

Heavy metal killer's execution stay lifted
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The U.S. Supreme Court refused to reconsider a San Antonio man's death penalty Monday, even as one of the justices went out of his way to say the sentence was unfair and deserves to be overturned.

The court's decision automatically lifted the stay of execution that spared Troy Kunkle last month, but the fate of the former Roosevelt High School student seemed far from settled.

Plainly disturbed by the way Kunkle was sentenced, Justice John Paul Stevens accompanied his vote to reject the case with a written explanation that seemed to invite another round of appeals.

Stevens was the only justice to address the case and characterized the court as stymied by procedural barriers. He said the justices had no authority to review Kunkle's appeal because it hinged on state law, not federal.

"That result is regrettable because it seems plain that Kunkle's sentence was imposed in violation of the Constitution," Stevens concluded.

Kunkle's case taps into ongoing tension between the Supreme Court and the lower courts over the treatment of death sentences issued in Texas before 1991.

Until the law was changed that year, Texas courts did not clearly tell jurors they could spare a defendant's life if they found mitigating evidence, such as mental illness.

The high court told the Texas Court of Criminal Appeals and the 5th U.S. Circuit Court of Appeals twice this year that they improperly reviewed and upheld death sentences from that era.

Some victims-rights advocates characterize the Supreme Court as mercurial and suggest the justices deserve blame if lower courts are confused.

"It's impossible to know what the rules are because the Supreme Court keeps changing them," said Dianne Clements, executive director of the Houston-based nonprofit victims advocacy group Justice For All.

Some experts predict Kunkle's case will receive further review - even though the court has now twice declined to consider appeals filed by the 38-year-old man who has spent

more than half his life on death row.

He shot a man during a 1984 stickup in Corpus Christi and then recited lyrics from the heavy metal song "No Remorse."

"I would say this is going to prove to be a minor bump in a long road that is eventually going to end in victory for Mr. Kunkle," said Eric Freedman, a Hofstra University law professor and a close watcher of death penalty litigation.

Kunkle's lawyers were encouraged by Justice Stevens' conclusions and resolved to press ahead with arguments that the inmate has a history of mental illness that jurors were not allowed to consider adequately during trial.

"It would just be obscene to kill a man when he did not get a proper sentencing," said Danalynn Recer, an attorney with the Gulf Region Advocacy Center, a nonprofit group that aids death penalty defenses.

While it was not immediately clear whether prosecutors would request another execution date, they remained steadfast in their defense of Kunkle's conviction.

Greg Norman, the prosecutor handling the appeal for the Nueces County district attorney's office, said no mitigating evidence would have saved Kunkle from the death sentence:

"I guess our position, if you sweep away all the legal nuances, is that we're comfortable he got what he deserved."

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