

In 3 A.M. ruling, Supreme Court allows Alabama execution to proceed

By Dan Conway
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For the second time in as many weeks, the US Supreme Court has ruled that the execution of a death row inmate can proceed despite claims that the method of execution, lethal injection, will cause unnecessary pain and suffering.

The 5-4 ruling issued by the court's right wing majority was made with extraordinary haste. The state of Alabama filed an application with the court on Thursday evening to proceed with the execution of Christopher L. Price, who, along with an accomplice, was convicted of the murder of Bill Lynn, a minister, in the course of a robbery in 1991. Alabama's 9 P.M. filing asked the court to vacate a stay of execution issued by a lower court and upheld by a federal court of appeals.

Justice Stephen Breyer asked for a postponement of the ruling until the court could meet to discuss the case in private conference Friday morning. But the right-wing majority, in its rush to keep the execution assembly moving, rejected Breyer's request and proceeded to reverse the lower courts and lift the stay.

Facing a midnight deadline to carry out the state murder, the Alabama authorities were compelled to call off the execution pending the Supreme Court ruling. Now the state must apply to a court for a new execution warrant, delaying the lethal injection killing of Price for 30 days.

Alabama Attorney General Steven T. Marshall railed against Price for filing his appeal, in which he asked that he be executed by nitrogen hypoxia instead of lethal injection, citing a series of botched executions employing the latter method, which had caused the victims protracted periods of excruciating pain.

Price, the attorney general said, "dodged his death sentence for the better part of three decades by employing much the same strategy he employed

tonight—desperately clinging to legal maneuverings to avoid facing the consequences of his heinous crime."

In his dissent, signed by the other members of the nominally liberal bloc on the court, Breyer wrote, "Should anyone doubt that death sentences in the United States can be carried out in an arbitrary way, let that person review the following circumstances as they have been presented to our Court this evening."

The use of nitrogen hypoxia had been approved by the Alabama legislature in 2018 and Price was well within his rights to ask for it.

In deciding to vacate the lower court's decision, the five-member majority concluded that Price had failed to select nitrogen hypoxia within the 30 days provided him under Alabama state law. In fact, Alabama death row inmates were finally notified that they could select the procedure within 72 hours of the June 2018 deadline. Price and others were only given three days to decide how they were to die.

Price's appeals cited studies commissioned by the state of Oklahoma determining that the use of nitrogen hypoxia was unlikely to cause "any substantial physical discomfort." The court majority made note of the fact, however, that Price and his attorneys initially presented draft studies stamped with the words "Do Not Cite." A final, and in all respects identical, report was available, which Price's legal team promised to present to the district court. The Supreme Court, majority, however, disregarded the existence of the final report in its ruling.

The Supreme Court, which has tacked even further to the right since the confirmation last year of Trump's nominee Brett Kavanaugh, has virtually rendered the Eighth Amendment to the US Constitution prohibiting cruel and unusual punishment a dead letter.

On April 2, the court approved the execution of

Russel Bucklew, who was afflicted with a rare disorder known as cavernous hemangioma, which resulted in tumors filled with blood vessels throughout his body. The court approved the execution despite the fact that the injections would cause the tumors to rupture, resulting in Bucklew choking and suffocating on his own blood.

The majority opinion in that case, written by Trump's first nominee, Neil Gorsuch, set a precedent for future dismissal of challenges to the death penalty on Eighth Amendment grounds. In language that could easily come from a right-wing dictatorship, Gorsuch wrote: "Courts should police carefully against attempts to use such challenges as tools to interpose unjustified delay. Last-minute stays should be the extreme exception, not the norm."

The two April rulings follow the court's decision in February to allow the execution of a Muslim inmate, also in Alabama, without the presence of his imam. In that case as well, the majority argued at the time that the request should have been made sooner. A similar request made by a Buddhist inmate in March, however, was granted by the court after it satisfied itself that the appeal was timely.

The medieval practice of capital punishment has always been one of the more barbaric aspects of US imperialism. There are currently 2,620 death row inmates in the country, while 163 have been found innocent since 1973, according to the Death Penalty Information Center.

Studies led by University of Michigan law professor Samuel Gross estimate that at least 4 percent of death row inmates are likely innocent. Said Gross, "There are a large number of innocent people who are sentenced to death, and despite our best efforts, some of them have undoubtedly been executed."

The Supreme Court's decision disregards the extreme pain and suffering that have accompanied recent lethal injection procedures. In April 2014, the state of Oklahoma carried out the execution of 38-year-old Clayton Lockett using an untested three-drug protocol. The drugs caused Lockett to react violently, kicking and contorting his face in pain throughout the procedure. In a media conference afterwards, Oklahoma Department of Corrections Director Robert Patton stated that Lockett's veins had "exploded" in the course of the execution, which

eventually led to Lockett dying of a massive heart attack.

In July 2017, Ronald Phillips was executed in the state of Ohio for the 1993 rape and murder of his girlfriend's three-year-old daughter. The execution used the three-drug-protocol of midazolam, rocuronium bromide and potassium chloride. This was despite the fact that 15 pharmacology professors had filed a brief with the Supreme Court arguing that midazolam was incapable of inducing unconsciousness or preventing severe pain. They called the use of midazolam in executions "profoundly troubling," saying it was "unsuitable" as an execution drug.

Ohio Governor John Kasich, now feted by the political establishment and corporate media as a moderate Republican alternative to Trump, condemned Phillips at the time. "Given the extremely brutal nature of the offense committed against an innocent three-year-old girl," he said, "I agree with the Ohio Parole Board's recommendation that clemency is not warranted in this case."

The ineffectiveness of midazolam had already been demonstrated in the April 2017 execution of Kenneth Williams of Arkansas. In that instance, Williams' body lurched and convulsed at least 15 times after the sedative was injected.

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