Flurry of halted executions idles death chamber

Court issues six stays in less than four months.

By Chuck Lindell clindell@statesman.com

U.S. SUPREME COURT AND TEXAS EXECUTIONS

Two other Texas death sentences will be reviewed by the U.S. Supreme Court when its new term begins in October:

DUANE BUCK claims his sentence is improper because it was based, in part, on a psychologist’s testimony that Buck presented a greater danger to society because he is black. Oral arguments will be heard Oct. 5.

BOBBY JAMES MOORE argues that the Texas courts use an outdated system to measure intellectual disability, allowing disabled defendants to be put to death in violation of the U.S. Constitution. Arguments haven’t yet been scheduled.

Bucking expectations for a court filled with former prosecutors and law-and-order Republicans, the state’s highest criminal court has halted six executions in 2016, equal to the number of lethal injections administered this year in the nation’s most prolific death penalty state.

The unexpected trend began when the Court of Criminal Appeals issued its first stay of execution in late May, another in June and then a flurry of four over the past 4½ weeks.
The court’s intervention has left the Huntsville death chamber idle since April 6. Only one other hiatus, a nine-month stretch in 2007-08, has been longer in the past 20 years.

More important than the lull in executions, however, were the court’s reasons for postponing several of the death sentences.

While some delays were granted to give time to examine DNA test results and to allow inmates to argue that previous attorneys offered substandard legal help — fairly common issues in death penalty cases — others might result in substantive rulings that could clarify important areas of law.

One case, for example, argues that “shaken-baby syndrome” is based on junk science, while another questions whether the use of “hypnotically refreshed” witness testimony was appropriate to introduce in court.

Kathryn Kase, executive director of the Texas Defender Service, a nonprofit that represented two of the death row inmates whose executions were delayed, believes a sharp reduction in death sentences has given the court more time to explore capital punishment issues.

With prosecutors embracing life without parole as a viable option for capital murder, Texas added only three inmates to death row last year, well below the 48 defendants who were sentenced to die in 1999.

The slower pace has also led to a lighter execution schedule, with three lethal injections set through early November. If allowed to take place, those executions would bring the year’s total to nine, a far cry from the death penalty’s heyday in Texas, when 35 inmates were put to death in 1999, followed by 40 in 2000.

With two guaranteed appeals per inmate, plus additional appeals that typically occur as the execution date nears, the slower pace has drastically cut the court’s workload, Kase said.

More importantly, she said, the court-ordered stays of execution appear part of a nationwide “rethinking” of the death penalty.
“We’re seeing judges on the court reacting to the same news that we all hear about problems around the use of the death penalty, whether it’s the problem of innocent people being convicted, or prosecutorial misconduct, or bad forensic science or the overuse of the death penalty against people of color,” Kase said. “These all raise questions that deserve to be discussed.”

A lawyer who advocates on behalf of Texas prosecutors said he suspects that the spike in halted executions is a statistical anomaly that will smooth out in time.

“I’m not convinced that we’re seeing any kind of sea change that maybe some anti-death-penalty advocates want to read from these tea leaves,” said Shannon Edmonds, general counsel for the Texas District and County Attorneys Association.

“The other reason why it doesn’t cause prosecutors much heartburn, from what I can tell, is that these stays aren’t being granted for the same reason. It’s not like there is some systemic problem that is being challenged and reviewed. Each seems to be centered on an issue specific to that individual case,” Edmonds said.