Experts say 3rd delay of Texas inmate’s execution likely tied to broader Supreme Court review

HOUSTON — The U.S. Supreme Court’s decision this week to stop a Texas death row inmate’s execution for a third time is likely part of a larger review by the high court of claims related to effective legal representation, legal experts said Wednesday.

While the court’s action on Tuesday to delay Cleve Foster’s execution for a third time in nine months is highly unusual, it isn’t a guarantee his appeal will be successful, according to the experts.

“The best I can say is the recent stay gives me hope the court will consider the really important issues that are raised by his case,” said Maurie Levin, Foster’s attorney.

Foster, 47, had been set to die Tuesday evening in Huntsville for the fatal shooting of 30-year-old Nyaneur Pal, whose body was found in a ditch by pipeline workers in Fort Worth in February 2002.

Foster, a former Army recruiter, along with Sheldon Ward were convicted and sent to death row for Pal’s murder. Ward died in prison last year of cancer.

Foster is claiming his trial and appellate attorneys were ineffective because they failed to present evidence from a blood spatter expert to challenge prosecutors’ claims that Pal was not shot where her body was found and that Foster helped Ward move the body to the ditch. Levin said the blood spatter expert claims Pal was shot where she was found.

Foster has blamed Pal’s death on Ward.

The Supreme Court previously halted scheduled executions for Foster in January and April, but eventually lifted those reprieves.

This time, the court is set to hear arguments in October in two other cases, one from Arizona and one from Alabama, related to effective legal representation. While the nation’s highest court usually does not specify why it grants reprieves unless it decides to hear the case, Levin and legal experts said they believe Foster’s latest delay was given because it’s an issue the justices are looking at.

Adam Gershowitz, a professor at the University of Houston Law Center, said while it is unusual for an inmate to get three reprieves within nine months, the latest delay is probably less about Foster’s case and more about first resolving the two other cases already pending before the high court.

Gershowitz noted that from September 2007 until April 2008, the high court halted all executions in the U.S. until it could rule on a Kentucky case that questioned whether lethal injections were unconstitutionally cruel.
Getting three reprieves is still “not much of an indicator of whether (Foster) will prevail,” he said.

Prosecutors said evidence showed Foster actively participated in Pal’s killing and that he offered no credible explanations, lied and gave contradictory stories about his sexual activities with the woman.

A gun identified as the murder weapon was found in a motel room Foster and Ward shared. DNA evidence showed both men had sex with her. Foster said he was passed out from sleeping pills at the time Pal would have been murdered.

Greg Westfall, a defense attorney from Fort Worth who has worked on 20 death row cases, said “it’s a good guess” the high court granted Foster’s latest reprieve because it wants to review the effective legal representation issues in the two other cases before ruling on Foster’s case.

“Hopefully the Supreme Court will let us know what they have been thinking for the last (nine) months. It would be nice not to have to bounce back and forth like this,” he said.

If the court were to again deny Foster’s request to review his case, the reprieve would be lifted, clearing the way for a new execution date to be set.