

High court hears arguments on castration sentence

COLUMBIA — Three men who raped and tortured an 80-pound woman for six hours in an Anderson County motel should be castrated and freed, their attorneys told the state Supreme Court on Monday.

However, the three lawyers said no South Carolina judge has the legal right to mete out physical punishment.

Although the state constitution prohibits cruel and unusual or corporal punishment, the rapists, Roscoe Brown, 27, of Pendleton, Michael Braxton, 19, of Sarasota, Fla., and Mark Vaughn, 21, of Clemson, want the high court to allow them to undergo surgical castration so they can be released from prison.

That option was given the three men by Circuit Judge C. Victor Pyle after each pleaded guilty to rape in April 1983. Pyle gave them the choice of 30 years in jail or castration and five years' probation.

The sentence spawned worldwide headlines, medical, ethical and legal questions, and protests from the victim, who claimed the sentence would allow her rapists to escape real punishment. Months later, Pyle

refused to allow Brown's operation to take place until the Supreme Court decided the constitutional issues.



By Marilyn Rauber
The News Capital bureau

On Monday, attorneys Steve Henry and Glenn Thomason labeled castration unconstitutional, and attorney Theo Mitchell called Pyle's sentence

"tainted."

At least one justice appeared to concur. "Where in the world did Judge Pyle come up with an idea such as this?" Associate Justice Julius Ness said.

The state attorney general's office, meanwhile, straddled the fence.

"We've taken both sides on this thing," Assistant Attorney General Harold Coombs conceded outside the courthouse. "The propriety of that (castration) has to

be determined by this court."

Coombs termed the sentence "pretty novel, pretty innovative," but emphasized the best outcome would be a 30-year jail term.

After the hour-long hearing, Henry, representing Brown, predicted "the court will probably strike down the castration."

Brown is requesting the high court permit his surgery, and the other two are asking for dismissal of their original appeals because they've changed their minds and want to be castrated too.

The court could uphold or strike down the castration option, leave intact only the jail term, or order new sentencing.

Inside the courtroom, Henry said, "Castration is unlawful, is unconstitutional. If this court struck down castration, I would have no argument." But he insisted Brown made a binding agreement with Pyle to accept the conditions of probation, and therefore should be surgically castrated or given other conditions for probation, such as counseling or chemical castration.

However, Steve Henry, Brown's attorney, said Tuesday his client's petition has no connection with the other two, and speculated the high court justices are "trying to take my guy's case, which basically is can a defendant voluntarily agree to an unlawful sentence, and combine it with the other, more simple issues.

"My petition does not raise the (constitutional) validity of the sentence," Henry said.

Instead, Brown is asking the high court to "follow the law" by allowing the castration to be carried out and thus overturning an August ruling by Pyle that no surgery could be performed until the Supreme Court decided the other two men's constitutional questions.

"The other issues are pretty simple," Henry said. "Castration's clearly illegal and the whole thing was a joke in the first place. But my guy took it to the ultimate limit and has made it really difficult for them to ignore."

But Henry said he believes the high court's desire to hear everything at once "means they're going to knock down the sentence."

Mitchell voiced similar optimism about the constitutionality issue. "I'm sure they're going to reverse it," he said.

"I commend the court for moving in an area where there's a need for clarification and to expedite it," Mitchell said.

The Supreme Court's willingness to hear the case quickly is an indication that the state does not want to be "the laughingstock ... of being barbaric, and above all, of mutilating our citizens," Mitchell added.

According to an attorney general's brief filed in the Brown case, at least one other state supreme court — Georgia — already has ruled "castration is a barbarity which is constitutionally prohibited as being cruel and unusual punishment."

Braxton's appeal is based on the belief that "the choice is unconstitutional because it is an unrealistic option that was rendered ... and as such it should go down," Mitchell said.

At the time of the sentence, a number of state surgeons said it would be unethical to participate in a castration procedure and that they would not do it.