

## **Court permanently halts death penalty hearing in Houston**

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The state's highest criminal court on Wednesday permanently halted a Houston judge's hearing on the constitutionality of the death penalty in Texas, saying accused killer John Green cannot object before he is convicted and sentenced to death.

"One does not put the cart before the horse," the decision reads. "A defendant has no claim of wrongful conviction or wrongful sentencing before he has even gone to trial."

State District Judge Kevin Fine last month began what was expected to be a two-week hearing after he declared the legal mechanisms surrounding the death penalty unconstitutional in March.

Fine rescinded his March ruling, deciding to hear evidence before overturning the death penalty in Texas.

Two days into the December hearing, the Court of Criminal Appeals halted the proceedings to hear a motion by the Harris County District Attorney's Office to stop the hearing. The appeals court agreed with the district attorney.

Defense lawyers for Green lambasted the decision.

"John Green is standing on a train track with a train coming right at him, and it's the state of Texas and their beloved death penalty," said attorney Casey Keirnan. "I can't think of a better time to stand up and say, 'I object and here's why!'"

Keirnan said he and attorneys Bob Loper and Richard Burr have evidence of wrongful convictions that is not being heard.

He maintained that Green would not be executed and said he expects Fine's unconventional ruling to be the beginning of the end of the death penalty.

If the judge had again ruled the procedures surrounding the death penalty were unconstitutional, the decision likely would have been quickly overturned.

However, death penalty opponents wanted to put evidence on the record that could be attached to future appellate pleadings. Appeals courts seldom hear new evidence, basing their rulings on testimony from the trial courts.

**'Not the venue'**

Harris County District Attorney Pat Lykos applauded Wednesday's ruling in a statement released by her office.

"The debate belongs in the Legislature, not the courts," she said. "A court of law is not the venue for speculative oratory."

The 6-2 decision agreed with the district attorney's office that there is no basis under Texas law to conduct a pretrial hearing to determine the constitutionality of a law.

In addition to saying Green did not have standing to object, the court repeatedly said that the Legislature, not the trial court, is the proper venue for a debate on capital punishment.

"These are indeed weighty public policy issues, greatly deserving of considerable debate by the appropriate people, in the appropriate forum, and at the appropriate time," according to the opinion.

### **Dissenters silent**

The two dissenting judges did not issue a written opinion.

The underlying case centers around Green, who is accused of a 2008 robbery and slaying in southwest Houston.

Green faces the death penalty if convicted in the shooting death of Huong Thien Nguyen, a 34-year-old mother of two.

In court documents, Nguyen is also known as Tina Vo.

Green has not been tried or convicted, which was central to the Court of Criminal Appeal's ruling.

After Wednesday's decision was handed down, Fine set the case for trial this summer.

Defense lawyers for Green can again raise the issue if their client is convicted and sentenced to death.

The hearing as scheduled had a massive scope, with death penalty experts from around the country flying in to testify, and culminating in Innocence Project co-director Barry Scheck's presenting evidence that Cameron Todd Willingham was wrongfully executed.

### **'Friend of the court'**

Other experts were expected to testify about problems with eyewitness identification, fingerprinting science and paid informants, all of which are expected to be introduced in the case against Green.

Last month, more than 60 people who believe there is a substantial risk of convicting and executing an innocent person, including former Texas Gov. Mark White, filed a "friend of the court" brief urging the Court of Criminal Appeals to allow the hearing.

Fine was invited to submit a brief for the appeals court to consider, but did not.

The judge did not return calls for comment Wednesday.

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