

SUPERIOR COURT  
OF THE  
STATE OF DELAWARE

T. HENLEY GRAVES  
RESIDENT JUDGE

SUSSEX COUNTY COURTHOUSE  
ONE THE CIRCLE, SUITE 2  
GEORGETOWN, DE 19947

July 21, 2010

HAND DELIVERED

Paula Ryan, Esquire  
Martin J. Cosgrove, Jr., Esquire  
Department of Justice  
114 East Market Street, Suite 201  
Georgetown, DE 19947

Stephanie Tsantes, Esquire  
Dean Johnson, Esquire  
Office of the Public Defender  
14 The Circle, Second Floor  
Georgetown, DE 19947

RE: State v. Derrick J. Powell – Case No. 0909000858 (THG)  
Murder 1<sup>st</sup> Degree - Capital

Dear Counsel:

On June 30, 2010, the defense filed a Motion to Declare the Delaware Death Penalty Statute Unconstitutional. See 11 Del.C. §4209 This motion seeks to declare the sentencing considerations and protocol unconstitutional for two reasons.

Once a jury unanimously finds a statutory aggravator beyond a reasonable doubt, the ultimate sentencing decision is by a judge, who must determine if the aggravators outweigh the mitigators by a preponderance of the evidence. Powell believes the statute to be unconstitutional because (i) a judge makes the final decision and (ii) the weighing decision is by a preponderance of the evidence instead of beyond a reasonable doubt.

In other words, the defense theory is that the death penalty can only be imposed by a jury verdict with the decision being based on a “beyond a reasonable doubt” standard.

The present motion is identical to that presented to this Court in *State v. Allison Lamont Norman*. I am not being critical of the defense in any way because I realize they must cover all bases in the event of a conviction and potential imposition of the death penalty.

However, since this motion is *deja vu*, there is no reason for the Court to re-analyze an issue that has been previously decided. See *State v. Millard Price*, 2009 WL 3765502 (Del.Super.)

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Therefore, defendant's Motion to Declare Delaware Death Penalty Statute Unconstitutional is denied.

IT IS SO ORDERED.

Very truly yours,

/s/ T. Henley Graves

cc: Prothonotary