Days from death house, killer seeks clemency

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In the summer of 2000, then-Texas Attorney General John Cornyn made an astounding admission: A psychiatrist's testimony in six capital murder cases - including that of Houston defendant Duane Edward Buck - wrongly had introduced race as a factor for consideration in the trials' punishment phases.

New punishment hearings were ordered for five of the men whose cases were on appeal in federal courts. But Buck, scheduled to be executed Sept. 15 for the July 1995 murders of his ex-girlfriend Debra Gardner and her friend Kenneth Butler, never got a new punishment hearing in what his lawyers contend was an oversight.

Now, Buck's Texas Defender Service Lawyers are asking the state Board of Pardons and Paroles to recommend that Gov. Rick Perry spare his life.

"The state of Texas cannot and should not tolerate an execution on the basis of an individual's race, particularly where this state's highest legal officer has acknowledged the error, not only in similarly situated cases, but in this case," the clemency petition, by lawyers David Dow and Katherine Black, argues.

Alternately, the petition asks for a 120-day reprieve to pursue a new sentencing hearing. Although the other five killers received new hearings, all again were sentenced to death. One has been executed.

The problem in Buck's case arose when Dr. Walter Quijano, a defense psychiatrist, testified that the killer would not likely pose a future danger to society if imprisoned. "Future danger" is a key question jurors must consider before assessing a death sentence.

On cross-examination, however, the doctor agreed to a prosecutor's assertion that being African-American enhanced chances for future violence. That comment became a key factor in the state's push for execution.

"It is inappropriate to allow race to be considered as a factor in our criminal justice system," Cornyn said at the time. "The people of Texas want and deserve a system that affords the same fairness to everyone."

Sister, pastor on his side

Buck was sentenced to die for the July 30, 1995, shootings at the home of his former girlfriend. Armed with two rifles, Buck fired fatal shots into Butler, whom he accused of sleeping with his "wife," according
to court records. Then, as Gardner's 11-year-old son and teenage daughter watched, Buck chased Gardner into the street and shot her.

Police arriving at the scene said Buck laughed about the killings.

Buck also shot his sister, Phyllis Taylor, who was visiting Gardner, in the chest at point-blank range. Taylor survived the shooting and is among those quoted in the clemency petition pleading for Buck's life.

"I forgive him," she said in the document. "... I love my brother so dearly. I hate that things had to turn out this way. I know that if he had been in his right mind, this never would have happened."

The Rev. Wayne Whitside, of Crestview Baptist Church, who has known Buck seven years, said in the petition that the killer is the "most strikingly changed individual that I have encountered in my ministry. ... (He) embodies God's power to transform."

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