

# Death row inmates ask NM Supreme Court for life in prison

**ALBUQUERQUE (KRQE)** — New Mexico's last two death row inmates want off the list and their attorneys plead their case in front of the state Supreme Court Monday morning.

However, some of the family members of the victims say this latest court battle is like reliving the nightmare of their death.

Attorneys for Timothy Allen and Robert Fry argue their death sentences are now unconstitutional since the state repealed the death penalty in 2009. But some of the victim's families believe the fate of the two men has been sealed by a jury.

No one in the courtroom Monday was arguing the innocence of convicted killers and death row inmates Robert Fry and Timothy Allen. However, whether or not the two men should be put to death is now the question for the New Mexico Supreme Court.

"We are here asking this court to find that the execution of Mr. Fry and Mr. Allen violate our state constitution," said Kathleen McGarry, attorney for Robert Fry.

Fry and Allen's attorneys argued Monday that putting the two to death would be "cruel and unusual punishment," since the New Mexico Legislature repealed death penalty and executions in 2009.

The attorneys also argue that killing Allen and Fry would violate equal protection for the men because the Legislature because of the Legislature's decision to establish a specific date when people could not be executed.

"Somebody with the identical characteristics who committed the identical

crime one minute after midnight, or July 1, 2009, would not receive the death penalty,” said Melissa Hill, attorney for Timothy Allen.

Allen killed 17-year old Sandra Phillips in 1994 after kidnapping her and trying to rape her.

Robert Fry was convicted of killing a mother of five in 2000. He also murdered three other people in the '90s.

However, the state disagrees.

“This is a heavy burden (to prove,)” said Victoria Wilson, an assistant attorney general for New Mexico.

The state Attorney General’s Office says the constitution allows for criminals to be sentenced under law that existed at the time they were convicted.

“This court does not sit as super legislature with the power to uphold or strike down the laws of the state based on the court’s own judgment as to the wisdom and propriety of such laws,” said Wilson.

Darlene Phillips doesn’t feel that the latest appeal should be happening though.

“The most beautiful little red head you’ve ever seen in your life,” said Phillips while looking at a photo of her daughter Sandra.

Sandra was killed by Allen in 1994 after he kidnapped and tried to rape her.

“You know the court of law has already decided this, why do they get another chance to over and over again,” said Phillips.

Justices will take the next several months to make a decision. Sandra hopes it will finally be the end.

“He murdered my daughter. I gave my... that’s my baby,” said Phillips.

The state Supreme Court justices have not set a time table on when they'll make a decision. If the death penalty is overturned, both would get life in prison.

Since 1976, when the U.S. Supreme Court reinstated the death penalty, New Mexico has only put one person to death. That was Terry Clark, who was executed in 2001.

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