

Court: Ban on execution of child rapists stands

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WASHINGTON (CNN) -- The Supreme Court has refused to reconsider its June ruling banning capital punishment for child rapists, rejecting Louisiana officials' argument that a "significant error" led to its conclusion that there is a "national consensus" against executing non-murderers.

Patrick Kennedy, 43, was on Louisiana's death row after being convicted of raping his 8-year-old stepdaughter.

The decision came as the high court announced Wednesday it is putting 10 new cases on its docket.

About 2,000 pending appeals had been awaiting review since July, when the justices began a three-month summer recess. The new term officially begins Monday.

The capital case involves a child rapist from Louisiana, the first person sentenced to death for such a crime in nearly a half century.

Paul Connick, district attorney in Jefferson Parish, outside New Orleans, had requested a new hearing. In a sharply divided 5-4 ruling June 25, Justice Anthony Kennedy wrote in the majority opinion that "evolving standards of decency" in the United States forbid capital punishment for any crime other than murder.

Kennedy wrote in his opinion that 30 of the 36 states with the death penalty, as well as the federal government, ban executing rapists.

But in fact, Congress in 2006 allowed child rape as death-eligible crime in the military justice system. President Bush a short time later signed Executive Order 13447, including those provisions in the latest edition of the Manual for Courts-Martial. The Justice Department and Louisiana prosecutors both have accepted responsibility for failing to inform the Supreme Court of the 2006 law.

In their appeal, lawyers for Louisiana said "both political branches have recently and affirmatively authorized the death penalty for child rape. Such a clear expression of democratic will, at the very least, calls into question the conclusion there is a 'national consensus against' the practice," as Kennedy had written.

But Kennedy, along with the four liberal justices who voted with him in June, said the new law applying to military members "does not draw into question our conclusions that there is a consensus against the death penalty for the crime in the civilian context and that the penalty here is unconstitutional."

Instead, they said, "the more relevant federal benchmark is federal criminal law that applies to civilians, and that law does not permit the death penalty for child rape."

A majority of the court would have to agree to reopen a decided case; the justices have rarely granted such requests.

The man at the center of the case, Patrick Kennedy, 44, was sentenced to die in 2003 for sexually assaulting his 8-year-old stepdaughter in her bed. In addition to severe emotional trauma, the attack caused internal injuries to the child, and she required extensive surgery, Louisiana prosecutors said.

Patrick Kennedy (no relation to Justice Kennedy) would have been the first person since 1964 to face capital punishment for a rape in which the victim was not killed. The 1964 execution took place in Missouri.

The last execution by the U.S. military for any crime was in 1961, when Pvt. John Bennett was hanged for raping an 11-year-old girl, according to Pentagon records. No one in the military has been charged with any capital crime since the revised 2006 provision.

The Supreme Court had not asked the federal government for its views on the issue before it held oral arguments in April, nor did the Justice Department volunteer. The omission of the military justice death penalty was first noticed by Dwight Sullivan, civilian defense lawyer who handles death penalty appeals for the Air Force, who blogged his findings on <http://caaflog.blogspot.com/>.

Shortly afterward, federal officials released a statement saying, "We regret the [Justice] Department didn't catch the 2006 law when the case of Kennedy v. Louisiana was briefed. It's true that the parties to the case missed it, but it's our responsibility."

Louisiana, in its appeal, also accepted "full responsibility" for not being aware of the federal law.

The case revealed the sharp ideological divide among the court's nine members over the death penalty.

"Difficulties in administering the penalty to ensure against its arbitrary and capricious application require adherence to a rule reserving its use, at this stage of evolving standards and in

cases of crimes against individuals, for crimes that take the life of the victim," Justice Anthony Kennedy wrote in June.

He was joined in the majority by Justices John Paul Stevens, David Souter, Ruth Bader Ginsburg and Stephen Breyer.

Justice Samuel Alito wrote the dissent, saying, "The harm that is caused to the victims and to society at large by the worst child rapist is grave."

He was supported by Chief Justice John Roberts and Justices Antonin Scalia and Clarence Thomas.

Scalia and Thomas voted to rehear the case, arguing Wednesday that the 2006 law that applies to military members "utterly destroys" the majority's claim of a national consensus against execution for rape.

The high court in recent years has banned execution for the mentally retarded, underage killers and defendants who receive an inadequate defense or were subject to prosecutorial misconduct.