

7/24/08 Birmingham News (AL) 6
2008 WLNR 13900321

Birmingham News (AL)
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July 24, 2008

Volume 121
Section: EDITORIAL

A test of justice

THE ISSUE Time is running out for Death Row inmate Thomas Arthur to get evidence in his case tested for DNA.

Barring intervention from Gov. Bob Riley or judges somewhere, Thomas Arthur will be put to death July 31 by the state of Alabama.

There should be an intervention.

Arthur this week asked the Alabama Supreme Court to give him access to evidence in his case so it can be tested for DNA and, if necessary, to postpone his execution.

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

A stalling tactic, you say? Maybe - except that Arthur has been begging for years for DNA tests he claimed would clear him of the 1982 murder of Troy Wicker.

There is no good reason for Arthur's pleas to have gone ignored until now, and there is no good reason to ignore them now.

The state should not execute Arthur as long as there is evidence that has not been examined to the fullest extent possible using modern scientific methods.

If Arthur were being tried today in this case, the biological evidence collected at the crime scene - which includes such things as a rape kit and blood - would without question be tested. But the science did not exist at the time of his trial.

To order the testing now doesn't require a full-fledged belief, or even a half-hearted belief, in Arthur's innocence. All it requires is a conviction that a person should not be executed before all the facts in his case are known.

In Arthur's case, the facts are undoubtedly strange. The victim's wife, Judy Wicker, initially claimed an intruder raped her and killed her husband at their home. But jurors believed prosecutors' version of the crime, which was that she arranged her husband's death at the hands of her lover, a killer on

work release named Thomas Arthur.

Only after she was convicted and sent to prison did she change her story and implicate Arthur. As Arthur was being sentenced to death for the crime, Mrs. Wicker was getting out of prison early for her cooperation.

Understand, Arthur is nobody's idea of a role model. He admits an earlier killing for which he was sent to prison. He admits having an affair with Mrs. Wicker. But he has steadfastly denied killing her husband. Because Arthur didn't have a lawyer for long stretches after his conviction, he missed crucial appeals.

In our view, courts should be able to intervene in a death penalty case at any time when guilt is at issue. Unfortunately, they're governed by timelines and procedural limits that sometimes even bar them from hearing defendants' claims of innocence. Courts may be unable to intervene even though justice seems to scream for it, even when there are questions that never got a full hearing in the appeals process.

But under Alabama law, Death Row defendants do have a place of last refuge. The governor has broad authority to block executions. He can grant temporary reprieves; he can commute a death sentence outright.

And Riley could require DNA tests to be conducted on the evidence in the Arthur case. If guilt is confirmed, great. If his guilt is called into question, even better that the tests were done.

Either way, the truth should be known before the state brings Arthur's life to an abrupt end.

This editorial board wishes courts would require every stone to be upended cases like this. But Riley doesn't have to wait for courts to act, and he shouldn't.

Time is running out for Arthur. Riley needs to order the tests.

---- Index References ----

Company: EDITIONS DES DERNIERES NOUVELLES D'ALSACE SA

News Subject: (Legal (1LE33))

Industry: (Science (1SC89); Science & Engineering (1SC33); Physical Science (1PH15))

Region: (Alabama (1AL90); North America (1NO39); Americas (1AM92); USA (1US73))

Language: EN

Other Indexing: (ALABAMA; ALABAMA SUPREME COURT; DNA) (Arthur; Bob Riley; Judy Wicker; Riley; Thomas; Thomas Arthur; Wicker)

Word Count: 695

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