Florida executes Mark Asay with untested lethal injection protocol

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The state of Florida executed Mark James Asay at the state prison in Raiford on Thursday evening. Asay, 53, was executed at 6:22 p.m. local time without incident, according to Florida corrections officials.

Asay, who was white, was convicted and sentenced to death in 1988 for the 1987 shooting deaths of Robert Lee Booker, 34, a black man, and Robert McDowell, 26, who was mixed race, white and Hispanic.

On Thursday afternoon, the US Supreme Court denied a stay of execution request on Asay's behalf without comment. Marty McClain, Asay's lawyer, had filed a final appeal with the court, arguing that his client was wrongly convicted on an unreliable ballistics report and made-up testimony from a jailhouse informant.

Florida Governor Rick Scott, a Republican, also refused to grant Asay clemency.

Highlighting the racially disproportionate application of the death penalty in Florida, Asay is the first white person in the state put to death for the murder of a black person since the US Supreme Court reinstated the death penalty in 1976. Since that time, at least 20 of the 92 Florida inmates executed were black men convicted of murdering white victims, according to the Death Penalty Information Center (DPIC).

Asay, who prosecutors said was a white supremacist, claimed in his final interview that he was not a racist. He said he had gotten a number of racist tattoos when he was in prison at age 19 because he wanted to "fit in" with a white supremacist gang and "keep safe," but had since had most of them covered up or "burnt off."

Asay's execution was the first in Florida in 18 months, after the US Supreme Court ruled Florida's capital sentencing laws unconstitutional. The high court ruled that the old system was illegal because it gave judges, not juries, the power to hand down a death sentence. Since then, the state legislature has passed a law requiring a unanimous jury recommendation for the death penalty.

Assay was the first person executed by a new lethal injection protocol adopted in January, which includes the anesthetic etomidate, which is supposed to sedate the condemned inmate after he or she is strapped to the gurney. The second drug, rocuronium bromide, is a paralytic. It was the only the second time that the final drug, potassium acetate, which is used to stop a person's heart, had been used.

A division of pharmaceutical giant Johnson & Johnson, Janssen, was the original inventor of etomidate. "Janssen discovers and develops medical innovations to save and enhance lives," the company said in a statement, adding, "We do not condone the use of our medicines in lethal injections for capital punishment." Etomidate is now off-patent and made by other generic manufacturers, and Florida has refused to divulge its source for the drug.

Like other states that continue to practice capital punishment, Florida has scrambled to come up with new medicines to put people to death after European and US drug companies have increasingly refused to sell the sedative midazolam and other drugs for use in executions.

Asay's attorneys challenged the use of etomidate in his execution before the Florida Supreme Court, claiming their client could die in agony due to the unknown effects of the chemicals. Professor Robert Sneyd, a member of the Royal College of Anaesthetists in the UK, wrote, in a declaration presented to the court, "There has been no medical testing of any kind into the effects of this kind of dose on the human body and this dosage could result in a host of adverse effects."

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Sneyd said the nature of etomidate, which takes effect and recedes quickly, made it “likely that the subject of the execution will be awake for all or part of the potassium [acetate] injection,” which is supposed to stop the heart, possibly subjecting the prisoner to extreme pain.

The state Supreme Court lifted a previous stay in Asay’s case, finding that it was impossible to eliminate all potential pain when carrying out an execution. In a dissenting opinion, Justice Barbara Parienta wrote that the prisoner was being treated as “the proverbial guinea pig” for the drug and that its use would violate constitutional protections against cruel and unusual punishment.

In his seven-year tenure, Governor Scott has signed 23 death warrants, more than any other Florida governor in the modern era. In 2013, Scott signed a law to hasten executions by requiring the governor to sign a death warrant 30 days after a clemency review has been completed, and mandating that the execution be carried out within 180 days.

Since 1973, 27 people have been freed from death row in Florida following the discovery of new DNA evidence, findings of prosecutorial misconduct or eyewitness misidentification, or other factors. Scott’s fast-track execution process makes it highly likely that innocent people have been and will continue to be sent to their deaths.

The new Florida law requiring a unanimous jury for all capital defendants is retroactive, but only for sentences after 2002. Mark Asay’s case, therefore, did not qualify for review.

There are more than 350 inmates on Florida’s death row, but more than 200 have no chance of having their sentences reviewed. Of the 1,459 executions in the US since 1976, Florida has carried out the fourth most, with 92. Texas has executed the most, at 543, followed by Virginia, with 113, and Oklahoma, with 112.

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