

Supreme Court confronts case of death row inmate whose lawyers quit his case

By Robert Barnes, Published: September 29

Cory R. Maples was not surprised the day he heard that a court had rejected his challenge to his death sentence. “Down here, they’re pretty serious about it,” he said in a phone call from Alabama’s death row.

But the other news left him in “a state of shock”: the two lawyers from the prestigious New York law firm who had agreed to represent him had quit, quite some time before, without so much as a goodbye.

A clerk attempted to notify the lawyers of the court’s action, but the letters were returned unopened; Maples discovered that he had missed the deadline for appealing to the next level.

“I hate to use the word ‘abandonment,’ but that’s the closest I can get to it,” Maples said. “I’m supposed to have these two lawyers from this great firm that have my life in their hands, and now I find out that they’re not even on the case anymore.”

Maples’s case heads to the Supreme Court next week, and once again the justices will be called upon to examine the intricate legal apparatus that has been constructed to ensure that the death penalty in America is carried out fairly.

It comes as questions about capital punishment and the legal process are in the public eye, as illustrated by the outcry over the recent execution of Georgia inmate Troy Davis, who proclaimed his innocence to the end.

The actions that landed the 37-year-old Maples on death row are his own: He was convicted of killing two acquaintances and driving off in a car that belonged to one of the victims. Captured in Nashville two weeks later, he confessed.

But the actions that the justices deemed worthy of review were on the part of others: Maples’s attorneys at the New York firm of Sullivan and Cromwell, for instance. Or the Alabama officials who took no further action after receiving the unopened letters and who did not inform Maples that his motion had been denied.

Maples's new attorney, Gregory G. Garre, who served as solicitor general in the administration of George W. Bush, told the justices in a brief that the case "raises the shocking prospect that a man may be executed without any federal court review of serious constitutional claims due to a series of events for which all agree he was blameless."

Alabama says that is nonsense.

"Maples is unquestionably guilty of murdering two people, and his conviction is now 15 years old," writes the state's solicitor general, John C. Neiman Jr. "He has received some sort of judicial review of every claim he has made."

Maples's fundamental claim is that his lawyers at his trial were ineffective. He contends that his court-appointed attorneys, paid \$1,000 for their work, mounted an incoherent defense and did not try to convince the jury that he may not have been responsible for his actions because of drug and alcohol use that night.

At sentencing, he contends, his attorneys acknowledged their inexperience, telling the jury they "may appear to be stumbling around in the dark." The jury voted 10 to 2 — the minimum number necessary — to recommend death.

Alabama, virtually alone among the states, provides no help to indigent inmates in their post-conviction appeals. But help was on the way from Clara Ingen-Housz and Jaasi Munanka, two Sullivan and Cromwell associates recruited to file Maples's appeal on grounds of ineffective counsel.

"I thought I hit the lottery as far as attorneys go," Maples said. Ingen-Housz and Munanka filed the appeal Aug 1, 2001. The Alabama court rejected it on May 22, 2003. By then, Ingen-Housz had left the firm to work for the European Commission, and Munanka had gone on to clerk for a federal judge.

Neither informed the court of their moves.

The court order was mailed to Sullivan and Cromwell offices in New York; instead of passing the mail on to other lawyers at the firm, someone stamped them "Returned to Sender — Attempted Unknown" and, on a letter to Ingen-Housz, "Return to Sender — Left Firm."

A copy also went to a third attorney — an Alabama lawyer who signed on to the case as a needed local counsel — but he took no action because the New York lawyers were supposed to take the lead.

The court clerk took no action, either. And Maples didn't learn of the adverse ruling until August 2003 — a month after the deadline to appeal had passed. After a frantic call from his mother, Sullivan and Cromwell lawyers sprung to action. But both state and federal courts said they would not waive the deadline.

Ingen-Housz, Munanka and Marc De Leeuw, a Sullivan and Cromwell partner who, Alabama claims, was part of Maples's legal team all along, did not respond to requests for comment. Another partner, Michael Steinberg, would not answer questions about Maples's representation, saying only "We continue to work diligently to support Mr. Maples in asserting his rights."

Garre, who will argue before the court on Maples's behalf, said there are numerous reasons to waive the missed deadline: the "misconduct" of Maples's lawyers, the halfhearted response of the clerk when the letters to the lead attorneys were returned, and the failure of Alabama officials to make sure inmates know when their appeals have been denied.

Five years ago, Garre said, the court held that it is not enough for the state to "shrug its shoulders and say I tried," when a property owner did not receive proper notification of government action. "Due process requires no less when a *life* is at stake," he said.

Alabama acknowledges that it is "hard not to feel a little sorry" for Maples. But it contends that he was, in fact, represented by lawyers — his local counsel and others at Sullivan and Cromwell — the whole time, and that it was their mistakes that led to his situation.

And Supreme Court precedent is directly on point, the state claims. In 1991's *Coleman v. Thompson*, the court ruled that in post-conviction proceedings, "the petitioner bears the risk . . . for all attorney errors made in the course of representation."

Twenty states are supporting Alabama, saying that granting Maples's request will insert new "uncertainty" into death penalty appeals that already can take decades to complete.

Groups taking Maples's side said it would do no harm to allow a federal court to hear his claim of ineffective counsel; left unsaid is that such claims are usually unsuccessful.

And two groups — the bipartisan Constitution Project and the libertarian Cato Institute — filed a brief saying that such a decision will only enhance the public's view of judicial fairness.

"This case measures our courts' basic commitment to correct what a reasonable observer would readily perceive as a miscarriage of justice," the brief said.

Maples said his expectations are not high.

"I fully realize that under this sentence of death, there's a 98 percent chance they're going to kill me," he said. "But I would feel a lot better about it if I actually had a chance to go down fighting. Just to be heard."