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Death Row inmate asks for access to evidence

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Thomas Arthur, scheduled to be executed next week for the 1982 murder of Muscle Shoals' Troy Wicker Jr., has asked the state Supreme Court to grant his attorneys access to evidence in the case for DNA testing.

Attorneys for Arthur offered to pay for the testing and asked the court to delay the execution if tests can't be completed before the July 31 execution date.

"Without the benefit of DNA testing here, the state of Alabama assumes the intolerable risk of executing an innocent man," said Arthur's appeal, which was filed Monday.

A similar appeal filed last year was rejected by a U.S. District Court and a federal appeals court. The U.S. Supreme Court declined to hear that appeal. Gov. Bob Riley also has rejected repeated requests that he order DNA tests in the case.

If executed as scheduled, Arthur would be the first inmate put to death in Alabama since the U.S. Supreme Court effectively halted executions nationwide last summer while it considered a Kentucky challenge to lethal injection. Twelve inmates have been executed in seven states since the U.S. Supreme Court ruled in that case in April, determining that lethal injection is not cruel and unusual punishment.

According to records, police responding to a call on Feb. 1, 1982, found Troy Wicker Jr. dead in his bed, shot through the right eye. His wife, Judy Wicker, was found at the scene with blood on her face, a bruised eye, cut lip and chipped teeth.

She told authorities that she was raped by a burglar, who killed her husband. Prosecutors alleged she killed her husband for \$90,000 in life insurance proceeds, however, and she was tried for murder, found guilty and sentenced to life in prison.

Wicker later recanted her testimony, and said that Arthur, a work-release inmate with whom she was having an affair, committed the murder. Wicker was granted early release and Arthur was convicted and sentenced to death.

The case has been championed by activists, including the Innocence Project and Amnesty International, because Arthur has always claimed to be innocent, because of irregularities at his trial and because the merits of the case have never been the subject of a second appeal. Arthur, who was not represented by a lawyer for a time, missed deadlines for filing appeals.

Arthur was tried three times for the murder, with the first two convictions being overturned on technicalities. Several witnesses changed sides between trials, testifying at one trial for the defense and for prosecutors at another. The prosecutor in Arthur's third trial was the lawyer who represented Judy Wicker when she arranged the deal in which she was granted early

release for testifying against Arthur.

Arthur's attorneys argue that DNA testing of evidence, which was not possible at the time of his trial, could prove his innocence. Among the evidence requested is material collected for a rape kit. That evidence could prove someone else assaulted Judy Wicker before the murder, they said.

Arthur also has appealed for a stay on the grounds that Alabama's lethal injection procedure, which was changed last fall, amounts to cruel and unusual punishment, in violation of the Eighth Amendment to the U.S. Constitution.

While executions were halted nationwide last fall, Alabama added a step to its execution procedure intended to determine whether the condemned is still conscious after an anesthetic is administered. Under the procedure, a corrections officer will speak the inmate's name, pinch his arm and brush a finger over his eyelashes to determine whether he is unconscious.

If the inmate is judged unconscious, the execution will continue as planned. If not, a second dose of anesthetic will be administered before the execution proceeds.

Arthur has argued that the possible second dose of anesthetic amounts to a substantive change in the execution procedure and that a stay should be issued while it's determined whether the new procedure is constitutional.

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