

Death row inmate gets Supreme Court help

Texan allowed to pursue evidence, but no certainty he can have it tested for DNA

WASHINGTON — In a case involving a Texas death row inmate, the Supreme Court on Monday opened up a new avenue for prisoners to seek access to DNA evidence when they believe it could help establish their innocence.

The court's narrow, 6-3 ruling means that Hank Skinner, who was about an hour away from execution when the Supreme Court intervened last year, will be not executed in the near future while his legal case continues.

The court ruled that prisoners may file federal civil rights lawsuits to get DNA material. But at the same time, the court's decision suggests that all a prisoner can claim is that a state failed to follow its own rules for access to DNA evidence. The court's decision today does not recognize a broad constitutional right to seek DNA material.

What it means, as a practical matter, is that when prisoners claim they've been improperly allow access to DNA testing, they have a method for trying to get it that buys them more time.

But the decision will not necessarily result in Skinner winning the right to perform genetic testing on evidence found at the scene of the triple murder for which he received the death penalty.

Justice Ruth Bader Ginsburg, writing for the majority, said prison inmates may use a federal civil rights law to seek DNA testing that was not performed before their conviction. Lower federal courts had dismissed Skinner's claims at an early stage, although other federal judges have allowed similar lawsuits to go forward in other parts of the country.

Ginsburg said it is by no means clear that Skinner can prevail in his lawsuit and actually gain access to the evidence for testing. Even if he does win in court, she said, testing the evidence "may prove exculpatory, inculpatory or inconclusive."

Justice Clarence Thomas, joined by Justices Samuel Alito and Anthony Kennedy, said Skinner's legal claims should have been cut off.

Robert Owen, Skinner's lawyer, praised the decision. "We look forward to making our case in federal court that Texas's inexplicable refusal to grant Mr. Skinner access to evidence for DNA testing is fundamentally unfair and cannot stand," Owen said.

Skinner, 48, was convicted of killing his girlfriend and her two adult sons on New Year's Eve 1993.

Police found him hiding in a closet in the home of a woman he knew, about three hours after the bodies were discovered. He was splattered with the blood of at least two of the victims. A trail of blood led police from the bodies to his hiding place, a few blocks away. He acknowledged being inside the house in the Texas Panhandle where the killings took place.

But other evidence was not tested at the time of Skinner's trial, on the advice of his lawyer. The untested material includes vaginal swabs taken from the girlfriend, Twila Jean Busby, at the time of her autopsy, fingernail clippings, a knife found on the porch of Busby's house and a second knife found in a plastic bag in the house, a towel with the second knife and a jacket next to Busby's body,

Skinner and his new defense team say that evidence could exonerate him. The state says Skinner is trying to game the system to delay his execution.

Like almost every other state, Texas has a law that allows prisoners to do DNA testing on evidence, long after their conviction. Skinner tried and failed twice to invoke the state law to get at the evidence.

He then filed the federal lawsuit, saying that the state had deprived him of his rights by withholding access to the evidence.

The case is *Skinner v. Switzer*, 09-9000.

The justices ruled in 2009 that convicted criminals do not have a constitutional right to demand that the state conduct DNA testing of

evidence. But that case did not involve a death row inmate seeking to prove his innocence.

In the United States, post-conviction DNA testing has exonerated 266 people, including 17 death row inmates, [according the Innocence Project public policy group](#).

There are nearly 3,200 inmates on death row in 36 states.

NBC Justice Correspondent Pete Williams as well as The Associated Press and Reuters contributed to this report.