

Court vacates Polk killer's death sentences due to prosecutor's misconduct

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TAMPA — Citing a prosecutor's misconduct, the Florida Supreme Court took the unusual step Thursday of vacating the death sentences of a triple murderer whose death warrant Gov. Charlie Crist signed last year.

Two separate juries found Paul Beasley Johnson guilty of gunning down a Polk County sheriff's deputy and two other people during a drug-fueled crime rampage in January 1981.

But in a harshly worded opinion, the court's 4-1 majority ordered a new penalty phase, finding that "the record here is so rife with evidence of previously undisclosed prosecutorial misconduct that we have no choice but to grant relief."

Justices ruled that the state induced Johnson to make incriminating statements to a jailhouse informant in violation of his right to counsel, then used that testimony at his trial despite knowing it was inadmissible.

They blamed the reversal squarely on Hardy Pickard, a former assistant state attorney who served as the original prosecutor in Johnson's case. Pickard's conduct also has been questioned in other death penalty cases.

"This is not a case of overzealous advocacy, but rather a case of deliberately misleading the court," the majority opinion penned by Justice James E.C. Perry said.

Justice Ricky Polston dissented.

Johnson, 60, was scheduled to die by lethal injection this past November. The governor signed his death warrant after Polk County Sheriff Grady Judd personally asked him to consider doing so at the August funeral of a Tampa police officer.

But Johnson still had an appeal pending. Saying Crist's decision put the Supreme Court in a difficult position, justices promptly stayed the execution to allow them time to consider the issues Johnson had raised.

The controversy over the informant's testimony wasn't new. Johnson's attorneys tried without success to keep it out of each of his three trials, one of which ended in a mistrial.

Defense attorneys argued that the informant, an experienced snitch who was transferred to a cell near Johnson's and took notes of their conversations, acted at the state's behest. A trial judge ruled that it was a close call but decided that police were passive recipients of the information.

Even the informant's subsequent concession that he had in fact been operating on instructions from the state failed to convince a judge to throw out his testimony, which included details of the killings and Johnson's plan to evade punishment by claiming he was insane when he committed the crimes.

So what changed? Enter Martin McClain, an appellate attorney who travels around the state handling death cases.

Over lunch with one of Johnson's attorneys a few years back, McClain mentioned how handwritten notes from prosecutor Pickard's files had played an important role in the appeals for two unrelated death cases.

In one case, a death row inmate went free after nearly 18 years after a judge's finding that Pickard withheld notes from interviews with key witnesses and kept police reports about the witnesses' conduct secret.

McClain offered to review the prosecutor's handwritten notes in Johnson's case.

Pickard's writings indicated that a sheriff's investigator told the informant "to make notes" and "to keep (his) ears open," contradicting previous testimony that the informant acted on his own, the justices ruled.

Justices said Pickard was aware of this contradiction at the time of the initial suppression hearing but used false testimony and misleading argument to convince the court to allow the informant to testify.

"It must be emphasized that in our American legal system there is no room for such misconduct, no matter how disturbing a crime may be or how unsympathetic a defendant is," the majority wrote. "Lawlessness by a defendant never justifies lawless conduct at trial."

Pickard could not be reached for comment Thursday. He retired in January 2009 after more than 35 years as a prosecutor in Polk County. The Florida Bar has never disciplined him.

"He was the straightest-shooting prosecutor you could ask for," said Polk State Attorney Jerry Hill. "I think the Supreme Court is off base."

Sheriff Judd issued a statement expressing his disappointment that "this cold-blooded murderer will get yet another day in court."

Eddie Burnham, 70, sounded more resigned. Johnson shot and killed his brother, Theron Burnham, after the deputy responded to the scene of one Johnson's murders. The other victims were William Evans, a cabdriver, and Ray Beasley, a man who had given Johnson a ride from a restaurant.

"It's getting tiresome," Burnham said of the appeals. "It's been quite a few years since he did all he did."

Researcher John Martin contributed to this story.

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