

Florida Supreme Court to hear appeal for man set to be executed

David Johnston's attorney argues his client is mentally retarded and shouldn't be executed.

By Sarah Lundy, Orlando Sentinel

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David Johnston, who was convicted of killing an Orlando woman in 1983, is scheduled to die on Tuesday.

On Thursday, his attorney will appear before the Florida Supreme Court to argue Johnston should not be put to death because he's mentally retarded.

Florida law and a 2002 [U.S. Supreme Court](#) ruling prohibit executing retarded people.

To be considered legally retarded, a defendant must have an IQ of 70 or lower and cannot perform "adaptive functions." Those include everyday living skills such as going to work, preparing a meal and getting dressed. Both conditions must have existed before the person turned 18.

As a kid, Johnston was diagnosed as retarded, and he was sent to the Leesville State School for the Retarded. He wasn't allowed to cook, fearing he would start a stove fire. He failed to earn a driver's license, wrecking the car too many times.

When he was 7, he scored a 57 on an IQ test.

"It seems like a slam dunk," his attorney, Todd Doss, said.

It's not.

[Columbia University](#) psychiatry professor Dr. Paul S. Appelbaum said several factors can affect a person's IQ score, including how a person feels that day, the type of test given and whether the person has any mental illness.

After the 2002 U.S. Supreme Court decision, Johnston appealed his death sentence, pointing to his retardation. A hearing was held, and his IQ tested at 84.

Two doctors concluded he was not retarded. A year later, the Florida Supreme Court agreed with the lower court's decision, according to court records.

Doss claims a new version of an IQ test, which is considered to be more accurate, shows his client is retarded. His client, he wrote in his motion, recently tested at 61.

The lower court denied Johnston's request for a new evidentiary hearing. Johnston is appealing the decision to the state's top court.

For Johnston, the latest fight to stay alive is one of many. He has been on Florida's death row for 25 years — half his life — for the murder of Mary Hammond of Orlando.

In 1983, Johnston called Orlando police and identified himself as "Martin White." He told officers, "Somebody killed my grandma" on Ridgewood Avenue.

Police arrived and found Hammond stabbed to death inside her home. She was not Johnston's grandmother.

Investigators arrested Johnston after noticing blood on his clothes and scratches on his face.

He had been working at a demolition site near Hammond's home and had spoken to the victim before. He also was seen washing dishes inside her home five days before her murder, according to court records.

Unless he wins a last-minute appeal, Johnston is scheduled to die by lethal injection at 6 p.m. on Tuesday at [Florida State](#) Prison in Starke. He would be the second man executed in Florida this year.

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