

US Supreme Court denies appeals of four death row inmates

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On Monday, the US Supreme Court denied review in four death penalty cases, each of which had been relisted by the court multiple times. The rejected appeals follow the court's denial of stays of execution last week for two death row inmates, one each in Georgia and Alabama.

One of the inmates denied review by the high court on Monday was Romell Broom, who was sentenced to death for the rape and murder of 14-year-old Tryna Middleton in 1984 in Cleveland, Ohio. The state of Ohio attempted to execute Broom in 2009, but the execution was called off after two hours, during which he cried out in pain while receiving 18 needle sticks.

The high court's ruling denies Broom the opportunity to argue that giving the state prison agency a second chance to execute him would amount to cruel and unusual punishment and double jeopardy. Broom's case was relisted four times before being denied. His execution has yet to be rescheduled, due to other executions scheduled ahead of him.

Ohio currently has 142 prisoners on death row, and the state is scheduled to execute 13 in 2017, 8 in 2018, and 7 in 2019. In 2016, all executions in Ohio were put on hold because the state had difficulty obtaining the lethal drugs to carry them out. The state's supply of the drugs is still uncertain.

The Supreme Court considered the case of Florida death row inmate Henry Sireci nine times before denying his appeal on Monday. Sireci was convicted and sentenced to death for the 1976 murder of car lot owner Howard Poteet during a robbery.

Sireci argued in *Sireci v. Florida* that the main evidence used against him at trial was flawed. Jurors in his case were told that hair found at the crime scene matched Sireci's. But the FBI has subsequently acknowledged that the kind of hair-comparison

evidence the state relied upon to convict him is statistically invalid.

Justice Stephen Breyer dissented from the court's denial of review in both the Broom and Sireci cases. While not focusing on the merits of Sireci's argument, Breyer indicated that having spent four decades on death row awaiting execution constituted cruel and unusual punishment, in violation of the US Constitution.

He apparently had no backing for this view on the court. Justice Elena Kagan did back a dissent by Breyer in the Romell Broom case.

More broadly, Breyer argued that the death penalty itself is not imposed consistently. He repeated the view he put forward in his dissent of the high court's ruling in June 2015 that upheld executions utilizing the sedative midazolam, despite substantial evidence that use of the drug can cause excruciating pain, including in numerous botched executions.

Breyer reiterated this opinion on Monday, stating: "Individuals who are executed are not the 'worst of the worst' but, rather, are individuals chosen at random on the basis, perhaps of geography, perhaps of the views of individual prosecutors, or still worse on the basis of race," adding that "the time had come for the Court to reconsider the constitutionality of the death penalty."

The high court justices also denied Monday, without any noted dissents, two other death penalty appeals.

James Tyler was convicted of first-degree murder and sentenced to death in 1996. Tyler argued in *Tyler v. Louisiana* that the public defenders who represented him at trial conceded to the jury that he was guilty, despite the fact that he had told both the judge and his attorneys that he did not want to admit guilt and that he wanted a new lawyer. The court rejected Tyler's argument that his attorneys' conduct deprived him of

the Sixth Amendment right to an effective attorney.

Also denied on Monday was the appeal of inmate Sammie Louis Stokes of South Carolina, who was sentenced to death in 1999 for his role in two murders. One of the attorneys appointed to represent Stokes had prosecuted him eight years earlier for an alleged assault on his ex-wife. In *Stokes v. South Carolina*, the death row prisoner had asked the court to review whether his legal representation violated his constitutional right to have an attorney without a conflict of interest.

The Supreme Court's denial of review in these four cases follows its rejection of two last-minute appeals for stays of execution last week.

Last Tuesday, William Sallie, 50, was executed in Jackson, Georgia, after the Supreme Court rejected his appeal on the grounds that his due-process rights were repeatedly denied by both the state and federal court system. He was the ninth prisoner put to death in Georgia this year, more than in any other state.

Then on Thursday, the Supreme Court denied the appeal of Ronald Smith, 45, who had argued that Alabama's three-drug lethal injection protocol posed the danger of cruel and unusual punishment. He also appealed on the basis that a judge overrode the jury's 7-5 vote recommending life in prison, and sentenced him to death. Witnesses to Smith's execution reported that he gasped and coughed for about 13 minutes during his execution late Thursday night.

At one point on Thursday evening, four justices—Ruth Bader Ginsburg, Stephen Breyer, Sonia Sotomayor and Elena Kagan—all said they would have granted the request to hear Smith's appeal and grant a stay of execution. Currently, eight justices are serving on the court since the death of Antonin Scalia in February and the failure of the US Senate to vote on confirmation of President Obama's nomination for a replacement.

The votes of five justices are required for a stay of execution, which means that an even split of the eight-member court is insufficient. Smith's attorneys responded to the denial stating that "the Court should not permit executions in the face of four dissents," and that "the Court's inconsistent practices respecting 5-4 stay denials in capital cases clash with the appearance and reality both of equal justice under law and of sound judicial decision-making."

The attorneys were referencing a case less than a month ago, in which the Supreme Court issued a stay of

execution for Alabama inmate Thomas Arthur, who also had challenged the state's death penalty protocol. In that case, Chief Justice John Roberts voted with four justices, who were not named, as a "courtesy." There has been no indication why this "courtesy fifth" was extended in one Alabama case and not the other.

The Supreme Court has ruled as unconstitutional the execution of the intellectually disabled, those sentenced to death for crimes committed as juveniles, and those who have not committed murder or treason. Since reinstating the death penalty in 1976, however, the court has not ruled on the constitutionality of the death penalty itself.

The United States stands virtually alone in the industrialized world in utilizing capital punishment. It has rejected appeals from the European Union and international courts to ban the practice and halt the execution of foreign nationals, juvenile offenders, women, and the mentally disabled.

The incoming Trump administration will undoubtedly nominate a pro-death-penalty justice to fill the vacancy on the Supreme Court, setting up the likelihood that stays of execution and denials of appeals of death row inmates will recur with regularity.

The handing down of death sentences in the US has been substantially reduced, falling from about 300 annually in the 1990s to fewer than 50 annually today. Executions have likewise decreased, down from 98 in 1999 to 20 so far this year.

However, 2,905 prisoners languished on death row across the nation as of July 1, 2016, according to the Death Penalty Information Center. This is not a substantial reduction from the peak of 3,593 in 2000. Many of these prisoners remain on death row for decades. Thirty-one of 50 US states still have capital punishment on the books, along with the federal government and the US military.



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