should be put to death.

Smith's death sentence is grabbing the attention of the U.S. Supreme Court this week for an unusual second time in three years. Justices will hear arguments Wednesday that the Texas Court of Criminal Appeals, the state's highest criminal court, ignored their earlier ruling saying jurors in Smith's case weren't allowed to sufficiently consider the abuse and neglect Smith suffered as a child.

Two other Texas death row inmates, Brent Ray Brewer and Jalil Abdul-Kabir, are raising similar claims after the 5th U.S. Circuit Court of Appeals turned down their appeals. The Supreme Court has combined their cases into a single argument, also to be heard Wednesday, immediately after the Smith arguments.

The state appeals court last year upheld Smith's conviction despite the high court's concerns.

"It's not unheard of, but not common either," Erwin Chemerinsky, a Duke University law professor who urged the justices to take Smith's case a second time. "Usually when it happens, the Supreme Court does not take well to what they regard as disobedience by a lower court."

Texas has executed 380 prisoners over the past 24 years, making it by far the nation's most active death-penalty state.

A high court decision favorable to the defense could mean new sentencing trials for the three men and possibly affect a few dozen other inmates sent to Texas' death row in the late 1980s and early 1990s who might have been sentenced under similar jury instructions.

Smith, Abdul-Kabir and Brewer are not contesting their guilt. All declined requests for interviews about their cases.

Abdul-Kabir, also known as Ted Calvin Cole, was convicted in 1988 of using a dog leash to strangle Raymond Richardson, 66, during a \$20 robbery at his San Angelo home. Abdul-Kabir's lawyers contend the jury that condemned him had no way to take into account the mistreatment and abandonment that contributed to his violent adult behavior.

The same sentencing problems applied to Brewer, convicted of fatally stabbing 66-year-old Robert Laminack, who was attacked in 1990 outside his Amarillo flooring business and robbed of \$140. Brewer was abused as a child and suffered from mental illness, factors his jurors weren't allowed to consider, according to his petition.

The 5th Circuit, which handles Texas death penalty appeals and has upheld the death sentences of Abdul-Kabir and Brewer, "refused to yield to the letter or the spirit" of the Supreme Court's previous decisions related to the sentencing rules, lawyers said when they asked for the high court review. Instead, the New Orleans-based appeals court "continues to veer from the course" and is "busily crafting new 'screening tests' to evade" the Supreme Court's guidance, Abdul-Kabir's attorneys said.

In briefs prefacing this week's arguments in Smith's case, the Texas Attorney General's Office maintained that the state court ruling was correct and that Smith's lawyers never

objected to the jury instructions at his trial and during earlier appeals. State lawyers also said jurors were presented ample mitigating evidence that made the instruction error harmless.

Presiding Texas Court of Criminal Appeals Judge Sharon Keller, a Republican, declined to discuss the case while it was pending before the Supreme Court.

Eds: The cases are LaRoyce Lathair Smith v. Texas, No. 05-11304; Brent Ray Brewer v. Nathaniel Quarterman, No. 05-11287; Jalil Abdul-Kabir, formerly known as Ted Calvin Cole v. Nathaniel Quarterman, No. 05-11284.

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