

# Fla. justices deny condemned inmate's appeals

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TALLAHASSEE, Fla. -- A death row inmate seeking to stave off execution for killing his girlfriend's teenage daughter lost three separate appeals Friday in the Florida Supreme Court.

Wayne Tompkins, 57, murdered Lisa DeCarr, the 15-year-old daughter of his girlfriend, 25 years ago in Tampa. Tompkins is under a stay of execution that's due to expire Nov. 18. A new execution date has not yet been set.

Appeals by the convicted murderer included a claim the state's lethal injection procedure is unconstitutional because it inflicts cruel and unusual punishment. The state justices and U.S. Supreme Court rejected similar appeals by two other Florida death row inmates, who were executed earlier this year.

The high court unanimously denied all of his claims except one, which it turned aside on a 4-1 vote. Chief Justice Peggy Quince and Justice Charles Canady recused themselves from all three cases.

Justice Harry Lee Anstead wrote in dissent that he would have granted Tompkins' request for an evidentiary hearing on a claim of prosecutorial misconduct. Tompkins alleged a former inmate's trial testimony was tainted because a prosecutor told him to give the jury false information.

A friend of the victim, Kathy Stevens, testified she saw Tompkins atop the teen on a couch at the DeCarr home on March 24, 1983. DeCarr asked her to call police as she struggled and hit Tompkins, who was trying to remove her clothing. Stevens said she left but did not call police.

Tompkins claimed the teen ran away from home. He was charged with first-degree murder when her skeletal remains were found 15 months later, buried under the house. DeCarr's bathrobe sash was tied around her neck bones.

Kenneth Turco testified Tompkins confided details of the murder while they were cellmates including that he buried the victim under his girlfriend's house with some clothing and her pocketbook to make it appear she had run away.

Turco said in sworn statement last week that prosecutor Michael Benito told him before he testified "don't forget the purse." Turco said his testimony was truthful except for his statement about the purse.

The high court majority wrote in an unsigned opinion that even if the state knowingly presented false testimony it was harmless error because "there is no reasonable possibility that it could have affected the jury's verdict."

Anstead disagreed.

"Imagine here a jury already concerned with the credibility of a jailhouse snitch now being told that a critical part of his testimony was fabricated by the state's prosecutor," he wrote. "Surely, common sense would tell us this is the kind of 'bombshell' disclosure that could change the jury's entire evaluation of the case."

Capital Collateral Regional Representative Neal Dupree, whose office is representing Tompkins, said he was disappointed and agreed with Anstead's dissent.

Another appeal is pending in U.S. District Court in Tampa. Dupree said that court may be asked to also consider the issues in the state appeals or they might be taken directly to the U.S. Supreme Court.

Other rejected claims included that Gov. Charlie Crist lacked the authority to reset Tompkins' execution - originally scheduled in 2004 but delayed by appeals - and the extra four years on death row were cruel and unusual punishment.