

Condemned man appeals case to Supreme Court

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HUNTSVILLE — A convicted killer scheduled to die before dawn Thursday turned to the U.S. Supreme Court late Tuesday, hoping to put off his execution a second time.

Carlos DeLuna, 27, is scheduled to die by lethal injection for the 1983 robbery and murder of Wanda Jean Lopez, 25, a clerk at a Shamrock service station in Corpus Christi.



DeLuna

DeLuna's Dallas attorneys, Chris Weaver and Richard Anderson, took the case to the nation's highest court after the 5th U.S. Circuit Court of Appeals rejected the condemned man's appeal Tuesday afternoon.

DeLuna raised three issues in his appeal: that jurors were not instructed on how to consider mitigating evidence, an issue that has become known as the Penry claim; that the term "deliberate" was not defined for jurors and that his right to represent himself on appeal was denied. The three-judge panel rejected all three claims.

The justices ruled DeLuna had not presented any mitigating evidence on which jurors could have been instructed and that his trial attorneys had opted not to introduce such evidence because it would have allowed the state to introduce evidence of DeLuna's prior criminal record.

DeLuna had served time in the state prison previously for unauthorized use of a motor vehicle and attempted rape. Authorities said the victim of the attempted rape was his best friend's mother and that the assault occurred after DeLuna and his friend celebrated their paroles from prison.

The three-judge panel said DeLuna presented no evidence of abuse as a child or mental retardation — mitigating evidence that convicted killer Johnny Paul Penry presented in his trial for the October 1979 rape-slaying of Pamela Moseley Carpenter, 22, of Livingston.

DeLuna's claims of drug and alcohol abuse and youth do not fit within the Penry rule, the 5th Circuit said.

The 5th Circuit also said DeLuna is procedurally barred from raising the issue of self-representation because he had failed to raise that issue in earlier appeals.