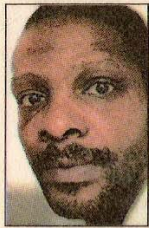


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High court overturns death sentence

Missouri justices also reject conviction, call for releasing man if case is not retried



Amrine

Was convicted in
1986 prison killing

By **TIM O'NEIL**
Of the Post-Dispatch

Expressing strong doubt over Joseph Amrine's guilt in a prison murder 17 years ago, the Missouri Supreme Court took the rare steps Tuesday of overturning his death sentence and conviction and ordering him released if prosecutors don't move to try the case again.

Amrine's claim of innocence had become a high-profile cause among

opponents of capital punishment, who were elated by the 4-3 decision. A 30-minute film on his case, "Unreasonable Doubt: The Joe Amrine Case," was produced last year and shown at regional film festivals and anti-death penalty events.

Amrine, 46, of Kansas City, has faced execution since he was convicted in 1986 in the stabbing of a fellow inmate in the old state penitentiary in Jefferson City. Over the years, all three former inmates who

testified against him recanted. No physical evidence tied Amrine to the murder of Gary "Fox" Barber of St. Louis on Oct. 18, 1985.

Had he not been convicted of the murder, Amrine would have been freed in 1992. He was in prison for robbery, burglary and forgery.

Other appeals courts were skeptical of the witnesses' changed stories, and affirmed the sentence. The U.S. Supreme Court declined to take the case. But the Missouri

Supreme Court held a special hearing Feb. 4 on whether the case remained strong enough to proceed with execution.

"Our confidence in the outcome of the first trial is sufficiently undermined . . . to require setting aside his conviction and sentence of death," Judge Richard B. Teitelman wrote for the majority. ". . . Amrine has met his burden of providing clear and convincing evidence of

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actual innocence that undermines our confidence in the correctness of the judgment."

Teitelman also wrote that the court doesn't need a constitutional claim on appeal to examine innocence in death cases.

The dissenters said they would have assigned the case to a special master, or hearing officer, to examine whether Amrine was guilty.

"Based on allegations (of innocence) alone, this court should not free a person convicted after trial, which was affirmed on appeal," wrote Judge Duane Benton.

The four judges of the majority were appointed by Democratic governors. The three dissenters are Republican appointees.

If Amrine gets to walk free from the Potosi Correctional Center, he will become only the third Missouri death row inmate in modern times to be freed of his capital conviction, although one remains in prison on another murder and the other couldn't be retried because evidence was lost. Some other condemned inmates have won reductions in sentences.

Missouri has executed 60 men since 1989, when it resumed carrying out the sentence under current federal rules. The state has 64 men under death sentence, including John C. Smith, 32, who is to be executed May 14 for murdering a woman and her stepfather near Canton, Mo., in 1997.

The Missouri Supreme Court set that execution date last week.

Its ruling on Amrine is expected to become formal in 15 days, after which prosecutors have 30 days to refile charges. Cole County Prosecuting Attorney Bill Tackett said he will pursue the case if he can.

"If you read the opinion, the hurdles involved in retrying the case are significant," Tackett said. "I have to determine if they are insurmountable. We'll have to go through the (trial) transcripts and determine if we can do it."

Amrine's lawyer, Sean D. O'Brien, of Kansas City, applauded the ruling. But he also said, "It was way harder than it should have been to accomplish this result. It should have happened 17 years ago."

Opponents of capital punishment in Missouri were delighted.

"This is a really bright day for Missouri," said Jeff Stack of Columbia, legislative coordinator for Missourians to Abolish the Death Penalty. "I think this court is taking its job very seriously. Sean O'Brien has been a real warrior for justice. And the (documentary) helped provide some vital awareness."

"Without all of that, Amrine would be dead by now," said Stack. "We'd just have the woeeful and sad chorus about putting a man to death."

Margaret Phillips, a veteran leader of the Eastern Missouri Coalition Against the Death Penalty, said, "This near-tragedy means that Missouri should have a moratorium on executions."

And John McHale, who was a doctoral candidate at the University of Missouri at Columbia when he produced the film on Amrine, said, "It's good to know that a few people who are committed to a just cause can have a catalyzing factor in getting some justice."

"And God bless Sean O'Brien's good work," said McHale, now an assistant professor at Illinois State University, in Normal, Ill. "Joe Amrine has been in a dark place for a long time."

Missouri Attorney General Jay Nixon's office had supported the death sentence, arguing during the hearing Feb. 4 that the court should ignore claims of innocence if there were no constitutional problems with Amrine's conviction. But the court said Missouri law empowers it to review guilt, not just legal procedures.

"It is difficult to imagine a more manifestly unjust and unconstitutional result than permitting the execution of an innocent person," the ruling says.

Nixon, in a statement, said, "The decision . . . is the first time that this court has ever addressed

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STLtoday.com Link to the court ruling in the Amrine case online at STLtoday.com/links.