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HEADLINE: APPEALS COURT TURNS STATE DOWN/ FULL PANEL WON'T HEAR CASE TO KEEP RECORDS SEALED IN 1982 MURDER

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BODY:

Only the U.S. Supreme Court can now block the release of secret documents concerning the investigation of a rape and murder for which an apparently innocent man was nearly executed.

No decision was reached yesterday by the Virginia Attorney General's Office on whether to appeal to the nation's highest court to keep Virginia State Police records about the Earl Washington Jr. case sealed.

This month, a three-judge panel of the 4th U.S. Circuit Court of Appeals largely upheld U.S. District Court Judge Norman K. Moon's decision to release the documents.

Attorney General Jerry W. Kilgore then asked the court for a hearing by the full court. Yesterday, in a one-page order, the 4th Circuit turned the state down, noting that DNA testing won Washington a full pardon in 2000 for the rape and murder of Rebecca Lynn Williams, 19, in Culpeper in 1982. In spite of the pardon, authorities still said Washington was a suspect in the case.

The 2000 DNA testing failed to find any trace of Washington at the crime scene. However, it did find the DNA of Kenneth M. Tinsley, a convicted rapist now in prison for another rape, in a seminal stain on a blue blanket at the scene of the crime.

Washington filed the suit against authorities who prosecuted him in part to clear his name. State police want to keep its investigative file into the Williams' slaying secret and under court seal.

News organizations, including The Times-Dispatch, sought to have more than a dozen documents unsealed.

"No judge anywhere has been able to buy their overblown theories why the public should be denied access to this material," Eric M. Freedman, a law professor at Hofstra University and one of Washington's lawyers, said of authorities.

"The responsible course of action would be to make it public rather than perpetuating the attempt to cover up the wrongdoing" of the Virginia forensics lab, Freedman said.

Tim Murtaugh, spokesman for the attorney general's office, said yesterday that "we're reviewing the ruling and other options."

However, Freedman said the attorney general's only avenue of appeal would be to the U.S. Supreme Court. He said that if the attorney general decides not to appeal, 10 of the 14 documents in question might be released in a matter of weeks.

Moon wanted all 14 documents to be released; the appeals court panel backed him on 10 of the documents and asked for more information on why the remaining four should be unsealed.

Meanwhile, Ellen Qualls, spokeswoman for Gov. Mark R. Warner, said an audit of DNA testing done by the Virginia Division of Forensic Science in the Washington case in 2000 is underway.

The audit was requested by Warner after an independent DNA test showed Tinsley's DNA was present in sperm taken from a vaginal swab of the murdered woman. The state tests did not find Tinsley's DNA, presumably complicating any prosecution.//

GRAPHIC: PHOTO

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