

The Seattle Times

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Local News

Originally published January 31, 2014 at 9:06 PM | Page modified February 1, 2014 at 6:50 PM

Justices to revisit 2007 Carnation death-penalty case

A new appeal by King County Prosecutor Dan Satterberg could mean a further delay in the trial of Joseph McEnroe and Michele Anderson in the shooting deaths of six of Anderson's relatives on Christmas Eve 2007.

By Sara Jean Green

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For the second time in a year, King County prosecutors plan to challenge a ruling by Superior Court Judge Jeffrey Ramsdell with an appeal to the state Supreme Court, likely causing a further delay in the trial of Joseph McEnroe and Michele Anderson for the shooting deaths of six of Anderson's relatives on Christmas Eve 2007.

On Friday, Ramsdell delivered an apparent blow to the state, setting a Feb. 17 deadline for prosecutors to amend charging documents — apparently to reflect why the state is seeking the death penalty. If the deadline isn't met, the judge said, he will consider a defense motion to allow McEnroe to plead guilty to six counts of aggravated first-degree murder without facing the death penalty.

Asked if the state intends to amend its information by the judge's deadline, Dan Donohoe, a spokesman for King County Prosecutor Dan Satterberg, said, "we don't plan on going that route."

Prosecutors in the case are still reviewing their options and will have more details early next week, Donohoe said.

Last month, McEnroe's defense team filed a motion arguing that a case decided by the U.S. Supreme Court in June applies to the Carnation case. However, King County prosecutors argued that the case — known as *Alleyne v. United States* — doesn't apply and urged Ramsdell to instead rely on state case law in previous death-penalty cases.

The main thrust of the *Alleyne* decision has to do with mandatory minimum sentences, and a U.S. Supreme Court ruling that any fact that could increase the mandatory minimum is an "element" of the crime and must be alleged in charging documents.

After hearing oral arguments, Ramsdell sided with the defense but ruled it was premature to dismiss the death penalty. After the state asked him to reconsider his decision and oral arguments were heard last week, Ramsdell denied the state's motion for reconsideration in his Friday ruling.

Katie Ross, one of McEnroe's attorneys, said in an email Friday that Ramsdell's original order "was very well considered and correct," and that the defense is pleased the judge denied the state's motion to reconsider.

But prosecutors “believe this decision is contrary to state law, and we will appeal it directly to the state Supreme Court,” Donohoe said.

Donohoe said the state will ask for the proceedings to be stayed while the issue is put before the high court, but “unfortunately, it could cause some delay.”

The case has already been pending for more than six years and has cost taxpayers nearly \$7 million.

In Washington, there are only two penalties for the crime of aggravated first-degree murder: life in prison without the possibility of release, or death. To seek the death penalty, an elected prosecutor must determine there is an absence of sufficient mitigating circumstances to warrant leniency — a life sentence — and provide a defendant with a special sentencing notice that the death penalty is being sought.

Typically, defense attorneys submit mitigation packages to the prosecutor, outlining reasons they believe support a life sentence instead of death. A mitigation package often takes months to compile before being submitted for a prosecutor’s consideration.

In McEnroe and Anderson’s case, the defense didn’t submit a mitigation package until October 2008, nearly a year after the two allegedly gunned down Anderson’s parents, brother, sister-in-law and the younger couple’s two children at the parents’ home in Carnation.

Satterberg decided the mitigation submitted by the defense wasn’t sufficient to warrant leniency and issued special notices of his intent to put the question of death to a jury.

Using an analysis of the Alleyne case, Ramsdell’s Friday ruling basically says that aggravated first-degree murder is the “core crime” for which the penalty is life in prison without the possibility of release. Since the absence of sufficient mitigation increases the penalty to death, insufficient mitigation is an “essential element” of the crime and is the “sole element, which ... exposes that defendant to the mandatory sentence of death.”

Because Ramsdell ruled insufficient mitigation is an “essential element” of the crimes, it must be charged in the information notifying the defendants of the crimes they’re accused of, the ruling says.

A January 2013 ruling by Ramsdell on another legal question related to Satterberg’s decision to seek the death penalty was overturned in September by the state Supreme Court, which found that Ramsdell’s decision wasn’t based on case law.

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Information from Seattle Times archives is included in this report.

