

## Jury spares Wilk from death sentence, says police mishandled raid where deputy died

By Robert Nolin  
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One mother doubled over in a courtroom pew and sobbed. Across the aisle, another mother heaved a sigh of relief.

A federal jury, the majority of whose members were against the death penalty, on Wednesday unanimously rejected that ultimate sentence for Kenneth Wilk, the man they had a week earlier convicted of killing Broward Sheriff's Deputy Todd Fatta.

The verdict left Fatta's mother, Josephine, red-faced and in tears.

"My son is buried in a crypt and he gets life," she cried out in a courtroom at the federal courthouse in downtown Fort Lauderdale.

"He'll never get out of jail," prosecutor John Kastrenakes assured her.

Wilk, 45, suffers from AIDS. Even his father expects him to die in prison. But Sheriff Ken Jenne, who attended the verdict along with about a dozen deputies, said the state still may prosecute Wilk. The State Attorney's Office acknowledged that possibility but said Fatta's family has not requested it.

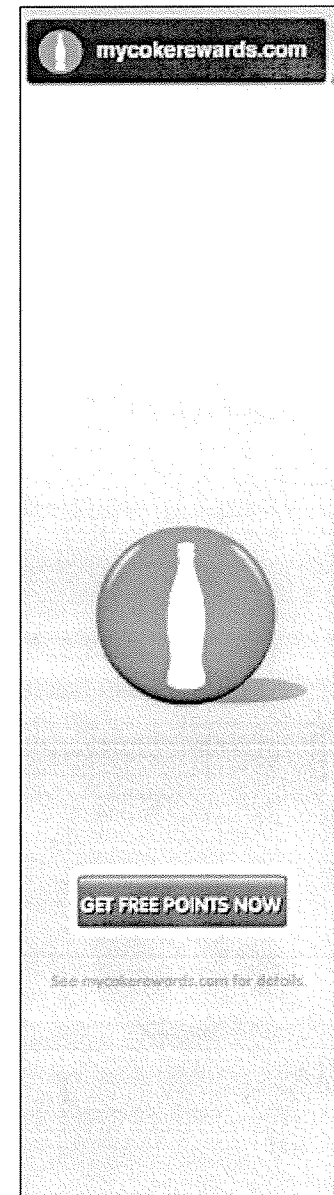
Wilk was convicted of shooting Fatta, 33, as the deputy served a child pornography warrant at Wilk's northeast Fort Lauderdale home on Aug. 19, 2004. Prosecutors said Wilk was seeking revenge against police because his boyfriend, Kelly Ray Jones, had been arrested on charges of possessing child porn and attempting to have sex with a minor.

This was the third time federal prosecutors in South Florida have sought the death penalty, each time without success. Defense attorney Bill Matthewman said they never should have done so, and he blamed U.S. Attorney General Alberto Gonzales for approving the move. Wilk was charged in federal court because Fatta was serving a federal warrant on behalf of a federal agency.

"It shows such a lack of common sense and discretion to waste federal money and federal resources to pursue the death penalty against a man who has full-blown AIDS," Matthewman said.

The jury of eight women and four men deliberated more than six hours over two days before the verdict, which under federal rules had to be unanimous for a death sentence.

Juror Serge Augustin, 25, Coral Springs, said 10 jurors were strongly opposed to execution. "A lot of people came in with their own personal beliefs," he said. "It started a lot of arguments, the death penalty."



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The jury, which at one point was deadlocked, almost convicted Wilk of second-degree murder, Augustin added. More debate swayed the holdouts.

In their verdict Wednesday, jurors were to weigh aggravating and mitigating factors in Wilk's crime. Ten jurors listed a mitigating factor on the verdict form: Police were in part responsible because of the inept way they tried to arrest Wilk.

Wilk's attorneys argued deputies botched the raid by not properly announcing themselves or having sufficient backup in light of Wilk's previous threats against law enforcement. Fatta's family is pursuing a wrongful death suit against the Sheriff's Office for mistakes they allege were made in the raid.

Wilk showed no emotion as the verdict was read, except to turn and nod at his parents, Walt and Joan Wilk.

In court, Jenne said Wilk deserved death, but acknowledged that "under federal rules and procedures, it's very difficult to get a death penalty."

Experts said federal court rules offer advantages to defense attorneys in death cases.

"As a general matter, resources provided to you are better in federal court than in state court," Andrea Lyon, director of DePaul University's Center for Justice in Capital Cases, said from her Chicago office. Extra resources could be money for special investigators, experts or testing, Lyon added. Also, jury instructions are easier to understand in federal death cases, she said.

"Legally, we know that Kenneth Wilk can be prosecuted in state court," Ron Ishoy, spokesman for the Broward State Attorney's Office, said in a statement. "If we're asked to review this case by Deputy Fatta's family or law enforcement, we certainly will meet with them and discuss that option."

Lyon said the jury has already "acquitted" Wilk of a death sentence and to seek that penalty against him again would violate the constitutional prohibition of double jeopardy, or, trying a person twice for the same crime.

But given that Wilk has AIDS, a life sentence is tantamount to death in prison.

"I have no joy," his father said after the verdict. "He's gone."

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