

Baumgartner, POLI 203

Spring 2016

Background on the Death Penalty
Process

January 20, 2016

Reading: Jost, Welty, NC administrative
documents (see class web page)

Announcements

- Paper topics available on the web site
- Quiz and survey results on the web site

- Today: Process, with a focus on NC but also more generally.

“Modern” Death Penalty

- Innovations required by US SC in Gregg v. Georgia (1976)
- Two-stage trials:
 - Guilt v. innocence (guilt phase)
 - Death v. prison term (penalty phase)
 - Review of aggravating and mitigating circumstances (but no guidance on how to weight)
 - “proportionality review” by the state SC
 - Automatic “direct” appeal to state and federal courts. “Death is different” doctrine.

NC response to Furman (1972)

- State v. Waddell (1973)
 - If the USSC won't allow jury and judge discretion, then the law shall be MANDATORY death for eligible crimes.
 - Murder, arson, rape, burglary
 - 120 people sentenced to death, quickly, largest death row in US
- Woodson v. NC (1976), USSC says this is unconstitutional

Crimes limited to Murder (usually)

- 1977: USSC says death for rape is not allowed
- 2008: USSC says death for rape of child is not allowed
- 1979: NC changes law to remove rape
- Crimes may also be against the state, such as sedition, treason
- “Felony murder” also a common aggravator: participating in a felony during which a murder occurs. (E.g., you are the getaway driver...)

Crimes Punishable by Death

- <http://www.deathpenaltyinfo.org/crimes-punishable-death-penalty#BJS>
- **North Carolina** - First-degree murder (NCGS §14-17) with the finding of at least 1 of 11 statutory aggravating circumstances (NCGS §15A-2000).
- http://www.ncga.state.nc.us/enactedlegislation/statutes/html/bysection/chapter_15a/gs_15a-2000.html

Typical Aggravators

- Murder for hire
- Killer in prison
- Killer previously convicted of murder
- Multiple victims
- Felony murder, including for accomplices
- Flight from authorities
- Especially heinous, atrocious, cruel, “manifesting exceptional depravity”

