

The New York Times

October 4, 2000, Wednesday, Late Edition - Final

SECTION: Section A; Page 22; Column 1; National Desk

LENGTH: 914 words

HEADLINE: Pardoned Inmate's Lawyers Attack Virginia Evidence Law

BYLINE: By FRANCIS X. CLINES

BODY:

Lawyers for Earl Washington Jr., the former death row inmate who was pardoned in Virginia on Monday after 17 years of imprisonment, say their long struggle to prove his innocence through DNA evidence was necessary because the state has the most severe limits in the nation on submitting new exculpatory evidence.

"It is insurmountable," Bob Hall, a defense lawyer, said of the state's 21-day limitation for submitting new evidence after conviction. "After that, a judge loses jurisdiction even if he feels there's been a gross miscarriage of justice."

Acting on the results of DNA testing, Gov. James S. Gilmore III, Mr. Washington's only recourse for appeal, granted an "absolute pardon" in the 1982 rape and murder of Rebecca L. Williams, a Culpeper County homemaker.

Rebutting criticism of the 21-day evidence limit, the governor's office said that Mr. Gilmore felt that "over all, the Virginia criminal justice system works quite well" with its recourse to executive clemency. "Even if there was a two-year rule, this might not accomplish what the opposition wants, while executive clemency will," said Lila White, a spokeswoman for the governor.

Mr. Washington's lawyers disagreed. "It's a sham," complained Eric M. Freedman, a law professor at Hofstra University who has been working for Mr. Washington's cause for 15 years. "Virginia has the lowest reversal rate in capital cases in the United States, which means either it has the best system of justice or the worst," he said, calling the 21-day evidence limitation a symptom of the worst.

"The governor is left acting in a totally distorted legal framework," Mr. Freedman added, noting that other states, including New York and California, set no time limit for submitting new evidence.

Earlier this year, a proposal to expand the period during which evidence could be submitted in Virginia to 3 years was amended to 45 days and died in the State Senate after lower-house passage.

Mr. Washington, a 40-year-old mentally retarded farmhand, remains in prison because the governor declined to recommend parole on an unrelated assault conviction that carries a 30-year sentence.

State corrections officials said yesterday that Mr. Washington's remaining sentence would be recalculated as soon as possible to see whether he might be eligible for parole now.

Mr. Washington's lawyers maintain that he would normally have been released for that conviction several years ago for good behavior and that Governor

Gilmore showed punitive political motives in not recommending his immediate freedom in compensation for the injustice of the murder conviction. The governor's office stressed that the case was decided entirely on its criminal-justice merits in the face of fresh DNA evidence and that the assault sentence deserved to stand.

Mr. Washington's lawyers, while intent now on winning immediate parole on the assault charge, said they would use the pardon and erroneous conviction to press once more for reform of the evidence limitation.

"That limit cost Earl at least 6 years longer in prison," said Gerald T. Zerkin, a defense lawyer who described the frustration of being unable to bring exculpatory evidence to light until news organizations brought pressure on the state for DNA testing.

"The murder conviction is now a nullity, and the state should recalculate the good time Earl has served," Mr. Zerkin said of the complex state formulas for deciding parole. He maintained that, by any formula, Mr. Washington would have been released for good behavior by now but for the headlines and political controversy stirred by his challenging the Virginia system of justice.

Mr. Washington was nine days from execution in 1994 when his death sentence was commuted to life by Gov. L. Douglas Wilder, a Democrat, after an initial DNA test raised doubts about his guilt. That test suggested the possibility that someone else might have been involved in the crime, but state officials insisted the test was not fully conclusive. In his pardon, Governor Gilmore said the new test confirmed the possibility that another individual, a known convicted rapist, might have been involved in the murder.

Critics of Virginia's time limit on evidence maintain that it ends court jurisdiction well before any possibility for full justice.

"It places the victims of unjust convictions at the discretion of elected political officials," said Peter Neufeld, co-director of the Innocence Project at the Benjamin N. Cardozo School of Law in New York, a pro bono defense program that has won DNA appeals in capital cases.

"You would think the state would offer at least a word of apology for this miscarriage of justice, but there's none in the governor's pardon of Earl," he said.

The Culpeper police originally said that Mr. Washington, who has an IQ of 69, waived his right to a lawyer and then confessed to a series of unsolved murders after he was arrested on a charge of assaulting a neighbor. All the murder cases were later dropped except the Williams case. Mr. Washington was convicted largely on the basis of a confession that he recanted and sought to challenge with exculpatory evidence after the 21-day limit when new lawyers took up his cause.

Mr. Washington was informed of the pardon on Monday night by Barry Weinstein, another member of his defense team. "Earl said, 'I've been telling everyone I didn't do it; I guess I'm free!' " Mr. Weinstein related.

"I had to tell him, 'No, not yet, Earl.' "

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Send To: MOORE, GARY  
HOFSTRA UNIVERSITY  
122 HOFSTRA UNIVERSITY  
HEMPSTEAD, NEW YORK 11549-1220