

April 16, 2009 Federal court rejects Troy Davis' appeal:

Killer gets 30-day stay of execution to pursue appeals

By BILL RANKIN The Atlanta Journal-Constitution

The federal appeals court in Atlanta on Thursday rejected death-row inmate Troy Anthony Davis' bid for a new trial on claims he did not kill a Savannah police officer in 1989.

In a 2-1 opinion, the 11th U.S. Circuit Court of Appeals ruled that Davis could not establish by clear and convincing evidence a jury would not have found him guilty.

Davis' innocence claims have attracted international attention. They rely largely on the recantations of key prosecution witnesses who testified at trial and on statements by others who say another man told them he was the actual killer.

In October, the 11th Circuit granted Davis a stay three days before he was to be put to death by lethal injection. It marked the third time Davis' life was spared before his scheduled execution.

On Thursday, the two-judge majority noted that state courts and the Georgia Board of Pardons and Paroles had exhaustively reviewed Davis' claims and rejected them.

Judges Joel Dubina and Stanley Marcus said they agreed with those conclusions. "Davis has not presented us with a showing of innocence so compelling that we would be obligated to act today," they wrote.

The judges said they view the recantations with skepticism and, after reviewing Davis' claims, "remain unpersuaded."

Judge Rosemary Barkett dissented. "To execute Davis, in the face of a significant amount of proffered evidence that may establish his actual innocence, is unconscionable and unconstitutional," she wrote.

The 11th Circuit kept in place its stay of execution for another 30 days so Davis can pursue his final appeal before the U.S. Supreme Court. The high court in October declined to consider a previous appeal.

Davis, 40, stands convicted of killing off-duty Savannah Police Officer Mark Allen MacPhail. The 27-year-old former Army Ranger was shot three times before he could draw his weapon.

Russ Willard, spokesman for state Attorney General Thurbert Baker, said the 11th Circuit made the "correct decision."

Tom Dunn, one of Davis' lawyers, said he was disappointed, but would fight on. "Troy is innocent and this struggle is far from over."

http://www.ajc.com/services/content/metro/stories/2009/04/16/troy_davis_appeal.html