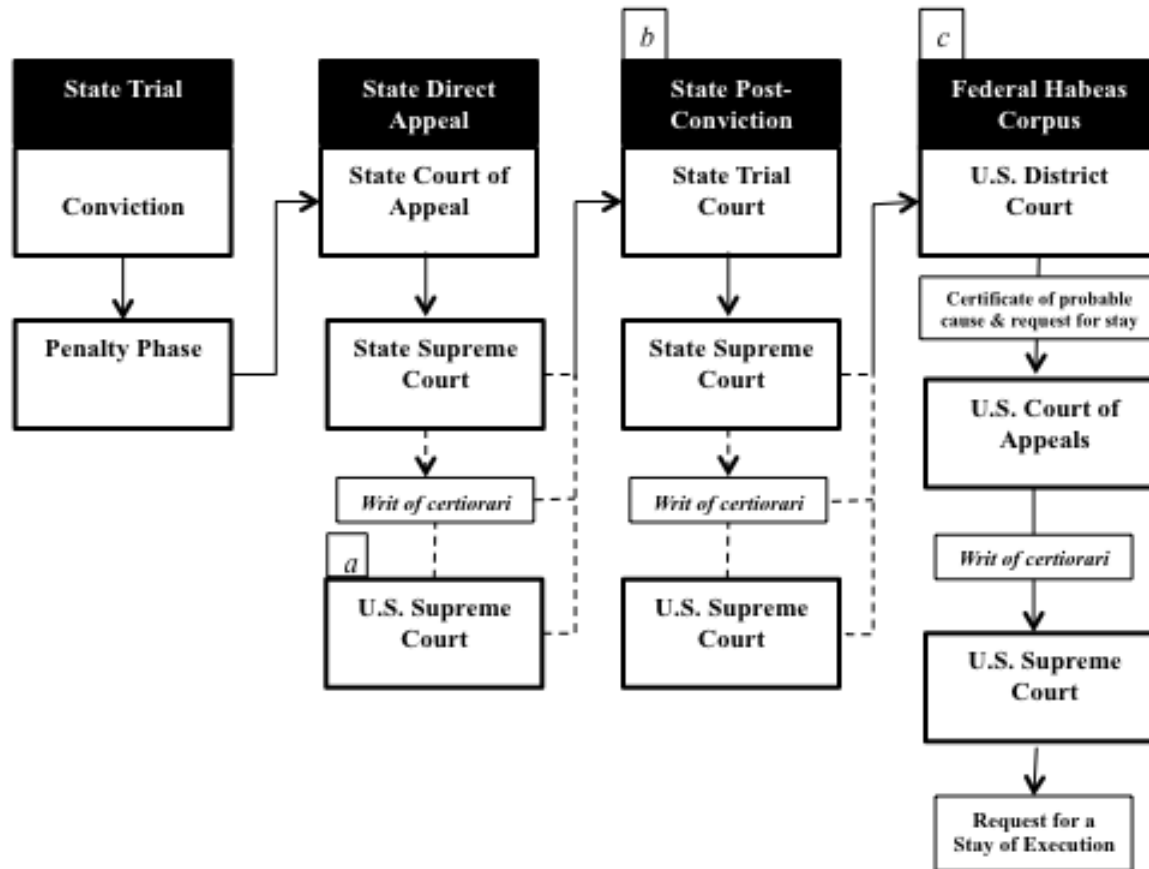
Idiosyncratic Death Eligible Crimes

Death Eligible Crimes	State(s)
Place a bomb near a bus terminal	Missouri
Aggravated assault by incarcerated, persistent felons, or murderers	Montana
Drug Trafficking	Florida, Missouri
Crime on educational property	Mississippi, Nevada
Victim was in a vehicle	Alabama, Arkansas
Victim a conservation officer	New Hampshire, Mississippi
Victim a liquor enforcement inspector	Mississippi, Oregon
Perjury causing the execution of an innocent person	California
Interfering with victims first amendment right	Delaware

The Process

- Rule 24 hearing: Prosecutor announces if they are going to “seek death”
- If yes, a capital process ensues
 - Indigent Defense Services assigns two attorneys
 - Possible hearing to determine mental capacity
 - 12, not 6 peremptory challenges
 - Two-stage trial
 - Appeal by right to NCSC, USSC
 - (See web site, “process” booklet by NC DOJ gives overview, scan for parts on capital cases)

Typical Process of Appeal



a: If the decision runs against the defendant in the direct appeal, then a defendant may seek certiorari in the United States Supreme Court. Although they are routinely denied, occasionally it may be accepted. Certiorari is usually seen as the final stage in the criminal case.

b: Also known as State Habeas Procedure, this begins once the direct appeal ends. In order to progress to seek federal habeas corpus of a constitutional claim, the defendant must have exhausted at least one full round of state appeals.

c: Once the state habeas corpus is completed, the prisoner may file a petition for federal habeas corpus, which has a one-year time limit

Post-Conviction Appeals

- State collateral review
 - Motion for Appropriate Relief
- Federal collateral review
 - Habeas Corpus petition to federal court
- At that point, execution date can be set
- Note that most appeals are successful
 - About 65 percent nationally succeed
 - About 13 percent of death sentences are carried out
- Seek clemency from governor (highly unlikely)

Big reforms reducing the DP in NC

- 1994: LWOP is the alternative to DP
- 2000: creation of Indigent Defense Services
- 2001: Prosecutors have discretion to seek DP
- 2002: no DP for mentally retarded (before US SC does same thing in *Atkins*, 2002)
- 2005: US SC rules in *Roper* against DP for juveniles
- 2006: Physicians oppose lethal injection, no more executions since then.
- 2009: RJA (But: revised 2011, repealed 2013, “Restoring Proper Justice Act” 2015)

NC as Innovator

- Centralized Indigent Defense Services (still either unique or very rare)
- LWOP (now the case in every DP state)
- Discretion to prosecutors (now common)
- Mental handicap (now SC ruling)
- RJA (still unique)
- Innocence Inquiry Commission (unique in US)

- Lots of push-back on these reforms. IDS may have been the most significant.

NC methods of execution

- Before 1910: hangings in front of local court house
- 1910: Executions centralized in Raleigh
 - Electric chair, no longer hangings
 - Gas chamber later
 - Lethal injections later
 - Each innovation an attempt to create a safer, calmer, more humane method
 - Similar to trends nationally.

Issues (continued)

- Retribution is a legitimate goal of justice
 - Retributivist argument is “just desserts” – some crimes are so terrible the perpetrators deserve death
- Incapacitation
 - Remove the perpetrator, permanently, the only way to ensure no further crimes
- Deterrence
 - Conflicting studies on this topic, National Academy of Science review in 2012 said we should draw no conclusions

Issues (CQ researcher)

- Indigent Defense Resources
 - Last priority of a state legislature: pay for lawyers for guilty people. We are already paying for the prosecution!
- Vulnerable populations targeted
 - Mentally Ill
 - Mentally Incapacitated (e.g., low IQ)
- Innocence / Errors

Issues (continued)

- Local variation
 - State by state, but also within states
 - DA's decide whether to prosecute
 - Juries cannot be monitored
 - Strong tradition of “local control” but when does this veer into “arbitrary” or “capricious” if the same crime sometimes does and sometimes does not lead to death?
 - Recent Chapel Hill killings were in Durham County, just across the border. Death is on the table. Orange County has never had a death sentence...

Issues (continued)

- Torture, delays, cancelled, stayed executions
 - Most death sentences are overturned
 - Most scheduled execution dates are cancelled, often at the last minute
- Race, Gender of inmate, victim
 - Female offenders: 10 percent of homicides, but only 15 women have been executed...

Furman, Gregg, and the Constitution

- The safeguards in *Gregg v. Georgia* were supposed to eliminate the deficiencies recognized in *Furman*. Our question for the semester: has this occurred.
- So these questions of “equal protection of the law”, “cruel and unusual” punishments”, and “evolving standards of decency” are key.