

# Texas executes mentally incompetent death row prisoner

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Derrick Dwayne Charles was executed Tuesday in Texas at the Walls Unit execution chamber in Huntsville. Charles, 32, was injected with a single dose of pentobarbital and was pronounced dead at 6:36 p.m. local time.

Charles's execution went forward after the US Supreme Court declined to review whether he had been wrongly refused help in developing an incompetency claim based on his mental disability. He was the seventh prisoner executed in Texas so far this year, more than in any other state.

Charles was convicted and sentenced to death in 2003 for the killings 13 years ago of his 15-year-old girlfriend Myiesha Bennett, her mother Brenda Bennett and her grandfather Obie Bennett. Nineteen years old at the time, Charles told authorities that he was high from smoking marijuana soaked in embalming fluid and was delusional when he committed the crimes. He pleaded guilty to capital murder, leaving it to a jury to decide whether he should receive a life sentence or the death penalty.

The US Supreme Court denied a last-minute appeal on Charles's behalf to stay his execution, despite clear signs of his intellectual disability. In 1986, the high court ruled in *Ford v. Wainwright* that an individual should be spared execution if "mental illness prevents him from comprehending the reasons for the penalty or its implications."

Charles's lawyers argued that their client "suffered from severe and debilitating mental illness since childhood" as a result of genetic inheritance and his childhood environment.

Recently, the Houston-based US District Court for the Southern District of Texas also rejected Charles's petitions for a stay and for funds to hire a mental health expert to develop his insanity claim. Turning down the

petitions, US judge Nancy Atlas also seized on the technicality that Charles's attorney waited four months after the state had set an execution date before turning to the courts.

The Fifth Circuit Court of appeals in New Orleans refused to halt Charles's execution as well.

Charles's appellate attorney, Paul Mansur of the Texas Defender Service, argued in a series of unsuccessful appeals that Charles received some psychiatric care as an adolescent and most likely suffered from attention deficit disorder, depression and a possible brain injury. Court documents assert that his mother suffered from schizophrenia.

According to court records, Charles was diagnosed with depressive disorder and at age 10 was violent toward his peers, lost his temper easily, had witnessed domestic violence and had to undergo treatment due to "serious dysfunctionality at home and at school." A psychological assessment notes that he came from a "very deprived background."

Hospital records show that Charles was at risk for mental anguish and suicide and suffered seizures and stuttering as an infant. In 1995, his parents admitted him to the hospital for symptoms of depression, lack of sleep, irritability and violent outbursts, including fights at school. Hospital records at the time showed Charles testing "in the intellectually deficient range of intelligence" and exhibiting "some signs of neurological problems."

This record of mental impairment was not enough to sway the courts to spare Derrick Charles's life.

Texas lawmakers are also intent on keeping the state's killing machine going, despite a shortage of pentobarbital, the lethal drug used by the state to send prisoners to their deaths. After Charles's execution, Texas has only two more doses of the deadly

barbiturate on hand.

In a 23-8 vote Monday, a state Senate measure to keep the names of execution drug providers from the public won initial approval. State Sen. Joan Huffman said her legislation, Senate Bill 1697, was a “practical solution” to the harassment and threats faced by companies who provide pentobarbital to the state prison system. A similar measure has been proposed in the Texas House.

“Discussion in the public area has led to a chilling effect for companies who want to supply this compound to the state of Texas,” Huffman said. “There are very few doses left of the drug that’s currently being administered.”

Texas and other states have turned to compounding pharmacies, which are only loosely regulated, for the drugs for lethal injections, as manufacturers in the US and Europe have stopped providing them for use in executions.

In 2013, the Texas Department of Criminal Justice (TDCJ) announced that the Woodlands Compounding Pharmacy, near Houston, had provided it with doses of pentobarbital. The Woodlands owner said public knowledge of the transaction led to threats against the pharmacy. After this, the TDCJ stopped releasing the names of its pentobarbital suppliers.

Last year, then-Texas attorney general Greg Abbott concluded that the names of the compounding pharmacies could be kept secret, despite the fact that such information has long been public. A Travis County judge then ruled in December that the prison system must make the providers’ identities public. TDCJ has refused to release the names of its drug sources as the issue plays out.

State Senator Kirk Watson, an opponent of Senate Bill 1697, commented, “We are moving into an area here where we are talking about contracts with the state that we are going to hide from the public.”

Attorneys for death row inmates in Texas and other states argue that such secrecy on the lethal chemicals makes it impossible to ensure that the state can carry out an execution in line with the Eighth Amendment’s prohibition on cruel and unusual punishment. They point to a series of recent executions in which condemned inmates displayed clear signs of pain during their lethal injections.

These executions included that of Michael Wilson in

Oklahoma, who said, “I feel my whole body burning” while strapped to the gurney; Dennis McGuire in Ohio, who gasped for air and choked for about 10 minutes before dying; and Clayton Lockett in Oklahoma, who regained consciousness during his execution, writhing and moaning, before finally succumbing 43 minutes later.

Of the 1,408 executions carried out in the US since the Supreme Court reinstated the death penalty in 1976, 525 of them have been in Texas.



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