

# Killer found not mentally disabled, can be executed

**A judge's decision means death-row inmate David Johnston can be put to death under Florida law.**



David Johnston talks with attorney Robert T. Strain at an April 2009 hearing in Orlando to determine who will represent him. In 1983, the transient killed Mary Hammond, 84, at her Orlando apartment. (RICARDO RAMIREZ BUXEDA, ORLANDO SENTINEL FILE / April 20, 2009)

By Sarah Lundy, Orlando Sentinel

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A judge ruled Monday that death-row inmate David Johnston is not mentally disabled — which means he can be executed under Florida law.

No date has been set.

Orange-Osceola Chief Judge Belvin Perry held a hearing last month that focused on whether

Johnston was legally mentally retarded or not. Two experts for the defense reported Johnston is by law mentally retarded. Two experts for the state said he is not.

Florida bans the execution of prisoners "with mental retardation."

To be considered legally retarded, a defendant must have an IQ of 70 or below and can't perform "adaptive functions," such as holding a job, cooking a meal and balancing a checkbook. Both conditions must have existed before the person was 18.

Johnston was scheduled to be executed March 9. The Florida Supreme Court issued a last-minute delay and instructed the lower court to hash out the "mental retardation" issue.

Johnston's IQ scores have varied throughout his life, ranging from 57 to 83.

His attorney, Todd Doss, has argued that the latest most accurate test scores him at 61 — lower than previous tests — and qualifies him to be spared the state's death penalty.

The state has pointed to earlier tests in 2005 that scored Johnston's IQ at 84.

One of the state experts said that Johnston scored lower in the earlier tests because he was experiencing emotional problems, anxiety and depression. He scored low on the test last year because he was facing the death penalty, which can cause depression, [stress](#), emotional difficulties and behavioral problems.

"The Court finds the testimony of the state's witnesses to be more detailed and to provide more credible explanations for disparities in the defendant's test scores," Perry wrote in his 14-page order.

Johnston was convicted in the 1983 murder of Mary Hammond. The 84-year-old woman was found stabbed to death in her Orlando home.

Johnston had been working at a demolition site near Hammond's home and had spoken to Hammond before her death.

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