

Tennessee death row inmates challenge plan to fast-track executions

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Thirty-three death row inmates in Tennessee have filed a lawsuit challenging the constitutionality and legality of the state's new execution protocol. The challenge follows state Attorney General Herbert Slatery's request to the state Supreme Court to schedule eight executions by June 1, before one of the state's lethal injection drugs expires.

Tennessee has not carried out an execution since that of Cecil Johnson in 2009. If carried out, the state's efforts to fast-track eight executions would be the most since 1939, when Tennessee sent 10 prisoners to their deaths between January and August of that year.

As Tennessee moves ahead with plans for assembly-line state killings, one study shows prosecutorial misconduct in capital punishment cases that ranks one state prosecutor as among the four worst in the nation.

"Tennessee is not only a state rushing to execute but one where misconduct by prosecutors in death penalty cases are being overturned," the Death Penalty Information Center (DPIC) reported.

Three inmates had already been scheduled for execution at the beginning of this year, with two being scheduled after the June 1 deadline. None of the three are referenced in Slatery's court request.

In his court statement, Slatery wrote, "Years of delay between sentencing and execution undermines confidence in our criminal justice system."

Supreme Court spokeswoman Barbara Peck confirmed Slatery's filing was received, stating, "In all of these cases, previous execution dates have been set and the defendants have completed the three-tier appeals process: direct appeal, post-conviction relief, and federal habeas corpus. The motion will be reviewed and the court will issue an order with its decision."

The eight inmates referenced in Slatery's request are Donnie Johnson, Stephen Michael West, Edmund

Zagorski, Leroy Hall, Abu-Ali Abdur'Rahman, Charles Walton Wright, Nicholas Todd Sutton and David Earl Miller.

A notice filed on behalf of the eight inmates disputes Peck's statement, claiming that the appeals process is ongoing for some of the eight men. They are seeking 14 days to file an opposition to the attorney general's request.

The three-drug combination Tennessee is prepared to use is rife with controversy due to instances when it has left inmates in intense pain and alive. A recent example is the execution of Kenneth Williams last year in Arkansas, who was reported "coughing, convulsing, lurching, jerking," for a 10- to 20-second period during his execution.

In addition to lethal injection, the state can also carry out executions with the electric chair, which was last used in 2007 in the execution of Daryl Holton.

In March 2017, the Tennessee Supreme Court ruled against dozens of death row inmates who had filed suit against the practice of execution by lethal injection.

"The intended result of an execution is to render the inmate dead," Chief Justice Jeffrey Bivins said in upholding the state's procedure to execute the condemned with one shot of pentobarbital.

Four counties in the United States that rank among the most aggressive users of capital punishment have prolonged patterns of prosecutorial misconduct, according to a report by the Harvard-based Fair Punishment Project.

One was Shelby County, which is in West Tennessee and includes Memphis.

The report, titled "The Recidivists: Four Prosecutors Who Repeatedly Violate the Constitution," examined state appeals court decisions in Tennessee, California, Louisiana and Missouri, between 2010 and 2015. The

research found that prosecutors in Orange County, California; Orleans Parish, Louisiana; St. Louis, Missouri; and Shelby County, Tennessee—all of which currently face allegations of significant misconduct—ranked among the most “prolific perpetrators of misconduct” in their respective states.

The report concluded: “The prosecutors in these jurisdictions, all of whom are elected officials, are imbued with the public’s trust. And each and every one of them has violated it, not just on one or two occasions, but repeatedly. They have illegally concealed important evidence from the defense, made highly unethical statements and arguments, and committed other types of misconduct that undermines the integrity of criminal convictions in serious cases, and of the justice system itself.”

The US Court of Appeals for the Sixth Circuit last year overturned the conviction and death sentence of Tennessee death row prisoner Andrew Lee Thomas, Jr., ruling that Shelby County District Attorney Amy Weirich withheld evidence that a key prosecution witness had been paid for her cooperation in the case.

Weirich then elicited perjured testimony from the witness lying about the payment. Weirich is also facing ethical charges from the Tennessee Board of Professional Responsibility in another murder trial, in which the Tennessee Supreme Court found that Weirich failed to disclose exculpatory evidence to the defense and had improperly commented on the defendant’s decision not to testify, the appeals court ruled.

In 2014, Weirich defended the conduct of Tom Henderson, a veteran homicide prosecutor in her office who had been censured by the Tennessee Supreme Court for misconduct in the capital trial of Michael Rimmer. A judge had found that Henderson made “blatantly false, inappropriate and ethically questionable” statements to the court and defense counsel about the existence of exculpatory evidence, “purposefully misled counsel with regard to the evidence,” and withheld exculpatory evidence he was required to disclose, according to deathpenaltyinfo.org.

According to the report, as of January 2013, Orange and Shelby counties ranked 7th and 13th respectively among the 2 percent of counties responsible for a majority of death-row prisoners in the US. These two counties had more individuals on their death rows than

99.5 percent of all counties in the country.

In 2017, 23 people were executed in the US states that practice capital punishment, the second fewest in the past 25 years, according to DPIC. Tennessee is apparently attempting to go against the flow in sending eight prisoners to their deaths in less than three months.

Tennessee also imposes draconian sentences for those convicted of first-degree murder committed as a juvenile. Dan Birman, a filmmaker whose documentary, *Me Facing Life: Cyntoia’s Story*, highlighted Tennessee’s brutal sentencing laws, said:

“Unless sentenced to life without the possibility of parole, a juvenile offender in Tennessee could be released after serving 51 years—that is, if they are still alive. In all likelihood, they won’t be.”

In 2004, Cyntoia Brown, then 16 years old, shot and killed a 43-year-old man who had allegedly hired her for sex. Tried as an adult, she was convicted of first-degree murder and received a mandatory life sentence with the possibility of parole after 51 years.

“The life expectancy for youth serving life sentences is roughly 50 years. This means that juveniles are, in effect, receiving a death sentence,” Birman said in an opinion piece for the *Tennessean* newspaper.



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