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**HIGH COURT BANS EXECUTING RETARDED**

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In a far-reaching decision that could spare the lives of dozens of death row inmates, the U.S. Supreme **Court** ruled Thursday that it is unconstitutional to execute mentally retarded defendants, violating their Eighth Amendment right against cruel and unusual punishment.

The 6-3 decision was based on the case of a Virginia man, Daryl Renard Atkins, who shot and killed an Air Force enlisted man that he and an accomplice abducted outside a Hampton convenience store in August 1996. Atkins has an IQ of 59, according to his attorneys. Atkins had 20 previous felonies on his record at the time of the killing, the state argued. He gave a detailed confession to police when he was arrested, describing how he and an accomplice kidnapped 21-year-old Airman 1st Class Eric Nesbitt, forced him to withdraw cash from a bank automated teller machine, drove him to a deserted field, and shot him eight times.

While Thursday's ruling reverses a stand that the country's **highest court** took in a 1989 landmark decision, it also throws the issue back to states to develop their own systems for ensuring that mentally retarded people are not executed.

In Virginia, it is not clear what will happen next. However, dozens of inmates in Virginia and 19 other states where the execution of the mentally retarded has been allowed likely will argue that they are retarded, and that they should be given life in prison instead of death. Virginia prison officials have said they don't know how many of the 28 people now on death row are considered mentally retarded.

Eighteen states already have outlawed such executions.

As for Atkins, York County Commonwealth's Attorney Eileen Addison, who prosecuted Atkins, and Robert E. Lee, who represented Atkins before the U.S. Supreme **Court**, said the case has been remanded to the Virginia Supreme **Court**. The **court** can rule on the mental retardation issue or send the case back to the York County trial **court** for a ruling.

The Virginia legislature also might have to decide how to define mentally retarded before the trial **court** can rule, Addison said.

This year, the General Assembly considered a bill that would have banned executions of the mentally retarded as drawn from the standard psychiatric definition. It required that a defendant have an IQ lower than 70 and have substantially limited adaptive and learning skills.

The measure was approved by the Senate, but died in the House of Delegates.

The increasing state prohibition on these executions had an impact on the **court**, according to Justice John Paul Stevens, who wrote for the majority.

"The practice . . . has become unusual," Stevens wrote, "and it is fair to say that a national consensus has developed against it."

Justices Sandra Day O'Connor, Anthony M. Kennedy, David H. Souter, Ruth Bader Ginsburg and Stephen Breyer joined Stevens.

Justices Clarence Thomas, Antonin Scalia and William H. Rehnquist dissented.

"Seldom has an opinion of this **court** rested so obviously upon nothing but the personal views of its members," Scalia wrote in a dissenting opinion.

Rehnquist wrote that the majority went too far in looking at factors beyond the state laws and put too much stock in opinion polls and the views of national and international observers.

Like the decision itself, reaction to the decision was split, hailed in some circles and criticized in others.

Gov. Mark R. Warner, who supported the bill that would have banned executions of the retarded in Virginia, said in a statement issued Thursday afternoon that he was pleased with the ruling.

"Like the **court**, I am not persuaded that the execution of mentally retarded criminals will measurably advance the purpose of the death penalty," Warner said.

His predecessor, former Gov. Jim Gilmore, said during a CNN television interview Thursday that it's not "necessarily a step forward."

Gilmore said that it has generally been viewed as a positive trend to have the mentally retarded mainstreamed into community life.

"Now we are saying that they are not in the mainstream," Gilmore said. "They are being treated special."

Virginia Attorney General Jerry Kilgore agreed that the Supreme **Court** had erred.

"I oppose the execution of those who are severely mentally retarded and do not know right from wrong," Kilgore said. "The facts in this case, however, made it clear that Atkins knew exactly what he was doing."

Wayne F. Smith, executive director of The Justice Project, a Washington-based criminal justice reform organization, hailed the decision, but cautioned that the **court** had not yet gone far enough.

In some ways, Smith said, the **court** remains behind the rest of society.

"The justices affirmed a value most Americans already held - the execution of people with mental retardation must be prohibited," Smith said in a prepared statement. "It simply violates the evolving standards of decency that mark the progress of a maturing society."

Richard C. Dieter, executive director of the national Death Penalty Information Center, said that although other aspects of the death penalty may still be debatable, there is a national consensus on the execution of the mentally retarded.

"At least today we have stopped a practice that most Americans and the rest of the world finds abhorrent."

According to Dieter's organization, Virginia has executed six men considered mentally retarded since the state resumed executions in 1982. Texas has executed nine.

One of those men was Russel Burket, a Virginia Beach man who confessed to brutally murdering his next-door neighbor and her 5-year-old daughter in 1993. Burket was executed on Aug. 30, 2000, by lethal injection.

Norfolk attorney Andrew A. Protogyrou, who represented Burket, said on Thursday that Burket would never have gone to death row if the Supreme **Court** had ruled in 1989 as it did Thursday.

Burket, Protogyrou said, could neither read nor write, and had an IQ in the "68 to 72 range."

It also would have been decisive in the majority of capital murder cases that Protogyrou has handled. Of the 19 capital cases that Protogyrou has worked on, 12 of the defendants have tested in the borderline range on intelligence tests.

According to the National Coalition to Abolish the Death Penalty, 300 of the more than 3,500 people on death row nationally are known to be mentally retarded.

Reach Jon Frank at 446-2277 or jfrank(AT)pilotonline.com

**Description of illustration(s):**

Color photo

ASSOCIATED PRESS/FILE PHOTO Death chambers, like this one, will no longer be used for the retarded.

Graphic

THE RULING The 6-3 ruling by the Supreme **Court** came in the case of a Virginia man, Daryl Renard Atkins, below, who murdered an Air Force enlisted man in Hampton. Justice John Paul Stevens wrote for the majority that "it is fair to say that a national consensus has developed against" **executing** mentally retarded people.

WHAT IT MEANS Of the states with the death penalty, 18 had banned such executions; 20 states, including Virginia, had not. Death row inmates across the country now will likely argue they are mentally retarded and ask to have their sentences reduced to life in prison.

To comply with the ruling, states will have to develop their own systems for ensuring that mentally retarded people are not executed.

Graphic

ONLINE POLL

Online voters Thursday largely disagreed with the Supreme **Court**, with 59 percent saying states should be allowed to execute mentally retarded people who commit murder; 32 percent said no to such executions, and 9 percent were undecided. Continue voting and join a TalkNet debate today at pilotonline.com

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