

Texas executes mentally disabled prisoner using one-drug lethal injection

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The state of Texas executed death row prisoner Yokamon Laneal Hearn on Wednesday, utilizing a new one-drug lethal injection protocol. Hearn, 33, was pronounced dead at 6:37 p.m. local time, about 25 minutes after the administration of the sedative pentobarbital by prison officials. The US Supreme Court had rejected appeals to halt the execution several hours earlier.

Hearn was convicted and sentenced to death for murder in connection with a 1998 carjacking in Dallas. With his execution, Texas became the latest state to switch to executions with the use of a single dose of pentobarbital, following Arizona, Idaho, Ohio and Washington. The change came after the expiration of the supply of another drug that had been used in the state's lethal three-drug cocktail.

Critics of the use of the single-dose pentobarbital protocol claim that it may be less humane than other methods of lethal injection. While the drug is highly regulated when used in the euthanasia of animals, in Texas, as in other states, the lethal injection protocol is left to the discretion of prison authorities with no medical training. The Texas Code of Criminal Procedures simply states that executions must be carried out "by intravenous injection of a substance or substances in a lethal quantity sufficient to cause death."

Attorneys for Yokamon Hearn 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, issues that were never raised by his legal counsel at either his initial trial or on appeal.

In June 2002, the US Supreme 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 high court left it to the US states that practice capital punishment to determine what constitutes mental retardation.

The Texas Coalition to Abolish the Death Penalty (TCADP) described some of the mitigating evidence related to Hearn's mental condition, which "includes the fact that both of his parents were severely impaired throughout his life and he was the victim of extreme neglect; he experienced mental health problems as a young child; and he had brain damage due to his mother's drinking during her pregnancy with him that caused him to have severe impairments in day-to-day functioning."

But Texas authorities were determined to send Yokamon Hearn to his death despite his mental disability and his lawyers' failure to investigate this history or bring it up at his capital trial or on appeal. Former Dallas County assistant district attorney Jason January, who prosecuted Hearn for capital murder, stated that halting Hearn's execution due to the condemned man's Fetal Alcohol Syndrome "would be a free pass for anyone whose parents drank."

Hearn's current attorneys had also sought relief for their client on the basis of another decision of the US Supreme Court, in March of this year. In *Martinez v. Ryan*, the court ruled that defendants are entitled to federal court review of their "ineffective assistance of counsel" claims, even if such claims are procedurally barred, if they have been barred due to the ineffectiveness of legal counsel in the first round of post-conviction *habeas* review.

However, a US District Court ruled earlier this month in Hearn's case that he was not entitled to further relief. Judge Sidney A. Fitzwater based his decision on a 5th Circuit Court ruling that so narrowly interpreted the high court's ruling in *Martinez* as to make it

virtually inapplicable to cases in Texas.

The Texas Board of Pardons and Paroles, along with Governor Rick Perry, a Republican, ignored the appeals of the United Nations human rights investigator—as well as the TCADP and other death penalty opponents—to grant a reprieve of execution to Yokamon Hearn and commute his sentence to life imprisonment. He became the sixth death row prisoner to be executed this year in Texas.

Since the US Supreme Court reinstated the death penalty in 1976, Texas has sent 483 individuals to their deaths, more than any other state. Texas has eight more executions scheduled through November. Pentobarbital is in short supply because its Danish manufacturer has said it will try to prevent its use for executions, but Texas said in May it had enough of the sedative to carry out 23 more state killings.

One of those condemned to die is Marcus Druery, who faces execution August 1 despite showing clear signs of mental incompetence. The Texas Defender Service recently filed a motion to delay his execution, citing the findings of a psychologist who examined Druery earlier this year and determined: “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.”

The state of Texas acknowledges that Druery suffers from delusions, schizophrenia, “thought broadcasting” and auditory hallucinations. State officials have yet to determine, however, whether his medical condition meets the legal definition of insanity. A preliminary hearing will be held July 24 to determine when a full competency investigation will be held.

The Death Penalty Information Center quotes the comments of Kate Black, one of Marcus Druery’s attorneys: “The state’s own experts have diagnosed him as having paranoid and disorganized schizophrenia. He’s been housed in the psychiatric unit. So, they’re well aware of his irrationality, and yet have still sought an execution date in this case.”



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