

Nov 28, 2007

## **With execution, let's make certain You would like to think that our government would take every step possible in advance of a legal execution to ensure that it was not taking the life of a person innocent of the crime.**

Unfortunately, the U.S. Supreme Court didn't see it that way. Instead, it refused Monday to reconsider DNA testing for Tommy Douglas Arthur, schedule to die Dec. 6 for a 1982 murder in Muscle Shoals.

Arthur's daughter said the court relied on a technicality in Alabama law that requires post-conviction challenges to be filed within a certain period of time. However, she points to the fact that Alabama does not provide attorneys for post-conviction appeals, leading Arthur to miss the window of opportunity to file a challenge based on lack of DNA testing.

Ah, the old Catch-22 of the death penalty in Alabama.

The state, needless to say, doesn't require DNA testing in murder cases.

Arthur may be guilty as charged, but his case poses enough questions to warrant a DNA test. Testimony of an eyewitness placed him 75 miles away from the murder. The victim's wife, who said she was raped, testified at first that Arthur was not the murderer. Later, she changed her story, claiming that Arthur killed her husband to let her collect on a \$90,000 life policy.

There was no physical evidence at his trial linking him directly to the crime.

With Arthur's execution pending, all of this is disturbing. Gov. Bob Riley, obviously bothered by the case, has asked a national organization, The Innocence Project, for information about DNA tests. The group is dedicated to exonerating wrongfully convicted people through DNA testing and reforming the criminal justice system to prevent future injustice.

Riley has the power to delay Arthur's execution while conclusive DNA tests are done. He should do so.

We hope the governor ultimately advocates for mandatory DNA tests in Alabama murder cases. The absence of such a requirement is one of many unconscionable loopholes in the state's capital code.