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Warner Commutes Death Sentence

Governor Cites Clerk's Destruction of DNA In Arlington Slaying

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RICHMOND, Nov. 29 -- Virginia Gov. Mark R. Warner (D) issued his first grant of clemency in a death penalty case Tuesday, sparing the life of convicted murderer Robin M. Lovitt a day before his scheduled execution.

Warner said in a statement that the destruction by an Arlington County court clerk of DNA evidence that might have cleared Lovitt convinced him that Lovitt should instead spend the rest of his life in prison without the possibility of parole. Lovitt would have been the 1,000th person executed in the United States since the U.S. Supreme Court reinstated capital punishment in 1976.

"In this case, the actions of an agent of the Commonwealth, in a manner contrary to the express direction of the law, comes at the expense of a defendant facing society's most severe and final sanction," Warner said in the statement. "The Commonwealth must ensure that every time this ultimate sanction is carried out, it is done fairly."

Lovitt, whose attorneys include former independent counsel Kenneth W. Starr, is the first condemned man that Warner has chosen to save from execution during his four-year term, which ends in January. Warner, a likely candidate for president in 2008, has allowed the executions of 11 men to proceed.

For Warner, the action in Lovitt's case could have political implications as he begins to navigate the national scene. He unveiled a federal political action committee this month and has been speaking across the country, including in New Hampshire this month.

"These decisions do get read politically once you are running for the highest office," said Robert D. Holsworth, the director of the Center for Public Policy at Virginia Commonwealth University.

Warner has at least one more criminal justice decision with political overtones to make before he leaves office. A New Jersey charity that investigates wrongful convictions has asked Warner to allow DNA testing in the case of convicted murderer Roger Keith Coleman, who maintained his innocence and was executed in 1992. Warner has been saying for three years that he would decide whether to order the testing.

Lovitt, 41, was convicted and sentenced to death in the November 1998 stabbing of Clayton Dicks, 45, during a robbery at a 24-hour pool hall in Arlington. During a 1999 trial, prosecutors said Lovitt went there to steal money but was confronted by Dicks. They said Lovitt grabbed a pair of scissors and stabbed Dicks six times.

Lovitt admitted he was at the pool hall the night of the killing but said he was in the bathroom while Dicks

fought with another man. He said that after he emerged and found that Dicks had been stabbed, he grabbed the cash box and fled.

Lovitt's attorneys have argued that DNA tests using the latest technology -- now impossible because evidence, including the scissors, was discarded -- might have exonerated their client. Early forensic tests involving DNA were inconclusive.

The clerk later testified that he destroyed the evidence to create space in the evidence room after learning that the Virginia Supreme Court had upheld Lovitt's convictions, according to a court opinion. Two subordinates said they told the clerk that the evidence should be preserved.

Lovitt's attorneys at the Kirkland & Ellis law firm released a brief statement Tuesday night.

"Kirkland & Ellis, LLP is gratified that Governor Warner has exercised his executive power of clemency to commute Mr. Lovitt's sentence to life in prison," the statement said. "We believe this decision to be entirely proper given the extraordinary circumstances of Mr. Lovitt's case."

Mary Dicks, the victim's mother, said last night that she was disappointed and remains convinced that Lovitt killed her son and deserves to be executed.

"I don't think it's right," Dicks said. "I don't know what they want jurors for if the jury votes for death and they give him life in prison. He killed Clayton, and Clayton was a hardworking person."

Interest in Lovitt's fate, and Warner's decision, is intense. Officials at the Virginia Department of Corrections said Tuesday that they have received calls from media in Poland, Australia, France and Italy about the execution.

In an interview on WTOP radio Tuesday morning, Warner said: "No case has been more troubling. . . . Rest assured, there's no case I've spent more time thinking about, praying about, reflecting on."

Holsworth said he believes Warner does not base clemency decisions on political considerations. But he said that commuting Lovitt's sentence will appeal to many hard-core, anti-death penalty Democrats and could help Warner compete with U.S. Sen. Hillary Rodham Clinton (N.Y.) and others for the party's presidential nomination.

"His biggest political challenge right now is appealing to the hearts of the Democratic Party activists," Holsworth said.

Some past candidates for president have had their actions on criminal justice issues come back to haunt them. Former Massachusetts governor Michael S. Dukakis supported a state furlough program only to be linked later in GOP campaign ads to Willie Horton, who committed a murder while out on furlough.

But those who urged Warner to grant clemency included Starr and a contingent of academics, law students and forensic experts, all citing concerns about the destruction of evidence. Former Republican attorney general Mark L. Earley, who is now president of Prison Fellowship Ministries in Northern Virginia, said it would be "morally unfair" to carry out the execution.

In a statement Tuesday, Virginia Attorney General Judith W. Jagdmann (R) said: "The Constitution of Virginia provides the Governor with the authority to grant clemency where in his view the circumstances so

warrant. Our thoughts and prayers are with the victim's family."

During Lovitt's trial, a customer who came into the pool hall during the attack testified he was 80 percent certain that Lovitt was the assailant. And a cellmate told jurors that Lovitt had confessed.

Forensic scientists found Dicks's DNA, along with that of another person, on scissors left at the scene. Tests done on the unknown genetic material were inconclusive.

This week, Robin W. Cotton, a forensic scientist who recently helped conduct a review of procedures at Virginia's forensic laboratory, sent a letter that said a prosecutor "grossly" misstated evidence during closing arguments. Cotton also said that scientific tests using the latest technology "likely" would have resulted in a more complete picture.

Post-conviction DNA testing has resulted in the exoneration of more than 160 inmates nationwide, including eight men in Virginia. Such testing has prompted Warner to pardon two men who spent time in prison for rapes they did not commit. Since 1976, each Virginia governor who could do so has commuted a death sentence.

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