

US Supreme Court denies reprieve for mentally retarded Texas death row inmate

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Milton Mathis, 32, was executed Tuesday evening at the Huntsville prison in Texas. He was administered a lethal injection and was pronounced dead just after 6 p.m. local time. He was the sixth death row inmate in Texas to be put to death this year.

The US Supreme Court rejected an appeal by Mathis's attorneys for a reprieve. His defense team had argued that his execution violated the Eighth Amendment to the US Constitution's ban on cruel and unusual punishment due to Mathis's mental retardation.

Mathis's attorneys also claimed that the condemned man was the victim of a "freakish coincidence of federal judicial error and state procedural law" which prevented his mental impairment claim to be considered in federal court. A federal judge's earlier denial of a stay of execution has precluded litigation in state district court.

Mathis came within a day of execution in 2005 before it was halted by the Texas Court of Criminal Appeals so it could review his claims.

The US high court ruled in 2002 in *Atkins v. Virginia* that the mentally retarded cannot be executed. (See "Divided US Supreme Court ruling bans execution of the mentally retarded".) However, the Supreme Court justices left it to the states to determine how to decide whether a person has mental disabilities. Prior to this decision, an estimated 44 mentally retarded people were executed between 1984 and 2002.

Milton Mathis was convicted and sentenced to death in the December 15, 1998 murders of Travis Brown III, 25, and Daniel Hibbard, 31. Mathis's third victim, Melanie Almaguer, 15 years old at the time, was shot in the head and remains paralyzed from the neck down.

In 1999, Mathis scored 62 on a standardized IQ test administered by the Texas correctional system. This was 8 to 13 points below the generally agreed threshold for mental retardation. The state, however, had based its argument that Mathis was not mentally retarded on a childhood IQ score of 79 on a test the defense contended may have been outdated and unreliable.

Post-trial, an experienced forensic psychologist conducted five different mental evaluations of Mathis. One of these tests was the Wechsler Adult Intelligence Scale-Third Edition (WAIS III), considered the gold standard by mental health experts. Mathis scored 64 on the WAIS III, slightly higher than the correctional system score.

After administering the series of tests, conducting a full-day interview with Mathis, and reviewing court affidavits and previous tests, the forensic psychologist concluded that Mathis had mental retardation. The state, however, characterized the WAIS III test as "too subjective." They also pointed to "racial bias" that stereotypes African-Americans as unintelligent, perversely seizing on this to deem Mathis "fit" for execution!

State prosecutors also said the low test scores may have been the result of heavy drug use, including PCP and "Fry," a marijuana cigarette soaked in embalming fluid, laced with PCP, codeine cough syrup, and alcohol. Mathis's attorneys did not dispute this, but argued that the cause of his mental retardation did not invalidate the diagnosis. They say that, beginning from about age 12, he abused drugs and that he most likely suffered significant and permanent brain damage as a result.

According to the American Association on Mental Retardation (AAMR), a set of diagnostic features must be exhibited before the age of 18 for an individual to be

defined as mentally retarded. These include (1) sub-average general intellectual functioning (an IQ of 70-75 or below, existing concurrently with (2) related limitations in two or more adaptive skill areas, such as communication, self-care, social skills, health and safety, academics, leisure and work.

There is little doubt that Milton Mathis exhibited these diagnostic features long before he turned 18. As early as the first grade, he fell short of the intellectual capacity of his peers. He struggled with reading, writing and completing simple math problems.

According to the International Justice Project, “His family and people within the community recall Mathis had difficulty with everyday activities: dressing himself properly, keeping himself clean, cooking, getting places on his own, managing (and even counting) money, and remembering simple tasks. As he got older, his behavior was often age-inappropriate, and he had difficulty expressing himself.”

Despite this overwhelming body of evidence that Milton Mathis was indeed mentally retarded, the Supreme Court denied his appeal for clemency, and he became the 470th individual put to death by the Texas killing machine in the modern era. Since the US Supreme Court reinstated the death penalty in 1976, executions in Texas have accounted for more than 37 percent of the executions carried out nationwide.

Texas Governor Rick Perry, a possible contender for the Republican presidential nomination, has presided over 232 executions, even outstripping his predecessor George W. Bush, who presided over 152 state killings before assuming the presidency in 2001.

Before the 2002 Supreme Court decision ruling execution of the mentally retarded unconstitutional, governors Bush and Perry both opposed legislation in Texas that would have barred execution of individuals with mental retardation. Such individuals have been sent to their deaths along with foreign nationals denied their consular rights, women, and those convicted for crimes committed as juveniles.

In addition to executing the mentally retarded, people suffering from varying types of mental illness have been put to death. Mentally impaired death row prisoners executed in Texas over the last decade have included the following:

Kelsey Patterson, executed May 18, 2004, suffered from paranoid schizophrenia, believing that electronic

devices implanted in his body were controlling him.

James Colburn, executed on March 26, 2003, had a long history of mental illness. He said that at the time he committed the murder for which he was condemned to die, “I was just in a bad state of mind. I was undergoing bad influences—voices, illusions—that were fueling my paranoia.”

Monty Delk was executed on February 28, 2002. His lawyer described Delk’s behavior on death row as “long periods of psychotic thought punctuated by grandiose delusions, incoherent ramblings, and smearing himself with his own feces, interspersed with brief moments of lucidity and compliance.”

Larry Robison, executed on January 21, 2000, was diagnosed with schizophrenia. He maintained that the murder for which he was convicted was the result of hallucinations suffered due to his mental illness.



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