Texas executes mentally disabled death row prisoner

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The barbarity of the US death penalty system was on display last night when the state of Texas executed the second mentally disabled death row prisoner in less than three weeks. Marvin Wilson, 54, was sent to his death after the US Supreme Court failed to grant him a stay of execution, ruling less than two hours before his lethal injection was set to begin.

Wilson was killed by a lethal dose of the sedative pentobarbital injected into his veins by prison authorities at about 6 p.m. local time. Death row prisoner Yokamon Hearn was put to death on July 19, the first Texas prisoner to be executed utilizing the new one-drug protocol.

Marvin Wilson was convicted and sentenced to die for the killing of police informant Jerry Williams in November 1992. Wilson was fingered as the killer by the wife of his accomplice, Andrew Lewis, who received a life term for his involvement in the crime.

Wilson showed clear signs of intellectual disability. Tests measured his IQ at 61, placing him below the first percentile of functioning, and with the mental capacity of a six-year old. This finding and other clinical tests led an expert neuropsychiatrist to diagnose Wilson with "mild mental retardation." His lawyers noted that he could not use a telephone book or match socks. He did not understand what a bank account was for, and had been known to tighten his belt to the point of nearly cutting off his circulation.

His execution stood in clear breach of the 2002 US Supreme Court ruling banning execution of the mentally disabled. The high court ruled in *Atkins v. Virginia* that execution of the "mentally retarded" is a violation of the Constitution's Eighth Amendment ban on "cruel and unusual punishment" on the basis of "evolved standards of decency."

The Supreme Court justices, however, left it up to the states to determine what constitutes mental retardation. In Texas, authorities base their determination of whether a condemned prisoner should be spared the death penalty on a set of standards that deviate widely from accepted psychological measurements of intellectual disability. In the drive to keep the state death machine rolling, a heavy burden is placed on the condemned prisoner to prove his or her intellectual disability.

In a 2004 ruling, the Texas Court of Criminal Appeals established evidentiary factors to be considered when determining whether a defendant is mentally retarded and therefore cannot be executed. These so-called "Briseno factors" include a series of questions fact-finders should ask to determine whether a defendant is mentally impaired enough to be spared.

These questions include subjective and unscientific factors such as whether a defendant can plan and lie, and whether the defendant's family and friends "think he is mentally retarded." The final criterion deviates from reason, introducing emotion into the process by asking "whether commission of the offense required forethought, planning, and complex execution of purpose."

The American Association on Intellectual and Developmental Disabilities has described the "Briseno factors" as "based on false stereotypes about mental retardation that effectively exclude all but the most severely incapacitated." In their petition to the Supreme Court, Wilson's lawyers argued that the Texas standards "lack any scientific foundation," unfairly excluding those who would otherwise legitimately be considered clinically mentally disabled.

In an effort to justify its standards for determining whether a defendant can be spared from execution based on intellectual disability, the Court of Criminal Appeals of Texas argued that they were obliged to define "that level and degree of mental retardation at which a consensus of Texas citizens should be exempted from the death penalty."

The court went on to make a bizarre reference to literary fiction, citing the character Lennie Small, the mentally impaired migrant worker from John Steinbeck's novel, *Of Mice and Men*. "Most Texas citizens might agree that Steinbeck's Lennie should, by virtue of his lack of reasoning ability and adaptive skills, be exempt" from execution, the court wrote.

But the court went on to ask: "Is there a national or Texas consensus that all of those persons whom the mental health profession might diagnose as meeting the criteria for mental retardation are automatically less morally culpable than those who just barely miss meeting those criteria?"

In a prepared statement, Thomas Steinbeck, son of the Pulitzer-Prize winning author, vigorously objected to the reference to the character from Steinbeck's novel as part of the argument justifying execution of the mentally disabled:

"On behalf of the family of John Steinbeck, I am deeply troubled by today's scheduled execution of Marvin Wilson, a Texas man with an I.Q. of 61. Prior to reading about Mr. Wilson's case, I had no idea that the great state of Texas would use a fictional character that my father created to make a point about human loyalty and dedication, i.e., Lennie Small from *Of Mice and Men*, as a benchmark to identify whether defendants with intellectual disability should live or die.

"My father was a highly gifted writer who won the Nobel prize for his ability to create art about the depth of the human experience and condition. His work was certainly not meant to be scientific, and the character of Lennie was never intended to be used to diagnose a medical condition like intellectual disability. I find the whole premise to be insulting, outrageous, ridiculous, and profoundly tragic. I am certain that if my father, John Steinbeck, were here, he would be deeply angry and ashamed to see his work used in this way."

After the Supreme Court's refusal to issue a stay, Wilson's attorney, Lee Kovaskey, described the ruling as a "shocking failure."

"It is outrageous," he stated, "that the state of Texas continues to utilize unscientific guidelines to determine which citizens with intellectual disability are exempt from execution. [The guidelines] are not scientific tools, they are the decayed remainder of an uninformed stereotype that has been widely discredited by the nation's leading groups on intellectual disability."