

Missouri executes brain-damaged 74-year-old

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The state of Missouri executed 74 year-old Cecil Clayton Tuesday night, after a more than a three-hour delay while his appeals were considered. Clayton was put to death despite overwhelming evidence of his intellectual disability caused by a sawmill accident more than four decades ago.

Clayton was injected with a single lethal dose of pentobarbital at 9:13 p.m. in the execution chamber at the state prison in Bonne Terre. The Missouri Department of Corrections said he was pronounced dead at 9:21 p.m.

The US Supreme Court denied Clayton's last-minute appeal for a stay of execution. Missouri Governor Jay Nixon, a Democrat, also denied his appeal for clemency. On Saturday, the Missouri Supreme Court ruled 4-3 against Clayton's procedural request for a mental competency hearing before his execution.

"The world will not be a safer place because Mr. Clayton has been executed," Elizabeth Unger Carlyle, one of his lawyers, said in a statement. She said putting Clayton to death without a mental competency hearing violated US and state law, "and basic human dignity."

Clayton was convicted and sentenced to death for the 1996 shooting death of Missouri Deputy Sheriff Christopher Castetter. Twenty-four years before this crime, Clayton was working on a log in a lumberyard in Purdy, Missouri, when a piece of wood broke off the saw mill and struck him in the head, piercing his skull and sending shards of bone deep into his brain.

To save Clayton's life, surgeons were forced to remove a fifth of his frontal lobe—the area of the brain that controls judgment, inhibition and impulsive behavior. One of his brothers testified that after the accident Clayton "broke up with his wife, began drinking alcohol and became impatient, unable to work and more prone to violence." Recent tests have placed his reading and writing skills at the third- or fourth-grade level.

The US Supreme Court has consistently ruled in recent years that the Eighth Amendment to the US Constitution forbids the execution of people whose mental illness or intellectual disability prevents them from understanding the consequences of their actions or why they are being put to death. However, the high court justices left it up to the states to determine what constitutes intellectual disability.

After Clayton's March 17 execution date was set in January, his attorneys petitioned the courts for a competency hearing in an effort to prevent his death sentence from being carried out. The US Supreme Court has ruled that condemned inmates have a due process right to a mental competency hearing once their execution date is set.

The Missouri Supreme Court ruled that Clayton had no right to such a hearing, and that he did not meet the "substantial threshold showing" established to prevent so-called frivolous claims that might slow down the state killing machine. In their petition to the nation's high court on Monday, Clayton's attorneys argued that "the Missouri Supreme Court ... essentially required Clayton to prove his incompetency in order to obtain a hearing on his incompetency."

Even if Clayton had been granted a competency hearing by the state Supreme Court, it is unclear whether it would have ruled that his disability should have stopped the execution. The Missouri death penalty statute requires that an inmate's intellectual disability be "manifested and documented before eighteen years of age." As Clayton was 32 years old at the time he became brain damaged, there was a fair likelihood that he would not have met the criteria.

Ruling against a competency hearing for Clayton, the state court seized on this bizarre loophole in the law. "The school records and other evidence provided by Clayton in this case show that he was of average intelligence—or better—before age 19, and this continued

at least until his brain injury in 1972,” the court explained in its ruling. “Accordingly, he cannot be ‘intellectually disabled’ as that term is defined in Missouri law.”

One of the three dissenters on the Missouri court, Judge Laura Stith, noted that neither a jury nor a Missouri court had considered Clayton’s most recent IQ score of 71 or evaluated several psychiatrists’ opinions after his trial. She referred to last year’s 5-4 ruling by the US Supreme Court in *Hall v. Florida*, which struck down Florida’s strict adherence to the 70 standard for determining intellectual disability. The high court ruled that other factors had to be taken into account when assessing mental competency.

The Missouri death penalty statute reads in part: “No person condemned to death shall be executed if as a result of mental disease or defect he lacks capacity to understand the nature and purpose of the punishment about to be imposed upon him.” There was abundant evidence that Clayton did not understand the gravity of his situation.

Defense attorney Cyndy Short, who prepared Clayton’s clemency petition, said of a recent meeting with her client at the Potosi Correctional Center days before his execution, “He did not seem to be emotionally tracking on what was going on. It was very inconsistent with someone looking at a pending execution.”

The *Kansas City Star* quoted a doctor who recently examined him: “He is simply incompetent legally; he would be unable to care for himself or manage basic self-care, were he not in a structured environment that takes care of him.” The doctor noted, “He can shower, groom, eat, walk; it is his comprehension, judgment, memory, limited intelligence and social deficits that plague him.”

In a video statement prepared for her father’s clemency hearing, Jena Clayton said, “He is brain-damaged, and talking with him is like talking to a child.” She added, “I do not believe we are the kind of country that executes the disabled.” The execution of Cecil Clayton has brutally refuted this notion. Earlier this year, the states of Texas and Georgia also executed two individuals who demonstrated clear signs of mental disability.

Last December, Missouri Governor Nixon denied clemency to Paul Goodwin, another death row inmate

who demonstrated clear mental incompetency. Nixon’s support for the death penalty and its use on the intellectually disabled is in line with his response to protests last August over the police killing of unarmed teenager Michael Brown, when he declared a state of emergency and called out the National Guard to suppress the protests.

Missouri has one of the most active execution chambers in the US. The state sent 10 individuals to their deaths in 2014, tying with Texas for the most executions among the 32 states that still carry out the barbaric practice. Missouri has executed 82 people since the US Supreme Court reinstated the death penalty in 1976.



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