

Missouri carries out first execution since Supreme Court lethal injection ruling

Kate Randall
15 July 2015

David Zink, 54, was executed by the state of Missouri on Tuesday. His lethal injection was administered at the Eastern Reception, Diagnostic and Corrections Center in Bonne Terre at 7:33 p.m. local time. He received one lethal dose of pentobarbital and was pronounced dead at 7:41 p.m.

Zink was convicted and sentenced to death for the 2001 brutal rape and murder of 19-year-old Amanda Morton. He waived his Miranda rights and confessed to the crime. A jury deliberated for 90 minutes in 2004 before sentencing him to death.

Zink's execution was the first carried out nationwide since the US Supreme Court's June 29 ruling in *Glossip v. Gross* upholding the constitutionality of Oklahoma's lethal injection protocol, which utilizes the sedative midazolam. Oklahoma has set the execution dates of the three death row inmates in the case that was brought before the high court.

The US Supreme Court denied Zink's last-minute appeal and the Missouri Supreme Court declined his appeal on Monday. A clemency request was also denied by the 8th US Circuit Court of Appeals. Missouri Governor Jay Nixon, a Democrat, also denied his bid for clemency.

In Zink's clemency petition to the governor, his lawyers argued that jurors at his trial were unaware that he suffered from brain damage as a result of a serious childhood illness. At age three, Zink contracted meningitis/encephalitis, leading to an eight-day hospital stay.

Neuropsychologist D. Malcolm Spica, who recently evaluated him, confirmed that this illness very likely led to organic brain damage. Spica performed cognitive tests that showed Zink performing in the first percentile, meaning that 99 percent of subjects do better in so-called executive functioning. This includes the

abilities to control impulses, process complicated information and make decisions.

The clemency petition also noted that Zink "Represented Self in Trial Due to Public Defender Neglect." According to the petition, Zink was to be represented by the Western Capital Division of the Missouri Public Defender System, but requests from initial attorneys for resources were denied and continuances by attorneys delayed the trial.

Frustrated by the delays, Zink opted to represent himself, a request that was, remarkably, honored by the trial judge. The public defenders reportedly chose not to inform the judge of their inability to "successfully represent Mr. Zink," the petition notes, adding, "Mr. Zink was sacrificed to the organizational concerns."

The US Supreme Court's majority ruling in *Glossip v. Gross* reaffirmed the right of Oklahoma, Missouri and other states to continue the barbaric practice of capital punishment, and to do so by methods of their choosing.

The high court ruled that Oklahoma's lethal injection protocol did not violate the US Constitution's Eighth Amendment prohibition on "cruel and unusual punishment," despite substantial evidence that the use of midazolam in executions can cause excruciating pain. The high court also maintained that if condemned inmates oppose a particular method of execution, they are obliged to recommend an alternative protocol.

Zink's attorneys, Rick Sindel and Kay Parish, who are among the first to defend a death row inmate post-*Glossip*, were placed in the impossible position of arguing that their client's planned lethal injection was "cruel and unusual punishment," while being compelled to offer an alternative form of execution. As Parish told the *New Statesman*, "Lawyers must tell a court how to kill our clients."

Referring to the Supreme Court decision, Parish said, “It’s a pretty nasty ruling in my opinion, and one that puts those of us trying to prevent our clients from being forcibly subject to this human experimentation in quite an ethical quandary.” As death penalty opponents, Sindel and Parish chose not to suggest an alternative form of capital punishment.

Another attorney made an unusual last-ditch attempt to halt Zink’s execution. Justin Gelfand, a former federal tax prosecutor, prepared a public interest lawsuit using an obscure “Taxpayers Suit” law. The law, which has never been used in connection with a pending execution, allows action to be brought by private individuals to prevent the state or federal government from unlawfully diverting public funds.

Four plaintiffs argued that the suit was “not about the general legality of the death penalty in Missouri or elsewhere, but had been filed because “Missouri public officials responsible for overseeing and administering executions are violating federal and state law using the tax dollars of hardworking Missourians.”

Basing themselves on arguments made previously by Sindel, Parish and other attorneys, the suit argued that Missouri’s use of compound pentobarbital is illegal because it is procured by an invalid prescription, which is written by a doctor who is contractually bound to write the prescription, but performs no medical examination of the person slated for execution.



To contact the WSWS and the
Socialist Equality Party visit:

wsws.org/contact