# Second Georgia death row inmate executed since US Supreme Court lethal-injection ruling

**Kate Randall**
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Death row inmate Curtis Osborne was executed Wednesday evening, just after 7 p.m., in the death chamber at a prison in Jackson, Georgia. His death by lethal injection followed a decision Monday by the Georgia Board of Pardons and Paroles denying him clemency, and the refusal by the Georgia Supreme Court just hours before the execution to issue a stay.

Osborne became the second prisoner to be sent to his death in Georgia, and the fourth in the US, since the Supreme Court ruled in April that the lethal-injection procedure does not violate the Eighth Amendment to the US Constitution's ban on "cruel and unusual punishment." Another Georgia inmate, William Earl Lund, was the first prisoner to die by lethal injection following the high-court ruling.

Those appealing unsuccessfully to the Georgia pardon board for a commutation of Osborne's sentence included former president Jimmy Carter, former US Attorney General Griffin Bell, and Norman Fletcher, the ex-chief justice of the Georgia Supreme Court, who said he had intervened due to the "extraordinary nature" of the case.

Osborne, who is African-American, was sentenced to death for the August 1990 fatal shootings of Linda Lisa Seaborne and Arthur Jones. The history of his case epitomized how the inherently barbaric death penalty system in the US is also permeated by racism and stacked against poor and working-class defendants.

Osborne and his attorneys do not dispute that he committed the crime. Addicted to cocaine and a small-time drug-dealer, Osborne killed his two victims in a dispute over $400. What they do charge is that his original lawyer, Johnny Mostiler, was a racist, regarded him with contempt, and did next to nothing to defend him at trial.

In the early 1990s, Mostiler represented all the indigent inmates in Spalding County, Georgia for a flat fee, handling hundreds of felony cases. According to a profile in *American Prospect* magazine, his clients often filed into court shackled together to enter their guilty pleas.

Mostiler never hired a psychiatrist to evaluate Curtis Osborne's mental state or history, despite the fact that a court-ordered sanity evaluation had found "indications of depression, paranoia and suicidal ideation." He also failed to investigate evidence that Osborne was the victim of childhood abuse and was borderline mentally retarded.

In 2000, Gerald Steven Huey, a prisoner serving a life sentence for murder, signed an affidavit pointing to extreme racial bias on Mostiler's part. Huey said that Mostiler indicated that he would not be spending much money on defending Osborne because "that little nigger deserves the chair."

Huey also said that Mostiler never informed Osborne of a plea bargain that would have given him a life sentence in exchange for a guilty plea, with the lawyer reportedly commenting that "he would never tell Mr. Osborne about it because he deserved to die."

Derrick Middlebrooks, another African-American defendant, on trial for selling cocaine, asked a trial court judge to replace Mostiler as his attorney because Mostiler had told him he wouldn't go to a particular neighborhood "cause them niggers would kill him."

In the end, Mostiler's sole defense in Osborne's case was that his crimes were not premeditated, a strategy that proved unsuccessful and ended with a guilty verdict and a sentence of death. Rulings in subsequent appeals found, Mostiler's incompetence notwithstanding, that the trial outcome would have been the same, and the death sentence was left standing.

While the Sixth Amendment sets down the constitutional right of all defendants to be represented by an attorney, the US Supreme Court has never ruled on what level of legal competence is required, leaving it up to each state. In countless capital cases, defendants such as Curtis Osborne receive shoddy defenses, with many ending on death row without recourse to meaningful appeal.

Barring any successful last-minute reprieves, Curtis

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Osborne's execution will be followed by a total of 24 executions in eight states through mid-October. The Supreme Court's ruling in April was widely interpreted as a green light for states across the nation to resume executions, which had been put on hold pending the challenge of two Kentucky death row inmates to the lethal injection method.

Texas alone presently has 13 executions scheduled between now and October 16. On Tuesday, Texas inmate Derrick Sonnier received a reprieve only about 90 minutes before he was scheduled to be put to death at the state's death chamber in Huntsville.

Sonnier was convicted and sentenced to death for the 1989 murders of a young suburban Houston woman, Melody Flowers, and her two-year-old son. He was initially scheduled to die in February, but his execution was stalled pending the outcome of the Supreme Court's ruling.

Sonnier's attorneys had filed a last-minute appeal calling on a judge to halt the execution on the grounds that the state of Texas has changed its lethal-injection procedures, and the Texas Court of Criminal Appeals issued a last-minute stay of execution. The court is also hearing a similar appeal by state inmate Heliberto Chi, and it had halted his execution in October.

It is not immediately clear how the court's ruling in Sonnier's case will affect the other scheduled executions in Texas, but is likely that the stays of execution will only be in force until Texas authorities can iron out the technicalities in state's lethal injection procedure.

Texas death row inmate Kevin Watts, who has an October 16 execution date, commented on the revving up of the state's killing machine, "It's going to be a bloodbath with the state of Texas, like old day lynchings."

Of the 42 executions carried out in the US last year, 26 were in Texas. Since the US Supreme Court reinstated capital punishment in 1976, Texas has sent 406 condemned men and women to their deaths, more than a third of the 1,102 executions in the US as a whole. Those put to death have included foreign nationals, the mentally impaired and those convicted for crimes committed as juveniles. During his five years as Texas governor before assuming the presidency, George W. Bush presided over 152 of these state killings.

Other states planning executions between now and October 16 include: South Carolina (1), Virginia (5), Oklahoma (2), Florida (1), Louisiana (2) and South Dakota (1).

In a divided decision in 2002, the US Supreme Court ruled that execution of the mentally retarded is unconstitutional. However, at least two of the four prisoners executed since the lethal injection ruling this April have been mentally impaired. The high court's ruling left it up to the states to determine a condemned prisoner's mental status.

Earl Wesley Berry, 49, was put to death May 21 in Mississippi despite ample evidence to suggest he suffered from mental retardation. Berry was convicted and sentenced to death for the 1987 beating death of Mary Bounds in north Mississippi.

An affidavit filed by his attorneys in April included statements of a psychologist that Berry had an IQ of 75 or lower and/or "significantly sub-average intellectual functioning" and determined that "to a reasonable degree of psychological certainty that further testing will demonstrate that Mr. Berry meets the criteria established by the American Psychiatric Association and the American Association on Mental Retardation to be classified as mentally retarded."

Berry's attorneys failed to present any of this evidence at his 1988 trial. Following the high court's 2002 ruling, Mississippi authorities denied Berry an evidentiary hearing on his mental status—which could have spared his life—on a technicality.

Thirty-one-year-old Kevin Green was executed in Virginia on May 27. Following his execution, defense attorney Timothy Richardson told reporters, "We just executed a man with the IQ of an 11-year-old child." Mental health experts had testified that Green had an IQ not exceeding 65, only five points above the generally accepted definition of mental retardation. An appeals court ruled last year that Green's mental incapacity was not sufficient to stay his execution.

The Death Penalty Information Center estimates that 44 prisoners with mental retardation have been executed since the 1976 reinstatement of the death penalty. These latest executions show that the high court's 2002 ruling is not a clear barrier to sending such condemned prisoners to their deaths.

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