

May 11, 2009

## Attorneys seek to block McNair lethal injection

*By Garry Mitchell  
The Associated Press*

MOBILE -- Attorneys for 44-year-old Willie McNair have asked the Alabama Supreme Court to block his lethal injection, which is set for Thursday for his conviction in the 1990 robbery and murder of 68-year-old Ella Foy Riley.

In a bid for a stay of execution filed Friday, McNair's attorneys said the jury's recommended penalty of life in prison without parole for McNair should not have been overruled by the state court judge.

Under Alabama law, a judge in a capital murder case is not bound by a jury's recommended penalty. Prosecutors contend McNair has exhausted his appeals.

He's scheduled for execution at Holman Prison, near Atmore, for killing the Abbeville woman in her home and stealing her purse when she refused to lend him \$20. She was stabbed in the neck and strangled on the night of May 21, 1990.

McNair's co-defendant, Olin Grimsley, received a life sentence for first-degree robbery on June 19, 1992, for his part in the attack.

Jurors in McNair's first trial recommended death on a 10-2 vote, but an appeals court required a resentencing and a Montgomery County jury voted 8-4 for life without parole. However, the judge sentenced him to death.

Attorneys from the Montgomery-based Equal Justice Initiative told the state Supreme Court in Friday's petition that jurors had a "strong factual basis" for the life-without-parole decision, including evidence of McNair's cocaine use when his victim was killed.

"His lack of dangerousness when not under the influence of cocaine was easily sufficient to allow the jury to conclude that life imprisonment without the possibility of parole was the appropriate sentence," the petition states.

The petition said the sentencing judge "simply disagreed" and offered "no valid rationale undermining the verdict."

McNair's attorneys seek an execution delay to allow a state Supreme Court hearing to ensure that McNair is not "subjected to arbitrary and capricious punishment."

State prosecutors did not immediately file a response.

Alabama's last execution was April 16.