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In 4-3 decision, state's highest court rules that 'deadlock' instructions to jury in capital punishment cases violate the constitution

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BODY:

New York State no longer has the death penalty.

Less than nine years after it was reinstated at the urging of Gov. George Pataki, the state Court of Appeals ruled yesterday that the 1995 law violated the state constitution. The 4-3 decision means the four remaining men on death row - three from Suffolk and one from Queens - will be resentenced and that the nine defendants around the state who were facing the death penalty if convicted no longer will.

"The slate is wiped clean," said Kevin Doyle, chief of the state Capital Defender Office, which represents death penalty defendants. The decision was written by Judge George Bundy Smith. "We ... conclude that under the present statute, the death penalty may not be imposed," he wrote.

The court's ruling came in the case of Stephen LaValle, who was convicted of raping and killing Patchogue-Medford teacher Cynthia Quinn while she jogged in Yaphank one morning in May 1997.

It was the fourth time the court has set aside a death sentence, but the first time it has done so with such sweeping results. The court focused on the law's "deadlock instruction." In a capital case, a jury votes first on whether a defendant is guilty of first-degree murder, and then in a separate proceeding decides between the sentences of death or life without parole. Either choice must be unanimous.

The law requires a judge to tell jurors that if they cannot reach a unanimous decision on the sentence, the judge must impose a sentence that permits parole in 20 to 25 years. The court ruled that this instruction could coerce jurors into voting for a death sentence they didn't favor, to avoid the possibility of a killer getting parole.

"For jurors who are inclined toward life without parole, the choice is between death and life with parole, a Hobson's choice in light of the jurors' likely concerns over [the] defendant's future dangerousness," Smith wrote.

Doyle credited Susan Solomon, a lawyer in his office, with being "the masterful and persistent advocate for this claim." LaValle and two of the remaining men on death row, Robert Shulman and Nicholson McCoy, were sent there from Suffolk during the administration of former District Attorney James Catterson Jr., who helped draft the law.

His successor, Thomas Spota, did not quarrel with the Court of Appeal's decision.

"I agree this flaw in our statute, as the court found, needs the full attention of the state legislature," Spota said in a statement. "A jury must be able to deliberate a capital murder case secure in the knowledge that, in the event of a deadlock, the defendant ... would be sentenced to life in prison without parole."

Death penalty supporters, however, were dismayed by the ruling. "Well, it's a disappointing decision," said Pataki, whose support of the law helped him oust Democrat Mario Cuomo a decade ago.

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Pataki did not say yesterday how the flaw in the statute would be corrected.

Senate Majority Leader Joseph Bruno (R-Brunswick) went further and disputed the court's conclusions.

"The state's death penalty is constitutional and the decision against it is irresponsible and could ultimately jeopardize the lives of New Yorkers by placing dangerous, violent criminals back on the street," he said in a statement. But Bruno said he was willing to work with the governor and Assembly on "corrective legislation."

Though some politicians have recognized potential problems with the death penalty statute and offered remedies, the issue had yet to rise to the top of Albany's lengthy list of unfinished business, which includes enacting a new budget - already almost three months overdue - and complying with a court order to improve education funding.

But as sentence after sentence has been vacated, it has become clear in the Capitol that lawmakers must confront the issue head-on.

Yesterday's ruling will likely speed that reckoning.

Both Pataki and state Sen. Dale Volker (R-DePew), a main proponent and author of the law, had in the past proposed eliminating the requirement to impose parole when juries deadlock in the sentencing phase. The measures, which never advanced in Albany, would have mandated life without parole if jurors are deadlocked.

Still, Volker yesterday called the decision "nit-picking" and said his deadlock proposal was an effort to head off the court's ongoing attack on the statute.

"They have decided they are not going to do an execution," Volker said. "It's another indication that this Court of Appeals does not want to approve a death penalty."

Perhaps anticipating such criticism, the court's decision said it could not let a bad law remain in effect.

"While the legislature may vote to have a death penalty, it cannot create one that offends constitutional rights," Smith wrote in the decision. Assemb. Joseph Lentol (D-Brooklyn), chairman of the Assembly's Codes committee and a death penalty supporter, yesterday expressed a desire to quickly repair the deficiencies.

"This is something we ought to fix," he said. "If you are going to have a death penalty, it has to be applied fairly and equitably, and we have to fix this. ... I am in favor of the death penalty, but I definitely want to see it done the right way."

Assembly Speaker Sheldon Silver (D-Manhattan) said he expects the Assembly "will take appropriate action to address the issue raised today by the court" to fix the law.

New York's experience is not unusual. New Jersey's highest court, for example, imposed a moratorium on executions in February, saying the state's rules on lethal injection were "unreasonable." No one has been executed in that state since the death penalty was reinstated in 1982. There are 13 prisoners on New Jersey's death row.

