

Death penalty a rarity in Washington

Out of more than 7,000 homicide cases filed since 1981, only 30 death sentences have been handed down.

By TERRY McCONN of the Walla Walla Union-Bulletin

The death penalty is seldom imposed in Washington state.

Since 1981, more than 7,000 homicide cases have been filed. Only 30 death sentences have been handed down.

That's partially because Washington's death penalty law is narrowly structured. But add to that an appellate court system that historically has been reluctant to allow an execution to take place and it becomes clear why the death chamber at the Washington State Penitentiary has been allowed to gather dust.

A breakdown of the 30 cases is as follows:

Four men have been executed.

Eight are on death row.

And 18 (of the 22 convictions or sentences that have completed review) have been reversed by either the state Supreme Court or federal Ninth Circuit Court of Appeals based in San Francisco. That 81 percent reversal rate is about double the national figure of 43 percent, calculated from 1977 through 2004.

A 2004 report by the Washington Death Penalty Assistance Center says the reversals "have been attributed to all aspects of the criminal justice system," including constitutionally prohibited errors, judicial errors, prosecutorial and jury misconduct, and ineffective defense counsel.

That partly can be explained by the complicated nature of capital punishment laws in Washington and throughout the country.

The American Bar Association has noted that "death penalty litigation is extraordinarily complex, both for the courts and for the attorneys involved," according to the Assistance Center report. "Not only do the cases incorporate the evidentiary and procedural issues that are associated with virtually every non-capital case, but they also involve a host of issues that are unique to capital cases."

Eight of the state's death penalty cases that have been reversed were overturned on federal appeals decided by the Ninth Circuit Court. The court consists of 29 judges appointed by U.S. presidents and is the largest of the 13 courts of appeal in the U.S. It is perceived to be politically liberal, with 59 percent of its judges having been appointed by Democratic presidents.

But the biggest hurdle for proponents of the death penalty in Washington has been the elected state Supreme Court, which has overturned 10 death penalty cases.

The average length of appeals pending for the eight men currently awaiting execution now has reached more than 12 years.

The state's high court currently is one justice away from finding our entire capital punishment law unconstitutional. That's evidenced by a 2006 ruling in an appeal by Dayva

Cross who was sentenced to die for the stabbing deaths of his wife and two stepdaughters in King County in March 1999.

Cross' attorneys argued his penalty is disproportionate to punishment in similar cases because Gary Ridgway, the so-called Green River Killer, was sentenced to spend the rest of his life behind bars although he brutally murdered at least 48 women.

Other serial killers, such as those convicted in Seattle's 1983 Wah Mee massacre, also have slipped through the noose over the years.

Then there's Robert Yates.

The Spokane County prosecutor in 2000 entered into a plea bargain with Yates, allowing him to escape the death penalty by admitting he killed 13 people. (Two of those victims were from Walla Walla County in 1975, but Yates couldn't have been executed for those killings because a capital punishment law didn't exist at the time.)

The prosecutor in Pierce County refused to buy into the deal, however, and Yates later was sentenced to death for two killings there. His case currently is on appeal.

Cross' attorneys argued the outcomes aren't rational. Four of the nine justices on the state Supreme Court agreed.

"These cases exemplify the arbitrariness with which the penalty of death is exacted," Justice Charles Johnson wrote in the dissenting opinion. "They are symptoms of a system where statutory comparability defies rational explanation. The death penalty is like lightning, randomly striking some defendants and not others."

Writing for the five-justice majority, Justice Tom Chambers acknowledged the "horrific" aberration of Ridgway has caused many people to question whether the death penalty is fair or proportional.

"We do not minimize the importance of this moral question," he wrote. "But it is a question best left to the people and to their elected representatives in the Legislature. Under the United States Constitution (the only constitution pled here), Washington's death penalty is constitutional and nothing about Gary Ridgway changes that."

A Washington State Bar Association report by a death penalty subcommittee in 2006 addresses the ruling and the appellate reversals, but also gives ultimate deference to citizens of the state.

"The question posed in the Subcommittee's charter about the practical wisdom of continuing the death penalty in light of Washington's experience with sentence reversals involves value judgments best left to the readers of this study," the report says in its conclusion.

"Voters and their elected representatives may decide to discontinue the death penalty for this or other reasons. The Subcommittee concluded that its best service to the bar and the general public is to provide as much information as possible about the application of the death penalty in Washington so that informed debate and decisions can be made on the subject of the death penalty."

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