

Commuting of Va. death sentence delayed

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YORKTOWN, Va. --

A man in the center of a case that led to the U.S. Supreme Court banning execution of the mentally retarded will remain on death row for now.

A judge Thursday agreed to a request by special prosecutors to stay his order to commute Daryl Atkins' sentence to life in prison while they appeal the ruling to the Virginia Supreme Court.

Judge Prentis Smiley Jr. commuted the sentence last month after finding that prosecutors had failed to turn over potentially favorable evidence to defense lawyers during Atkins' 1998 murder trial. Prosecutors contend that the York County-Poquoson Circuit Court judge lacked the authority to commute the sentence.

Defense attorney Joseph Migliozi had argued that a stay was unnecessary because the order would only remove Atkins from death row, not free him from prison.

"The defendant is not going back onto the street," Migliozi said.

Atkins, of Hampton, was 18 when he and another man killed Eric Nesbitt, a 21-year-old Air Force mechanic, for beer money in 1996. Nesbitt was abducted outside a convenience store, forced to withdraw money from an ATM and driven to a desolate road, where he was shot eight times.

William Jones reached a plea agreement and testified against Atkins, who prosecutors said was the triggerman. Jones is serving a life sentence.

Atkins' lawyers appealed the case to the U.S. Supreme Court, which ruled in 2002 that it was unconstitutional to execute the mentally retarded.

In Virginia, mental retardation is defined as an IQ of 70 or lower before the age of 18 and an inability to function well in society. Atkins scored between 59 and 76 on four IQ tests administered after he was charged in the killing.

A new jury decided in 2005 that Atkins wasn't retarded and upheld his original death sentence, but that verdict was overturned because of errors made during the trial.