Death penalty law experts said the court acted correctly in focusing on the deadlock instruction, which no other state's death penalty law had.

"The purpose of this unique provision was to tilt the playing field" in favor of prosecutors, said Eric M. Freedman, a constitutional law professor at Hofstra University.

"I think this was fully predictable," said James Acker, a professor at the University at Albany's School of Criminal Justice. During the debate on the bill in 1995, then-Sen. Richard Dollinger (D-Rochester) warned that the deadlock instruction was coercive.

Although the court's ruling does not address the fate of Shulman, McCoy and John Taylor of Queens, the three men remaining on death row, Acker and others said their death sentences must be overturned on the same grounds when the court hears their appeals.

The court explicitly ruled that the death penalty cannot be imposed in any pending case, nor can it be imposed in the future unless the deadlock instruction is rewritten.

The next step for LaValle - and eventually for the others on death row - is to be resentenced. LaValle's trial judge, Acting State Supreme Court Justice Michael Mullen, will sentence LaValle to life in prison without parole, or to a life sentence that will allow him to seek parole in 20 to 25 years.

Shrinking death row

The state appeals court's decision yesterday to throw out a Long Island man's capital sentence effectively invalidates the sentences of the remaining men awaiting execution.

STEPHEN LAVALLE

County: Suffolk

Case: Convicted of raping and fatally stabbing a jogger in Yaphank in 1997.

Status: Sentence to be downgraded to life in prison without parole or life with parole after 20-25 years. Court said state-mandated instruction to juries was unconstitutional as it might coerce them to vote for a death sentence.

NICHOLSON MCCOY

County: Suffolk

Case: Sentenced for sodomizing, suffocating and stabbing a co-worker to death at an Edwards grocery store in Medford

in 1998.

Status: Case in appeal, but sentence is essentially invalidated by the LaValle ruling because jurors at his trial were issued the same instructions.

ROBERT SHULMAN

County: Suffolk

Case: Sentenced for killing three prostitutes during the early 1990s. Also confessed to killing two other women in Yonkers and dumping their bodies. At the time of the crimes,

he grappled with depression and other mental problems.

Status: Case in appeal; sentence is essentially invalidated by LaValle ruling.

JOHN TAYLOR

County: Queens

Case: Sentenced in the execution-style slayings of five former co-workers during a holdup of a Wendy's restaurant in Flushing in 2000.

Status: Case in appeal, but sentence is essentially invalidated by LaValle ruling.

Already spared from death

Since the state reinstated capital punishment in 1995, three other men received death sentences that later were vacated, two because another provision in the state's death penalty statute also was found unconstitutional.

DARREL HARRIS

County: Brooklyn

Case: Convicted for killing three people during a 1996 bar robbery.

Status: Sentence overturned in 2002. Court ruled that a statute allowing a defendant to plead guilty in exchange for a prison sentence is unconstitutional because it coerces some into making a plea. Resentenced to life without parole.

ANGEL MATEO

County: Monroe

Case: Convicted for killing a man who refused to help him find his estranged girlfriend in 1996.

Status: Sentence vacated in February. Court ruled that, as with the Harris case, the state sentencing provision is unconstitutional.

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JAMES CAHILL

County: Onondaga

Case: Sentenced to death in 1999 for poisoning his wife, who was in a Syracuse hospital after he beat her with a baseball bat.

Status: Sentenced overturned last year. Court ruled that evidence of aggravating factors (needed for a capital conviction) was insufficient. Resentenced to 37 1/2 years to life.

'We . . . conclude that under the present statute, the death penalty may not be imposed.' - Judge George Bundy Smith, Court of Appeals

'The slate is wiped clean.' - Kevin Doyle, Capital Defender Office

'My reaction to this is, 'Oh, Lord help me. Unless you've walked a mile in my shoes and have had a loved one murdered, you would think differently about overturning it.' - Ruth Brown

'. . . We have to fix this . . . I am in favor of the death penalty, but I definitely want to see it done the right way.' - Assemb. Joseph Lentol (D-Brooklyn)

GRAPHIC: Photos - 1) Cynthia Quinn was killed in 1997 by Stephen LaValle. 2) Kelly Sue Bunting was killed in 1995 by Robert Shulman. 3) Victoria Peymann was killed by Nicholson McCoy. 4) Newsday File Photo / Michael E. Ach - The Greenhaven Correctional Facility upstate, where death sentences of New York prisoners would be carried out. Photos - 5) STEPHEN LAVALLE, 6) NICHOLSON MCCOY, 7) ROBERT SHULMAN, 8) JOHN TAYLOR, 9) DARREL HARRIS, 10) ANGEL MATEO, 11) JAMES CAHILL

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