

Death Row inmate still waits for ruling on new evidence

By CARLA CROWDER
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Evidence of Anthony Ray Hinton's possible innocence sits in a torn cardboard box at the Jefferson County Courthouse.

The files, hefty and disheveled, lie on the floor of the Circuit Clerk's office. Workers try not to trip over them. Hinton, meanwhile, sits on Alabama's Death Row.

For two years, he's been waiting for a judge to rule on new

evidence that could free him, but he has heard nothing. Hinton's lawyers presented the testimony in June 2002.

Three national firearms experts challenged the accuracy of information leading to his conviction in a series of restaurant robbery-shootings in the 1980s. Two restaurant managers died in the attacks, and a third was injured.

The experts — including the former chief of the FBI's firearm and toolmark identification unit

— said their tests on the gun that Alabama authorities used to tie Hinton to the crimes did not match bullets recovered at the crime scenes. "It was never even close," Lannie Emanuel, a Texas gun expert, said at the time.

Hinton, 48, has been locked up 19 years.

Takes too long

"People claim it takes too long for these cases to get to execution. Well, the same thing is

true for exoneration," said Hinton's attorney, Bryan Stevenson. He is executive director of Equal Justice Initiative, a Montgomery nonprofit law firm that represents poor people on Death Row.

In February, Equal Justice lawyers renewed their arguments in a 24-page motion that detailed three grounds under which Hinton should be freed. Still, they heard nothing.

► See Death Row, Page 3B

DEATH ROW: Evidence rebuts weapons testimony

► From Page 1B

"Here's a case where we're begging the court, begging the state to act responsibly, and what we're getting is silence and willful avoidance. And that's very troubling. But it's reflective of the problems with the death penalty in Alabama," Stevenson said.

The decision is pending before former Jefferson County Circuit Judge James Garrett. Though retired, Garrett retained some cases, including this one, court officials said. He does not keep an office at the courthouse, and efforts to reach him were unsuccessful.

Argues against delays

The Alabama attorney general's office defended Hinton's conviction at the 2002 hearing. The AG's office, too, has argued against delays, saying they hinder its ability to prove Hinton's guilt and have him executed.

Of the 29 people executed in

Alabama since 1976, it has taken an average of 13 years four months between sentencing and execution, Attorney General Troy King said. The delay is most unfair to victims, he said.

Hinton went to trial at a time when Alabama paid attorneys \$1,000 to defend indigent people charged with capital murder.

Sheldon Perhacs, his trial attorney, persuaded the judge to compensate him \$1,600 because Hinton was accused of two counts. It didn't even cover his overhead, Perhacs said.

Stevenson says inadequate resources are at the heart of the problems with older capital convictions, and one of the reasons defendants linger on Death Row for years. Hinton is one. There are dozens more.

With no statewide indigent defense system, Alabama has one of the largest death rows in the country per capita. It is easier for prosecutors to get convictions because they are often unchallenged by experienced, adequately compensated defense attorneys, Stevenson said.

"We have 193 people on Death Row in Alabama. Seventy

percent of those prisoners were represented by attorneys who were subject to the \$1,000 cap," Stevenson said.

King said the system works, and that he did not know of any innocent person on Alabama's Death Row. The \$1,000 defense cap has been lifted.

Caps were in place

Caps were in place when Hinton, a paroled car thief working at a Bruno's warehouse, was sent to Death Row.

His arrest came as restaurant employees were on edge in 1985 after two robbery-slayings. Manager John Davidson was killed that February at Mrs. Winner's Chicken and Biscuits on Southside. Thomas Vason, a manager of Captain D's on First Avenue, was killed under similar circumstances that July.

There were no witnesses. But there was a third crime at a Quincy's. This time the manager survived. Sidney Smotherman identified Hinton as his attacker. Police searched Hinton's home and retrieved a rusty revolver from his mother's bedroom. State forensics investigators testified the bullets from the killings matched that gun.

Hinton was sentenced to death based on that match.

Working on a shoestring, Perhacs found one expert willing to challenge the state's evidence at trial. But the man was blind in one eye, and could not operate the microscope used for bullet comparison.

A first set of appeals failed. In 1999, Stevenson and other Equal Justice lawyers began digging into Hinton's claims of innocence.

Among their findings, as outlined in February's renewed request for Hinton's freedom: Similar fast-food robberies continued in the area after Hinton's arrest. Hinton had an alibi, his Bruno's time card. And prosecutors failed to disclose reports prepared by the Alabama Department of Forensic Sciences that their initial ballistics exam could not link Hinton's gun to the bullets that killed Davidson. Forensics experts later testified that there was a match, helping convict Hinton.

State evidence has since been lost. The state scientists involved have retired.

And, Stevenson said, "somebody's gotten away with two murders and an attempted murder."