

# Another gruesome execution in the US: Alabama inmate heaves, coughs during lethal injection

By Kate Randall  
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An Alabama inmate gasped and coughed for about 13 minutes during his execution Thursday night. Ronald Smith, 45, was executed at the Holman Correctional Facility in Atmore, Alabama for the 1994 murder of Casey Wilson, a convenience store clerk.

Smith was executed by lethal injection utilizing midazolam as the first drug, a protocol that has drawn scrutiny in so-called botched executions in at least three other states. Originally scheduled for 6 p.m., Smith's execution began at 10:30 p.m. after the US Supreme Court denied a last-minute stay.

According to multiple witnesses that observed the execution, including reporters from the Associated Press, the *Chicago Tribune* and *AL.com*, it took more than 34 minutes for Smith to die.

*AL.com* reported that Smith appeared to be “struggling for breath and heaved and coughed and clenched his left fist after apparently being administered the first drug in the three-drug combination.” His left eye also appeared to be slightly open.

In the three-drug protocol, midazolam is supposed to anesthetize the inmate beyond consciousness. The second drug is a paralytic and the third drug induces cardiac arrest. Smith's lawyers had argued that the procedure poses the danger of inducing cruel and unusual pain if the midazolam does not properly anesthetize the inmate.

Two consciousness checks were performed on Smith by a Department of Corrections captain before they proceeded to administer the second and third drugs. The tests consisted of calling out the inmate's name, brushing back his eyebrows, and pinching him under the arm.

Kent Faulk, a reporter for the *Birmingham News* who also witnessed the execution, said this was the first time he had seen a consciousness check given twice. Faulk said Smith moved his hand after the second check.

According to *AL.com*, “Smith continued to heave, gasp and cough after the first test was performed at 10:37 p.m. and again at 10:47 p.m. After the second one, Smith's right arm and hand moved.” He was pronounced dead at 11:05 p.m.

The state of Oklahoma's use of midazolam was challenged after the April 2014 execution of Clayton Lockett, who writhed on the gurney and moaned for several minutes before prison officials halted the process. He died 43 minutes later, and a state investigation determined that a failed line had caused the drugs to be administered locally instead of into Lockett's blood.

In June 2015, the US Supreme Court upheld Arizona's use of midazolam in a 5-4 decision, rejecting Arizona prisoners' argument that the use of the drug violated the US Constitution's Eighth Amendment prohibition on “cruel and unusual punishment.”

In Ohio, inmate Dennis McGuire repeatedly gasped and snorted for more than 26 minutes during his January 2014 lethal injection. Ohio abandoned the three-drug protocol and halted executions, but plans to resume them in 2017. Arizona halted executions after it took nearly two hours to kill inmate Joseph Wood during his July 2014 lethal injection using the protocol.

At one point on Thursday evening the Supreme Court denied the stay in Smith's case, but four justices—Ruth Bader Ginsburg, Stephen Breyer, Sonia Sotomayor and Elena Kagan—all said they would have granted the

request. Currently eight justices are serving on the high court since the death of Antonin Scalia in February and the failure of the US Senate to vote on confirmation of President Obama's nomination for a replacement.

After the high court issued two temporary stays Thursday evening, Justice Clarence Thomas, the justice assigned to the 11th Circuit Court of Appeals that covers Alabama, denied the last-minute stay before 10:30 p.m. The 11th Circuit had denied Smith's request earlier on Thursday.

Smith's attorneys responded that "the Court should not permit executions in the face of four dissents," and stated that "the Court's inconsistent practices respecting 5-4 stay denials in capital cases clash with the appearance and reality both of equal justice under law and of sound judicial decision-making."

Less than a month ago, the Supreme Court issued a stay of execution for Alabama inmate Thomas Arthur, who also had challenged the state's death penalty protocol. In that case, Chief Justice John Roberts voted with four justices, who were not named, as a "courtesy."

Smith's attorneys also appealed for a stay on the basis of his sentencing. A jury found Smith, then 24 years old, guilty of capital murder in 1995. By a vote of 7 to 5, the jury recommended a life sentence without parole. But the judge overseeing the trial overrode that recommendation two months later and sentenced Smith to death.

Alabama is the only state in the US that now allows a judge to override a jury's recommended sentence. In January, the US Supreme Court ruled in *Hurst v. Florida* that Florida's sentencing system, which allows judge overrides, was unconstitutional. Despite this, the high court rejected Smith's appeal on this basis.

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