

Oklahoma and Alabama execute two intellectually disabled men after US Supreme Court clears the way

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Two death row prisoners with documented intellectual disabilities were executed in the US on Thursday, January 27. In both cases, the US Supreme Court cleared the way for their death sentences to be carried out by lethal injection. In last-ditch efforts, both men had asked that they be executed by methods other than lethal injection as a means of forestalling their impending state killings.

Oklahoma carried out the first execution of the new year in the US at the State Penitentiary in McAlester on Thursday. Donald Grant, 46, was injected with a three-drug chemical cocktail whose constitutionality is the subject of a federal trial set to begin in just one month on February 28.

Oklahoma Attorney General John O'Connor claimed in a statement that Grant's execution "was carried out with zero complications" at 10:16 a.m. Grant was sentenced to death for the 2001 murders of Brenda McElyea and Felecia Suzette Smith.

Grant's lawyers had asked the state's Pardon and Parole Board to commute his death sentence to life in prison, citing his brain damage and diagnosis with schizophrenia. The lawyers argued before the parole board, "Executing someone as mentally ill and brain damaged as Donald Grant is out of step with evolving standards of decency." On November 30, 2021, the board voted 4-1 against Grant. Oklahoma Republican Governor Kevin Stitt concurred and allowed the execution to go forward.

The severity of Grant's mental illness became apparent when he was a teenager. His intellectual disability stemmed from prenatal alcohol exposure and lack of oxygen from complications at birth, along with traumatic brain injury he suffered in abuse by his

alcoholic father. Grant's mother was addicted to cocaine when he was a young child. Grant and his siblings were often homeless and hungry on the streets of Brooklyn, New York. When child welfare took custody of the young Grant and his siblings, they were often separated and bounced around from one foster or group home to another.

Grant and death row inmate Gilbert Postelle, who is scheduled for execution February 17, had petitioned a federal judge to intervene and allow their death sentences to be carried out by firing squad rather than lethal injection. There is ongoing litigation in Oklahoma over whether the state's method of execution, lethal injection, constitutes cruel and unusual punishment, which is outlawed by the Eighth Amendment to the US Constitution.

Testimony submitted by the plaintiffs from a "board-certified anesthesiologist and a board-certified pain medicine specialist" alleged that execution by firing squad would "reliably cause a death that will be quick and virtually painless."

Oklahoma has a gruesome history with execution by lethal injection.

On April 29, 2014, Clayton Lockett writhed and groaned on the execution gurney as Oklahoma injected midazolam for the first time in an execution. Lockett's lawyer reported that "his whole upper body was lifting off the table." The prison director halted the execution, but Lockett died 43 minutes later, apparently from a heart attack.

The execution of Charles Warner, scheduled for the same day, was postponed and eventually rescheduled for January 15, 2015. An AP reporter who witnessed the execution said Warner called out, "My body is on

fire. No one should go through this.” The *Oklahoman* reported months later that the state had used potassium acetate, not potassium chloride, to execute Warner.

After a nearly seven-year effective moratorium on executions in Oklahoma, John Marion Grant (no relation to Donald Grant), was injected with a cocktail of midazolam, vecuronium bromide and potassium chloride—the same toxic mix of chemicals used in the state’s “botched” executions of Lockett and Warner. A witness to the execution said that as soon as the first drug, midazolam, a sedative, was injected, Grant began to convulse and vomit on the execution gurney in Oklahoma’s new “state-of-the-art” execution chamber.

In August 2021, US District Judge Stephen Friot dismissed the petitions of six death row prisoners in Oklahoma, including Donald Grant and Postelle, asking that they not be executed by lethal injection. The judge dismissed the petition on the legal technicality that the men had failed to specify their preferred alternative method of execution. Although the six plaintiffs have been reinstated to the litigation, the state carried out Grant’s execution and is pushing forward with Postelle’s.

Grant’s lawyers appealed to the US Supreme Court for a stay, but Justice Brett Kavanaugh denied the application. Grant was the 116th person to be executed in Oklahoma since the high court reinstated the death penalty in 1977, second only to Texas, with 579.

Also on Thursday, the Supreme Court cleared the way for Alabama to execute Matthew Reeves by lethal injection. Reeves, 44, was convicted and sentenced to death for the robbery and murder of Willie Johnson in 1996. He was the 69th person to be put to death in Alabama since the reinstatement of the death penalty in the US.

In an after-hours order, the Supreme Court reversed a lower court’s opinion that had blocked Reeves’ execution because he sought to be executed by nitrogen gas instead of lethal injection. In 2018, Alabama became the third state, along with Oklahoma and Mississippi, to authorize the untested use of nitrogen gas to execute prisoners. Death would be caused by forcing the inmate to breathe only nitrogen, thereby causing asphyxiation by depriving the person of oxygen.

Justice Elena Kagan, writing for Stephen Breyer and Sonia Sotomayor, wrote in a brief dissent that the court

majority should have abided by the lower court’s decision. Justice Amy Coney Barrett also would have denied Alabama’s request. Reeves was executed less than two hours after the Supreme Court’s ruling.

At his trial, Reeves’ court-appointed lawyers were granted funds by the court to investigate hundreds of pages of psychological and other records suggesting their client needed to be evaluated for intellectual disability, but they never hired an expert to evaluate him.

The jury did not hear mitigating evidence of intellectual disability, including that Reeves failed numerous elementary school grades and never advanced beyond middle school. He was treated for mental health issues beginning at eight years old; testing at age 14 revealed that he had “severe deficiencies in non-verbal social intelligence skills and his ability to see consequences.” IQ testing revealed scores between 68 and 71, at the threshold of intellectual disability.

Alabama claimed Reeves’ execution should proceed on the grounds that he had missed the deadline for making the decision to choose nitrogen gas over lethal injection. The condemned man’s lawyers sued, saying that their client should have received assistance in designating his choice of execution methods due to his cognitive limitations.

There are 12 more death row inmates in the US scheduled to be executed before the end of 2022. That condemned prisoners like Donald Grant and Matthew Reeves have resorted to choosing gruesome alternative methods of execution in an effort to stave off their state killings is yet another exposure of the barbarity of capital punishment in 21st century America.



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