

## THE DALLAS MORNING NEWS

THE QUALITY OF JUSTICE: Questions of competence arise in death row appeal Lawyer with history of problems defends handling of case

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PLAINVIEW, Texas - Joe Lee Guy was too poor to hire an attorney when he and two accomplices were charged seven years ago for a bungled robbery that left convenience store owner Larry Howell dead.

So the taxpayers of Hale County in the Texas Panhandle paid a lawyer to defend him - as counties across the country have been required by law to do for almost 40 years.

The man appointed to fight for Mr. Guy's life was Richard Lee Wardroup, a Lubbock lawyer with a history of professional misconduct and alcoholism. Though Mr. Wardroup's problems stemmed from other cases, his conduct in Mr. Guy's trial is now under attack by appellate lawyers.

Noting that the triggerman and a second accomplice in the case have both been sentenced to life, Mr. Guy said he would not be on death row today if a better lawyer and investigator had been appointed for his trial.

"Now I feel like I've been betrayed," Mr. Guy, 28, said in a death-row interview. "They just left me hanging."

Mr. Wardroup answered questions about the case by e-mail. He said he hopes Mr. Guy wins a new trial, but defended his handling of the case.

"If a court determines that we missed mitigation witnesses who could have and should have been called, or if I made strategic decisions through the trial which were wrong, I will be pleased," Mr. Wardroup said. "I know without doubt, though, that I did not intentionally do anything that prejudiced Joe Lee Guy at trial."

The Dallas Morning News reported Sunday that more than 100 prisoners awaiting execution in Texas as of May 1 - including Mr. Guy - have been represented by court-appointed attorneys with disciplinary problems before the State Bar of Texas. Mr. Wardroup has been repeatedly disciplined by the bar during the last 15 years and has twice been briefly suspended from practicing law, records show.

Mr. Wardroup was appointed to handle the capital murder case after Mr. Guy - along with his cousin, Thomas Howard, 29, and a friend, Ronald Springer, 24 -

were charged with the March 25, 1993, robbery and murder in which Mr. Howell, 52, was killed. Mr. Howell's 81-year-old mother, French Howell, was shot in the abdomen but recovered. The robbers, unable to open the store cash register, dropped it and the \$3,000 it held in a ditch as they fled.

Hale County taxpayers paid Mr. Wardroup nearly \$18,000 for his work in the Guy case, according to the county auditor's office. His investigator, Frank SoRelle, received an additional \$9,000.

At the time, Mr. Wardroup had represented four men facing death sentences. Two have been executed; one remains on death row. The death sentence of a fourth was reduced to life in prison.

Mr. Guy, who had previously been imprisoned for burglary of a vehicle, told police he was outside the store when his cousin shot the Howells.

"I never shot anyone and Ronald did not neither," Mr. Guy said in a statement.

There's little doubt that Mr. Guy was involved in the crime. But his current appellate attorneys - Phillip Wischkaemper of Lubbock and Steven Wells and Patrick McLaughlin of Minneapolis - are challenging the fairness of the system that would spare the life of the triggerman while condemning a lookout to death.

Experience, discipline

Though Mr. Wardroup had plenty of criminal defense experience, he also had a disciplinary history with the state bar. The 1980 graduate of the Texas Tech School of Law had been reprimanded twice before the Guy case.

In 1985, he was placed on one year of probation for making misrepresentations to a client and to a bar committee that heard the client's complaint, records show. The following year, while still on probation, he was publicly reprimanded for failing "to act competently as a lawyer."

Nonetheless, District Judge Marvin Marshall appointed him to represent Mr. Guy. Judge Marshall, who is retired, did not return messages left at his home.

In their appeal, Mr. Guy's attorneys contend that Mr. Wardroup was in the throes of drug and alcohol addiction at the time of the April 1994 trial.

They also say he relied too heavily on his investigator, Mr. SoRelle, who had no experience in death penalty cases. Mr. SoRelle, the attorneys charge, was more concerned about the slaying victim's affluent, elderly mother than with his indigent client.

"As a result of Wardroup's drug and alcohol impairment and his defense team's conflict of interest, Guy did not, in any real sense have a lawyer to defend him," the lawyers argue in court filings.

In a deposition taken by the appellate lawyers in August, Mr. Wardroup said he "drank alcoholically" for up to 15 years and periodically used cocaine and methamphetamines. He swore, however, that he has been sober since March 1995 and stopped using drugs and alcohol on several occasions - including Mr. Guy's trial.

Others dispute Mr. Wardroup's assertion.

In an affidavit filed in federal court, one of Mr. Wardroup's former secretaries, Regina Young, said she and her boss "did approximately 3-4 'lines' of cocaine while driving from Lubbock to Plainview" one morning before trial.

A private investigator who helped Mr. Wardroup in jury selection, Harry Leonard, said in another affidavit that he and Mr. Wardroup got "very drunk" the night Mr. Guy was convicted. The attorney still had the punishment phase of the trial to complete.

Asked about his colleague's statements, Mr. Wardroup said he "had many too many drinks" the night the trial concluded. He said Mr. Leonard was mistaken.

Mr. Wardroup said he did not use cocaine during the trial. Mr. Guy's attorneys are "much more interested in the sensational than the credible," he said.

The appellate attorneys contend that Mr. Wardroup had difficulty staying awake during the proceedings and failed to call key family members and friends to counter the state's negative portrayal of Mr. Guy during the punishment phase.

