Arkansas double-execution planned tonight as part of unprecedented killing spree

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A federal district judge in Arkansas declined on Friday to block the lethal injections of two death row inmates scheduled to die tonight in a double-execution in the Cummins Unit at the state prison in Grady.

Jack Jones and Marcell Williams would be the second and third prisoners out of an unprecedented eight that Republican Governor Asa Hutchinson had scheduled for execution before the state's supply of midazolam, one of the three drugs used in the state's lethal injection protocol, expires at the end of the month.

Late Thursday night, Ledell Lee, 51, was the first prisoner put to death in Arkansas in nearly a dozen years. His execution came after a flurry of legal challenges and rulings Thursday, including an 11:30 p.m. decision by the US Supreme Court, allowing the lethal injection procedure to begin. Lee was pronounced dead at 11:56 p.m., just 4 minutes before his execution warrant expired.

Legal rulings, including temporary stays, have blocked the executions of four inmates: Jason McGehee, Bruce Ward, Stacey Johnson and Don Davis. Davis was 15 minutes away from execution April 17 when the Supreme Court declined to overturn a stay handed down earlier that day by the Arkansas Supreme Court.

Arkansas prison authorities have acknowledged that legal issues in these cases cannot be resolved before the execution drug supply runs out at the end of April. Drugs for lethal injections have been increasingly difficult to obtain by death penalty states, largely due to companies, both in the US and Europe, not wanting their products associated with executions in general and executions gone awry in particular.

However, Arkansas authorities have vowed to push vigorously for the remaining three executions on the schedule to be carried out.

"As of this point right now, there are no stays in place for either Marcel Williams or Jack Jones moving forward to the executions set for Monday night," said state Attorney General Leslie Rutledge. "There are court cases, we are responding to those cases as they're being filed or as hearings are being conducted, we are firing on all cylinders at the attorney general's office and will continue to do so to ensure that … justice again is carried out."

In their case before the district court, Jones and Williams had argued that the use of midazolam, a sedative, would cause them unnecessary harm due to their obesity and other health reasons. District Court Judge Kristine Baker wrote that the two inmates' argument "falls short of demonstrating a significant possibility ... that the Arkansas protocol is 'sure or very likely' to cause severe pain and needless suffering."

On April 15, before the Arkansas "assembly line" executions were to begin, Judge Baker issued a temporary stay of the condemned inmates' lethal injections. At that time, she questioned the reliability of the sedative midazolam used as the first chemical in Arkansas' three-drug lethal injection protocol, writing, "If midazolam does not adequately anesthetize plaintiffs, or if their executions are 'botched,' they will suffer severe pain before they die." That ruling was overturned by the 8th Circuit Court of Appeals.

Arkansas' execution protocol begins with the sedative midazolam, followed by the paralytic vecuronium bromide, and ends with potassium chloride to induce cardiac arrest. A number of executions in recent years using midazolam—in Alabama, Arizona, Ohio and Oklahoma—have resulted in inmates suffering visibly excruciating deaths, gasping for breath and writhing on the execution gurney.

The US Supreme Court in 2015 ruled that the use of

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midazolam in executions does not constitute “cruel and unusual punishment,” which is banned by the Eighth Amendment to the US Constitution. In a 5-4 ruling Thursday night, the high court rejected Ledell Lee’s claim that he would not be rendered sufficiently unconscious by midazolam, allowing his execution to proceed, with Trump appointee Neil Gorsuch casting his first recorded vote as a Supreme Court justice in favor of the execution.

Jones and Williams both suffer from diabetes, sleep apnea and hypertension. Their legal counsel argued before Judge Baker that these conditions could lead to their executions being “botched.”

Dr. Joel Zivor, an Emory University Hospital physician, testified that both Jones and Williams had gained a very large amount of weight, leading to their diabetes. Jones had an amputation because of poor circulation related to that condition.

The two men’s lawyers claimed that because of their poor circulation, the lethal injection drugs would not work properly and they would die painful deaths. Rejecting this argument, the judge wrote in her decision: “Plaintiffs have the burden of proving that ‘the State’s lethal injection protocol creates a demonstrated risk of severe pain’ and ‘the risk is substantial when compared to the known and available alternatives.’”

Demonstrating the desperate plight of the eight Arkansas inmates, an earlier case filed jointly by their lawyers argued that a firing squad would be more humane than the state’s lethal injection protocol.

Both men scheduled to die tonight suffered through trauma as children. Williams was a victim of sexual abuse before the age of 10. According to the Fair Punishment Project (FPP) of Harvard Law School, by the time he was 12 Marcel’s “mother was routinely pimping him ... in exchange for food stamps, for food, for a place to stay.” She also routinely beat him.

Williams was sentenced to death in 1997 for the 1994 murder of Stacy Errickson, a 22-year-old woman. The jury never heard compelling mitigating evidence about his background of severe abuse.

In addition to his physical conditions, Jones suffers from bipolar disorder and depression. His symptoms of mental illness date back to his childhood, when he suffered physical abuse at the hands of his father. Jones was convicted and sentenced to death in 1996 for the killing of Mary Phillips and the attempted murder of her daughter, Lucy Phillips.

Jones declined to attend his April 2017 clemency hearing, instead having his attorney read a handwritten letter to the state parole board, in which he wrote, “I’m sorry, not only for what I did, but for you having to come here.”

If granted clemency, Jones said, he would decline it. “There’s no way in hell I would spend another day or 20 years in this rat hole,” he wrote.

The final inmate on Arkansas’ April death list is Kenneth Williams, who was convicted of murdering Cecil Boren in 1999. Williams suffers from intellectual disability and may have suffered brain damage. He also experienced trauma as he shuffled between six different foster homes as a child. He is currently set to be executed on Thursday.

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