

Georgia Supreme Court grants stay of execution to mentally disabled prisoner

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The Georgia Supreme Court granted a last-minute stay of execution to death row prisoner Warren Hill, who had been scheduled to be put to death at 7 p.m. on Monday. Hill's impending execution has provoked international protests from human rights and mental health advocates.

Earlier on Monday, Fulton County Superior Court Judge Craig Schwall had ruled against Hill, saying that Georgia's recent change to a single drug lethal injection protocol did not violate state law. However, he had also asked the Georgia Supreme Court to issue a substantive decision on whether the change in protocol violated the state's Administrative Procedure Act, which requires a 30-day comment period before changes are made. Judge Schwall argued that the state's high court had yet to decide the lethal-injection protocol issue on its merits.

The state's Supreme Court stay is temporary and Hill's execution can still proceed at a later date after the court has ruled on the lethal injection issue. Hill is also challenging the state statute that determines whether a condemned inmate is mentally disabled and thereby ineligible to be executed.

Warren Hill, 52, was sentenced to death for the 1990 beating death of his cellmate, Joseph Handspike, when he was already serving a life sentence for the 1986 murder of his girlfriend, Myra Wright. The Georgia Board of Pardons and Paroles denied commutation of Hill's death sentence a week ago, on July 16, but delayed the execution for a week pending a ruling on the lethal injection protocol.

The execution of Warren Hill, an individual showing clear signs of mental disability, would contravene a 2002 US Supreme Court ruling banning execution of the mentally disabled. By a 6-3 vote in *Atkins v. Virginia*, the high court ruled that execution of the

"mentally retarded" is a violation of the Constitution's Eighth Amendment ban on "cruel and unusual punishment." However, the ruling left the determination of what constitutes mental retardation up to the states.

In 1988, Georgia was the first US state to outlaw the execution of inmates with mental disabilities. However, state statutes require that mental impairment be proved "beyond a reasonable doubt," setting the bar higher than in any other US state that practices capital punishment. While a lower Georgia court in 2002 found Hill to be mentally disabled "by a preponderance of the evidence," the Georgia Supreme Court overturned this ruling in 2003, saying that Hill's mental disability did not meet this "reasonable doubt" threshold.

Psychiatrists and legal experts concur that proving mental disability "beyond a reasonable doubt" is virtually an impossible standard to uphold. Warren Hill, however, has been found to have an intellectual disability by numerous mental health experts, and his personal history bears this out.

Tests have shown Hill had an IQ of about 70, putting him in the range of mild mental disability. In elementary and middle school, standardized tests placed him in the bottom 2-3 percent of his classmates in academic ability. Appealing for clemency, Hill's attorneys have included a statement from two of his former elementary school teachers, who said it was "obvious" to them that he was mentally disabled.

Despite these clear signs of mental disability, juries at Hill's two murder trials were never informed of his IQ or signs of his mental impairment. In a letter to the Georgia Pardons Board, Richard Handspike, whose uncle was killed by Hill in 1990, wrote that his family "feels strongly that persons with any kind of significant

mental disabilities should not be put to death.” Several jurors have also indicated that they would not have recommended the death penalty if they had known Hill’s mental health history.

The impending execution of Warren Hill has provoked international outrage and calls for his sentence to be commuted. Christof Heyns the UN special rapporteur on extrajudicial summary or arbitrary executions, declared that execution of individuals suffering from “psychosocial disabilities” is a “violation of death penalty safeguards.” A spokesperson for the French Ministry of Foreign Affairs has also appealed to Georgia to halt Hill’s execution as a “first step to abolishing the death penalty” worldwide.

Antonio Ginatta, US advocacy director at Human Rights Watch, stated: “Requiring proof of intellectual disability beyond a reasonable doubt in death penalty cases makes Georgia an extreme and cruel outlier. The Supreme Court should not let Georgia flout the ban on executing people with intellectual disabilities through a legal technicality.”

Leah Sears, former chief justice of Georgia’s Supreme Court, commented on the state’s “beyond a reasonable doubt” standard, writing in court documents that the “state may still execute people who are in all probability mentally retarded. The state may execute people who are more than likely mentally retarded. The state may even execute people who are almost certainly mentally retarded.”

Despite the US Supreme Court ruling banning the execution of the mentally disabled, the state killing machine continues to sentence such individuals to death.

Last Wednesday, Yokamon Laneal Hearn, 33, was executed by the state of Texas. Hearn’s attorneys had appealed for clemency for their client on the grounds that he had a history of mental health problems and suffered from Fetal Alcohol Syndrome. These disabilities were never raised by Hearn’s legal counsel at his capital trial or on appeal.

Marcus Druery, also on death row in Texas, faces execution on August 1, despite showing clear signs of mental incompetence. The Texas Defender Service, filing a motion to delay Druery’s execution, cited the findings of a psychologist who examined the condemned prisoner earlier this year: “His delusional

ideas so pervade his understanding of his case that he no longer understands that it was him who committed the crime, and that he’s the one who has to suffer the punishment.”

By continuing to practice capital punishment, the United States stands virtually alone among the world’s major industrialized nations. Thirty-three of the 50 US states continue to hand down death sentences. Since the US Supreme Court reinstated the death penalty in 1976, 1,301 individuals have been executed, including those convicted of crimes committed as juveniles, foreign nationals denied their consular rights and the mentally disabled.



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