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## Block executions, lawyers for 2 inmates ask Florida Supreme Court

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Associated Press

Lawyers for two convicted killers under active death warrants for murders committed 26 years ago urged the Florida Supreme Court on Wednesday to block their executions.

One argued for a stay of execution so DNA testing can be done, and the other cited a codefendant's lesser sentence.

John Richard Marek, 47, and David Eugene Johnston, 49, both are facing death by lethal injection for separate murders committed in 1983. The high court did not immediately rule in either case.

### STAY OF EXECUTION

The justices earlier stayed Marek's execution, which had been scheduled for May 13, but it could be reset once his appeals have been exhausted. He was convicted of kidnapping, raping and strangling Adella Marie Simmons in Broward County. Marek's lawyer argued his sentence should be reduced because a co-defendant received a life term.

Johnston has a May 27 execution date. He was convicted of stabbing and strangling 84-year-old Mary Hammond at her Orlando home.

His lawyer, Todd Doss, told the justices his case "cries out for DNA testing" of flesh and blood from the fingernails of the victim who scratched and clawed at her attacker.

Assistant Attorney General Kenneth Nunnelley argued against testing fingernail clippings that remain in evidence and that drew some pointed questions from Justice Jorge Labarga.

"It seems to me that the DNA of the person who killed her is probably underneath her nails," Labarga said. "Why not test it and then we'll be sure?"

The results, no matter what they might be, wouldn't be enough to exonerate Johnston, Nunnelley insisted, because other evidence against him is too strong, including the

victim's blood on Johnston's clothing and his pendant that was entangled in her hair.

## **IN DISPUTE**

Doss argued Johnston got the blood on his clothing because he found the body after the victim had been killed by someone else and even called police to report her death. He said Johnston's ownership of the pendant also is in dispute.

Nunnelley questioned why Johnston waited until just before his execution to ask for DNA testing. "I would suggest to the court that the timing of all that is highly, highly suspect," Nunnelley said.

Justice Charles Canady reminded him there's no time limit for seeking DNA testing, even "at the 11th hour," under a law passed in 2006. Nunnelley acknowledged that but argued the law was ``never intended to be a one free stay of execution."

Doss said he couldn't have asked for DNA testing earlier because he was assigned the case after Gov. Charlie Crist signed Johnston's death warrant on April 20. He said Johnston has effectively been without legal representation for the past three years as his case bounced from one lawyer to another.

Marek's claim for a reduced sentence is based on newly discovered evidence in the form of statements from three witnesses who said co-defendant Raymond Wigley admitted to them that he strangled Simmons after both men picked her up on Florida's Turnpike after her car broke down. Wigley was killed by another inmate in 2000 while serving a life term at Columbia Correctional Institution near Lake City.

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