

# Fort Bend County killer may be executed tonight

■ Appeals are dwindling for man convicted in 1998 robbery-slaying

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The fate of killer Samuel Bustamante was in the hands of the U.S. Supreme Court today after the Texas Court of Criminal Appeals on Monday rejected his appeal based on a mental retardation claim. Unless the high court acts to save his life, Bustamante will be executed tonight.

Bustamante, 40, is convicted of the December 1998 Rosenberg killing of 27-year-old Rafael Alvarado.

Bustamante, an El Campo laborer, joined three other men in cruising the Fort Bend County town after taverns

closed in search of victims to rob.

Alvarado was targeted because of his neat clothes and his apparently expensive watch. Bustamante stabbed Alvarado 10 times after the victim joined him in the bed of a pickup, expecting to be driven across town.

In rejecting Bustamante's 11th-hour appeal, the state court asserted that he had failed to adequately establish he is mentally retarded.

Bustamante's lawyers argued that the 10th-grade dropout has an overall IQ of 71 and is mildly retarded. In 2002, the U.S. high court ruled that executing mentally retarded killers violates the Eighth Amendment protection against cruel and unusual punishment.

James Rytner, one of Bustamante's attorneys, said he will seek the Supreme Court's intervention on Bustamante's behalf but acknowledged that the best shot at saving his client had been in state court.

An appeal also has been filed with the Texas Board of Pardons and Paroles. Only twice in Gov. Rick Perry's tenure has that body acted in favor of a killer, and in both instances Perry permitted executions to take place.

Bustamante's accomplices were convicted of aggravated robbery in the Alvarado case and sentenced to eight years in prison. All have been released.

Shortly after his Fort Bend County conviction, Bustamante was brought to Wharton County, where he pleaded guilty to murdering Lloyd Harold Turner, 60, a homeless man.

Also charged in the crime was Bustamante's brother, Bill Bustamante, who was convicted and sentenced to 40 years in prison.

Authorities said Samuel Bustamante stabbed Turner 10-20 times and Bill Bustamante hit the man with a baseball bat.

If executed, Bustamante will be the seventh killer to die in the Huntsville death house this year.

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