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APPEALS COURT CONSIDERING TEXAS EXECUTION SCHEDULED FOR THIS WEEK

MGAW

BY MICHAEL GRACZYK

ASSOCIATED PRESS WRITER

HUNTSVILLE, TEXAS (AP) - THE 5TH U.S. CIRCUIT COURT OF APPEALS ON TUESDAY WAS CONSIDERING WHETHER TO HALT THE SCHEDULED EXECUTION LATER THIS WEEK OF A TEXAS PRISON INMATE SENTENCED TO DIE FOR A 1983 KILLING IN CORPUS CHRISTI.

CARLOS DELUNA, 27, FACED LETHAL INJECTION BEFORE DAWN THURSDAY FOR THE ROBBERY-SLAYING OF WANDA JEAN LOPEZ, 24, A SERVICE STATION CLERK.

STATE ATTORNEYS HAVE ASKED THE APPEALS COURT TO REVIEW THE CASE WITHOUT ISSUING AN IMMEDIATE STAY.

"WE'RE ARGUING THEY CAN DECIDE THE ISSUES WITHOUT HAVING TO STAY THE EXECUTION," BILL ZAPALAC, AN ASSISTANT ATTORNEY GENERAL, SAID TUESDAY. "THEY HAVE PLENTY OF TIME TO READ ISSUES AND MAKE A DECISION."

ATTORNEYS FOR DELUNA ARE ARGUING THEIR CLIENT HAD A HISTORY OF ALCOHOL AND DRUG ABUSE AND THE JURY AT HIS TRIAL WAS NOT ALLOWED TO CONSIDER THAT BEFORE SENTENCING HIM TO DEATH.

ZAPALAC, HOWEVER, SAID A DEFENSE MOTION OBJECTING TO THE JURY'S FAILURE TO CONSIDER THE MITIGATING CIRCUMSTANCES WAS WITHDRAWN AT THE TRIAL.

"OUR POSITION ON ALL OF THIS IS HE CAN'T REALLY CHALLENGE THE APPLICATION OF THE STATUTE IF HE DIDN'T PRESENT MITIGATING EVIDENCE," HE SAID. "THEY WITHDREW THE MOTION. I ASSUME THAT'S BECAUSE THERE WAS NO MITIGATING EVIDENCE."

MS. LOPEZ WAS STABBED TO DEATH MINUTES AFTER SHE PHONED POLICE AND ATTEMPTED TO DESCRIBE HER ASSAILANT TO AN EMERGENCY DISPATCHER.

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DELUINA, ON PAROLE FOR ABOUT SIX WEEKS AFTER SERVING PART OF A THREE-YEAR SENTENCE FOR ATTEMPTED RAPE AND CAR THEFT, WAS ARRESTED WHILE HIDING UNDER A TRUCK NEAR THE SLAYING AREA. TWO EYEWITNESSES IDENTIFIED HIM AT TRIAL.

HE HAS INSISTED ANOTHER PERSON COMMITTED THE CRIME BUT HAS REFUSED TO ELABORATE.

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