 TEXAS EXECUTION

Court likely to back death row inmate

Inmate: Testimony about race tainted sentence.

By Sherman, Mark Associated Press

The Supreme Court left little doubt Wednesday that it will side with a black Texas prison inmate who argues improper testimony about his race tainted his death sentence.

The justices often are divided on death penalty cases, but conservatives and liberals alike agreed that inmate Duane Buck is entitled to a new court hearing.

The only issue in arguments at the high court appeared to be whether to throw out Buck's sentence altogether and order a new punishment hearing. The court also could merely instruct lower courts to decide whether the death sentence can stand.

Buck has been trying for years to get federal courts to look at his claim that his rights were violated when jurors were told by a defense expert witness that Buck was more likely to be dangerous in the future because he is black.
In Texas death penalty trials, one of the “special issues” jurors must consider when deciding punishment is whether the defendant they’ve convicted would be a future danger.

“What occurred at the penalty phase is indefensible,” Justice Samuel Alito said in a comment that was widely shared by the six other justices who asked questions Wednesday. Justice Clarence Thomas asked no questions, as is his custom.

The high court appeal is not a broad challenge to the death penalty in Texas, the nation’s leader by far in carrying out 537 executions since the Supreme Court in 1976 allowed capital punishment to resume. Rather, it shows the justices’ heightened attention to the process in capital cases, from sentencing to execution. This is especially true in older cases, like Buck’s, in which the quality of defense lawyers is at issue.

The New Orleans-based 5th U.S. Circuit Court of Appeals refused attempts by Buck’s attorneys to reopen the case, blocking them from moving forward with an appeal contending Buck’s constitutional right to a competent lawyer was violated.

Buck’s case was among six in 2000 that then-Texas Attorney General John Cornyn in a news release said needed to be reopened because statements by the expert witness, Dr. Walter Quijano, were racially charged. In the other five cases, new punishment hearings were held and each convict again was sentenced to death. Cornyn, a Republican, is now the state’s senior U.S. senator.

Buck’s lawyers contended the attorney general, by then Cornyn’s successor Greg Abbott, broke a promise by contesting his case, although the 5th Circuit said while that circumstance was “odd and factually unusual,” they could find nothing in the case record to indicate the state made an error or promised not to oppose any move to reopen the case.

Abbott now is the state’s governor.

Texas Solicitor General Scott Keller defended the appellate ruling Wednesday because he said there is ample evidence to support a death sentence.

Buck, now 53, does not dispute that he shot and killed his ex-girlfriend, Debra Gardner, 32, about a week after breaking up with her, and another man in 1995. He also shot his stepsister, who survived.

Buck at the time was on parole after serving about a year of a 10-year prison term for delivery of cocaine. He also had a previous conviction for unlawfully carrying a weapon.
Still, no justice appeared to endorse Keller’s argument that the appellate ruling should be upheld.

Christina Swarns, Buck’s lawyer at the Supreme Court, sought at one point to place Buck’s case in the broader context of issues of race in the criminal justice system, telling the justices that the need to eradicate racial prejudice “is as urgent today as at any time in our nation’s history.”

The debate at the court was mostly over how the justices might rule in Buck's favor.