

LAST MAN OUT:
PEOPLE V. TAYLOR AND ITS PRECURSORS IN
NEW YORK DEATH PENALTY JURISPRUDENCE

AMANDA MARZULLO*

People v. Taylor marks the end of New York's most recent experiment with capital punishment.¹ If executed, the defendant John Taylor would have been the first and only person executed in the state since 1963 under the new 1995 death penalty statute. This legislation was passed after an 18-year hiatus from executions in the wake of the Supreme Court's moratorium issued in *Furman v. Georgia*.² Although the Supreme Court eventually reinstated the death penalty with its decisions in *Gregg v. Georgia*,³ *Woodson v. North Carolina*,⁴ and *Roberts v. Louisiana*,⁵ the New York Court of Appeals' ruled in its 1977 case, *People v. Davis*,⁶ that the death penalty law mandate that judges sentence defendants to execution for enumerated crimes violated the Eighth Amendment. In the years that followed, the New York Legislature passed a new capital punishment statute every year, only to be vetoed by Governors Hugh Carey and later, Mario Cuomo.⁷ By 1994, George Pataki was elected largely due to his promise to bring capital punishment back to the Empire State.

Passage of the 1995 death penalty statute was Pataki's first act as governor.⁸ At the time of its enactment, several prosecutors—including those of Manhattan, Queens, and the Bronx—expressed reservations about

* J.D., 2008, University of Pennsylvania Law School

¹ 9 N.Y.3d 129 (2007).

² 408 U.S. 238 (1972).

³ 428 U.S. 153 (1976).

⁴ 428 U.S. 280 (1976).

⁵ 428 U.S. 325 (1976).

⁶ 43 N.Y.2d 17 (1977).

⁷ These same legislators thwarted efforts to make life without-parole an available penalty for first degree murder.

⁸ In what was a media circus, Pataki signed the bill into law using two pens that had belonged to slain police officers. See James Dao, *Death Penalty in New York Reinstated After 18 Years: Pataki Sees Justice Served*, N.Y. TIMES, 8 Mar. 1995, at A1.

the use of capital punishment to deter violent crimes.⁹ Bronx District Attorney Robert Johnson even declared that he would refuse to seek the death penalty after the statute went into effect. In response, Pataki superseded Johnson in the prosecution for the alleged slaying of a Bronx police officer, appointing the state attorney general to try the case in Johnson's place.¹⁰ Despite Johnson's efforts to challenge the constitutionality of Pataki's actions, the Court of Appeals ruled that Pataki had "acted lawfully under [his] constitutional and statutory authority, and that even if the rationale for his action were subject to judicial review the superseded order . . . would be valid."¹¹

Pataki's coercive measures produced "compliance" on the part of prosecutors throughout the state¹² until the Court of Appeals issued its ruling in *People v. Lavelle*¹³ in June 2004. This opinion held the "deadlock-windfall provision" of the 1995 statute unconstitutional.¹⁴ The statute's jury charge mandated that a judge inform jurors at the conclusion of a penalty trial that if they failed to agree on a punishment (life without parole or death) that the defendant would be sentenced to life imprisonment with eligibility for parole after 20-25 years. Citing research that jurors' voting according to their perception of how long a given defendant will remain in prison, the Court of Appeals ruled that the instruction could cause jurors to "impose the death penalty on a defendant whom they believed did not deserve it simply because they fear that the defendant would not serve a life sentence."¹⁵ As a result, the court found that the "deadlock provision" violated the state constitution's due process clause.¹⁶

⁹ Adam Nossiter, *Balking Prosecutors: A Door Opens to Death Penalty Challenges*, N.Y. TIMES, Mar. 11, 1995, § 1, at 27.

¹⁰ Rachel Swarns, *A Killing in the Bronx: The Overview; The Governor Removes Bronx Prosecutor from Murder Case*, N.Y. TIMES, Mar. 22, 1996, at A1.

¹¹ *In the Matter of Robert T. Johnson v. George Pataki*, 91 N.Y.2d 214, 691 N.E.2d 1002, 668 N.Y.2d 978 (1997).

¹² In the years that followed, New York District Attorneys formally investigated seeking the death penalty in 857 cases, but precluded the penalty in 776 cases, and even dropped the charges against 8 defendants. New York Capital Defender Office Caseload, http://www.nycdo.org/caseload_040930_answers.html (last visited Feb. 20, 2008).

¹³ *People v. Lavelle*, 3 N.Y.3d 88 (2004).

¹⁴ *Id.*

¹⁵ *Id.* at 117.

¹⁶ *Id.* at 128.

Although the *Lavalle* opinion makes clear that a deadlock instruction is necessary for the provision of due process under New York's Constitution and thus non-severable, the prosecution in *Taylor* continued to pursue affirmance of Taylor's death sentence on the grounds that the jury was not charged with the statute's deadlock instruction.¹⁷ Before trial, the defense submitted motions arguing the unconstitutionality of the statute. Perhaps anticipating that this argument would be an issue on appeal, presiding Judge Steven Fisher instructed jury members that in the event they could not agree on a penalty, he would "almost certainly" sentence Taylor to five consecutive life sentences, such that he would be confined for one hundred seventy-five years before becoming eligible for parole.¹⁸ The jury decided in favor of imposing the death penalty against Taylor, and, at the time of his appeal he was the lone person on New York's death row. Ultimately, the Court of Appeals vacated this sentence under the doctrine of *stare decisis*, maintaining that any remedy to the statute is a matter for the Legislature.¹⁹

In what the press dubbed the "Wendy's Massacre," the evidence that emerged during Taylor's trial captivated the media. Most of the case's facts were undisputed. On May 24, 2000, John Taylor and his accomplice, Craig Godineaux, robbed a Wendy's restaurant in Flushing where Taylor had previously worked as an assistant manager. The main issue at Taylor's trial focused on which of the two defendants shot one of the five decedents and whether Taylor "commanded" accomplice Godineaux. They gathered the franchise's seven employees in the basement, where they bound and gagged each captive with duct tape. They then shepherded the employees to the freezer, placed plastic bags over their heads and shot six of them in the head. Only two victims, Patricio Castro and Jaquoine Johnson, survived. The main issue at trial was who shot whom.

The defendant appellants eventually prevailed in *People v. Taylor*. On October 22, 2007, the Court of Appeals issued an opinion vacating John Taylor's death sentence on the principles of *res judicata*. Although death penalty abolitionists were happy with the result, the ruling sidestepped arguments raised by the defense regarding the arbitrariness of the death penalty and how it is imposed. The following article, *Lethal Crapshoot: The Fatal Unreliability of Penalty Phase*, is a slightly revised section of John Taylor's brief written and argued by New York Capital Defender,

¹⁷ *Id.* at 128-131.

¹⁸ Brief for Appellant at 31, *People v. Taylor*, 9 N.Y.3d 129 (2007).

¹⁹ *Taylor*, at 138.

Kevin Doyle. Its arguments no longer apply to New York, but perhaps they will be heard again, as other states such as Connecticut, Montana and even Texas continue to debate the constitutional viability of executions.