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Appeals court throws out more than 100 death sentences in three states

By David Kravets
 THE ASSOCIATED PRESS

SAN FRANCISCO — A federal appeals court threw out more than 100 death sentences in Arizona, Montana and Idaho on Tuesday because the inmates were sent to death row by judges instead of juries.

The case stems from a 2002 decision by the U.S. Supreme Court, in which the high court found that juries, not judges, must render death sentences. But the Supreme Court left unclear whether the new rules should apply retroactively to inmates awaiting execution.

In an 8-3 vote, the San Francisco-based 9th U.S. Circuit Court of Appeals said all condemned inmates sentenced by a judge should have their sentences commuted to life in prison.

The ruling applies only to Arizona, Idaho and Montana, the only states in the 9th Circuit that have allowed judges to impose death sentences.

Two other states, Nebraska and Colorado, have also allowed judges to sentence inmates to death. But the federal appeals courts that oversee them have yet to rule on the issue.

The ruling affects approximately 3 percent of the 3,700 people on death row in the United States.

"By deciding that judges are not constitutionally permitted to decide whether defendants are eligible for the death penalty, the Supreme Court altered the fundamental bedrock principles applicable to capital murder trials," Circuit Judge Sidney R. Thomas wrote for the court.

Defense attorneys hailed the verdict.

"This is fundamental justice," said Ken Murray, a federal public defender in Phoenix.

Murray estimated that the decision affects at least 100 inmates on Arizona's death row alone.

If the decision stands, Arizona and the other states might hold new penalty trials, convening juries to

decide between life and death, said John P. Todd, a lawyer with the Arizona Attorney General's office. He said the state was trying to determine exactly how many condemned inmates are affected by the ruling.

"We are disappointed. We are going to appeal," Kent Cattani, chief counsel for the Arizona Attorney General's office.

The ruling is expected to reduce the death sentences of at least 16 condemned inmates in Montana. Assistant Attorney General Pamela Collins said state attorneys were reviewing the decision to determine whether its five condemned inmates would be affected.

"This may cause some chaos in the short term, but I don't think this is going to hold up," Collins said.

The case the appeals court used to decide the issue concerned Arizona inmate Wayne Summerlin, who was found guilty of murder in the 1981 slaying of Brenna Bailey, 36.

The Tempe finance company administrator's body was found in the trunk of her car a week after she visited Summerlin to check on him, he owed. Summerlin was convicted in 1982, and a judge sentenced him to death.

Prior to the U.S. Supreme Court's ruling last year, a jury determined guilt or innocence, but one or more judges evaluated whether the particulars of the case made it worthy of the death penalty in Arizona, Idaho, Montana, Colorado and Nebraska.

The Death Penalty Information Center, which compiles statistics on capital punishment, estimated that since 1976, those five states have executed 29 people under laws allowing nonjury sentencing.

In July, meanwhile, the 11th U.S. Circuit Court of Appeals ruled in a Florida case that the Supreme Court decision should not be applied retroactively to some death penalty cases. In Florida, Alabama, Indiana and Delaware, juries recommend a life or death sentence but judges are allowed to give a death penalty against the jury's wishes.

Heavy flooding in China kills 33

BEIJING (AP) — Heavy flooding in northern China has killed 38 people with another 34 people missing, the official Xinhua News Agency reported Tuesday.

Rains pounding Shaanxi province over the past weeks caused rivers to overflow and sparked mudslides, Xinhua said. More than 30,000 soldiers and militia helped residents shore up river embankments against further flooding, it said.

Xinhua didn't say when the deaths occurred, but earlier reports said at least 21 people have died since rain began falling Aug. 24.

Rescuers were at work in the remote Shaanxi village of Yongquan, where the mud-rock

flow damaged 14 houses, Xinhua said, without providing other details.

Meanwhile, troops were in the Shaanxi city of Weinan, where embankments along the Weihe river burst and forced the evacuation of over 150,000 residents from four counties, said an official at Weinan's flood control office who gave only his family name, Wang.

He said floodwaters were beginning to recede. Flooding hit record highs on Monday, Xinhua said.

Xinhua said direct economic losses have been estimated at \$240 million. 50,000 houses have been destroyed and roads, telephone lines and electricity

Death toll rises in China flooding

Heavy flooding in China's Shaanxi province killed 38 people with another 34 missing, the official Xinhua News Agency reported Tuesday.



SOURCES: ESRI, Associated Press

NEWS IN BRIEF

One killed, one injured in hotel robbery incident in Michigan
 TROY, Mich. (AP) — Several suspects in a hotel robbery that left an employee dead and a guest wounded were arrested Tuesday in Detroit, police said.

The victims were found about 1:30 a.m. at the Troy Holiday Inn in this suburb 20 miles north of downtown Detroit. Killed was employee Michelle Eberhard, 35, of Wayne County's Redford Township, Troy police Lt. Steve Zavislak said.

A 28-year-old female guest from Cedar Park, Texas, was being treated at a local hospital, Zavislak said. He did not provide her name or condition.

Troy detectives, assisted by Detroit police, arrested "multiple suspects" in Detroit shortly before noon, Zavislak said. He did not say how many suspects were in custody and did not provide their names, ages or hometowns but said, "We're confident we have the shooter in custody."

The robbers disabled the hotel's surveillance system before taking money and property from the hotel, Zavislak said. He declined to say how much money or what property was taken.

The women were not found together, Zavislak said earlier Tuesday. He declined to say where in the hotel the women were discovered.

The hotel was closed Tuesday morning while police investigated.

Blackout driver sentenced to 3 to 6 years in prison for killing
 PITTSBURGH (AP) — A man who kept driving despite a history of blackouts was sentenced to 3 to 6 years in prison Tuesday for a crash that killed a pregnant woman and her mother.

Jack Monroe Smith, 51, also received 10 years probation for the 2000 crash and for another crash last year in which four women were injured. He will not be able to drive while on probation.

Prosecutors contend Smith misled his doctor and state officials about his seizure disorder, but he could keep driving despite a history of blackout-related crashes.

Smith was convicted of involuntary manslaughter in the deaths of Patricia Schick, 54, and her daughter, Sherri Zeis, 27. Police said Smith was driving 77 mph when he rear-ended the woman's station wagon, apparently after blacking out.

The sentence was the maximum.

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