#### Prosecutor's view

Prosecutor Terry McEachern said he saw nothing amiss during the trial. "I certainly didn't smell anything on him," he said. "He didn't appear to be incapacitated in any manner."

Mr. Wardroup's biggest mistake, Mr. McEachern said, was calling a psychiatric witness who ended up hurting his case. "I don't really think Mr. Wardroup knew exactly ... what ... was going to come out of that," he said. That expert "is the one who killed him."

Mr. Wardroup played down the significance of the expert's testimony, saying it was "significant but not a surprise." The doctor testified that Mr. Guy had argued with his co-defendants about who would shoot the Howells.

The appellate attorneys also contend that Mr. SoRelle, the court-appointed investigator who was supposed to be looking for evidence to help Mr. Guy, was instead "currying favor" with the murder victim's mother.

Mrs. Howell died about a year after Mr. Guy was convicted. Before her death, she revised her will to leave the bulk of her estate to Mr. SoRelle, records show.

Mrs. Howell's relatives filed suit challenging the will. Mr. SoRelle said the estate, worth at least \$500,000, was eventually divided among himself and the family.

In a phone interview, he said that Mrs. Howell left him her estate "because she hated her family so bad ... I was the person that probably could hurt them the most."

Mr. SoRelle said he didn't know how he could work any harder on Mr. Guy's case. He bridled at the suggestion that there was anything improper about his relationship with Mrs. Howell. Mr. Guy's latest appeal, he said, is "so twisted it's obscene."

In an affidavit filed in federal court, Mr. SoRelle said: "The truth of the matter is this: Joe Lee Guy had an otherwise competent attorney who was suffering from a drug addiction and its effects which affected his competency, and an inexperienced investigator who had felt more compassion for the surviving victim, Ms. Howell, than I had for Joe Lee Guy, my client."

Mr. Wardroup said he knew that Mr. SoRelle had interviewed Mrs. Howell but was unaware of any conduct that would have created a conflict of interest.

"I was pleased and confident in the investigation that Frank did in this case," he said.

After the conviction, Mr. Wardroup remained Mr. Guy's attorney for the earliest stage of his appeal. According to the deposition taken by Mr. Guy's new appellate lawyers, Mr. Wardroup acknowledged he was impaired by substance abuse during that period.

After seeking several extensions, Mr. Wardroup finally informed the Court of Criminal Appeals that he could not file the brief because his law license had been suspended.

Another attorney had to be appointed to finish the matter. The court rejected Mr. Guy's petition, sending him to the next stage of the appeals process, a review of constitutional issues raised in a motion called a writ of habeas corpus.

### State review

The state court habeas review, which is routinely followed by a similar process in federal court, allows defendants to re-examine the entire trial and raise for the first time any issues related to fairness, including the effectiveness of court-appointed attorneys.

However, the attorney appointed to handle Mr. Guy's habeas appeal did not cite Mr. Wardroup's performance or troubled history as grounds for the appeal.

That attorney, Candace Norris, said she was unaware of Mr. Wardroup's problems.

Ms. Norris said her attempts to investigate the relationship between Mr. SoRelle and Mrs. Howell fizzled because she didn't know that Mrs. Howell's will was handled in a neighboring county.

She defends her work in the case, noting that she hired an investigator, met with Mr. Guy, brought the defendant to a court hearing and even bought him new clothes.

"I thought I did quite a bit," Ms. Norris said. "I didn't just sit back and fill out some papers and send it in."

But the lawyer on the Texas attorney general's staff who was assigned to defend the state's conviction of Mr. Guy disagrees.

Matthew Wymer said that Ms. Norris' errors left Mr. Guy "floating in the wind."

"He was abandoned," Mr. Wymer said. "My concern with Joe Lee Guy was that he get the process he deserved. He was getting robbed, getting robbed of federal habeas."

New appeal

Because the federal habeas is limited to issues dealt with in the earlier appeals, Ms. Norris' failure to raise the trial attorney's performance would normally make that off limits.

The attorney general's office, Mr. Wymer said, took the unusual position that Mr. Guy's appeal was so poorly handled it needed to be done over. Eventually a federal judge agreed, and Mr. Guy was given new attorneys, who filed the appeal now pending in federal court.

Although Mr. Wardroup says he has been sober for more than five years, the professional problems from his drinking days continue to hang over his practice.

When he was disciplined in the 1980s, a state bar grievance committee warned him to "expect no leniency as to the imposition of professional discipline for future acts of professional misconduct."

Since then, Mr. Wardroup has been disciplined repeatedly by the state bar.

He has been cited for passing a bad check, failing to keep clients informed, not performing work he was paid for and mishandling a client's funds. Records show his law license has been briefly suspended twice, including for one month last year. He remains on probation.

"Some of the problems that I have had with the state bar have been the result of my alcoholism and abuse of substances," Mr. Wardroup said. "Other problems, though, are the result of my accepting employment in matters that I was not particularly interested in or didn't have much, if any, experience, in. I have taken steps to avoid either of these problems arising again."

Mr. Guy, who has been on death row for six years, said he didn't learn of Mr. Wardroup's history of alcohol problems or of Mr. SoRelle's relationship with Mrs. Howell until after the trial. He even requested that Mr. Wardroup subsequently defend him against charges related to the attack on Mrs. Howell.

"He should have at least let me know he was having troubles," he said. "And Frank should have told me ... about his relationship with Mrs. Howell straight up."

Staff writer Diane Jennings contributed to this report.