

# Judge lifts stay of execution for DeLuna

## Convicted killer loses appeal in 1983 murder

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STAFF WRITER

U.S. District Judge Hayden W. Head Jr. has lifted the stay of execution for convicted killer Carlos DeLuna, who three years ago was sentenced to die for the stabbing death of a Corpus Christi gas station attendant.

Head's ruling on the appeal comes almost two years after DeLuna came within 12 hours of his execution in Huntsville. Head granted the original stay on Oct. 14, 1986, pending a review of the case.

"A final judgment is rendered in favor of the Department of Corrections, denying (DeLuna) the relief sought by his application for writ of habeas corpus," Head wrote. "The stay of execution is lifted."

District Attorney Grant Jones yesterday said a new execution date will be set for DeLuna in the court

in which he was convicted, the 28th District Court. No hearing date has been set, according to the court manager.

DeLuna, 26, was convicted of capital murder five years ago for the Feb. 4, 1983, knife-slaying of Wanda Jean Lopez, 24, during a robbery at the Sigmor Service Station at 2602 S. Padre Island Drive.

In the appeal, attorney Richard Anderson of Dallas argued that DeLuna's death sentence should be overturned on the grounds that he was inadequately represented by his first counsel, and that the application of the death penalty is racially influenced.

Anderson made seven allegations of inadequate representation, including DeLuna's lack of contact

with attorneys, failure to introduce certain witnesses and evidence, and a claim that DeLuna's attorneys told him not to cooperate with a court-appointed psychologist.

Head dismissed each allegation point-by-point, and ruled that there are no facts to support the contention that the death penalty assessment was racially motivated.

"The petitioner's reply . . . for a summary judgment shows no evidentiary basis to justify a hearing," Head wrote.

Anderson yesterday said he had just been informed of the judge's ruling and could not comment on the findings. He said he will continue to pursue every possible avenue of appeal for DeLuna.

DeLuna has continued to main-

tain that he is innocent in Lopez's murder, claiming the assailant was actually a friend of his named Carlos Hernandez. At the trial, DeLuna testified that he was across the street and saw the killing. He walked away without reporting it because he was a convicted felon and did not want to jeopardize his parole.

Police found DeLuna several blocks from the scene of the killing, hiding under a car with a stash of money in his pants pocket, according to prosecutors.

According to testimony presented at the trial, Lopez was stabbed to death as she was describing her murderer to a police dispatcher on the telephone. A tape of that call was played before the jury at De-

Luna's trial.

Lopez called police about 8 p.m. Feb. 4 and told the dispatcher that a man was entering the store with a knife. She then pleaded with her assailant before she was killed.

"If you want it, I'll give it to you. I'll give it to you," Lopez said on the tape. "I'm not going to do nothing to you. Please."

Four witnesses at the trial testified that they saw DeLuna inside the service station and fleeing the scene on foot.

DeLuna's conviction and death sentence was automatically appealed. The appeal was turned down by the Texas Court of Criminal Appeals in June 1986.

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