

Oklahoma executes Benjamin Cole, a severely mentally ill inmate, after US Supreme Court denies appeal

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Oklahoma executed Benjamin Cole on Thursday, over his attorneys' objections that he suffered from schizophrenia and was severely mentally ill, after the US Supreme Court denied his last-minute appeal. Cole, 57, was sentenced to death for the 2002 murder of his 9-month-old daughter Brianna.

Cole's lethal injection began at 10:06 a.m. local time Thursday at the Oklahoma State Penitentiary in McAlester, according to Department of Corrections Chief of Operations Justin Farris. Cole was pronounced unconscious at 10:11 and pronounced dead at 10:22 a.m. The execution was "uneventful and without any complications," Farris told reporters.

The execution was the second of 25 executions scheduled in a flurry of state killings by Oklahoma authorities through 2024. The move comes as a federal judge denied a challenge by prisoners to the state's lethal injection protocol after a series of so-called botched executions in the state that saw condemned prisoners writhe and cry out in the execution chamber.

Cole's attorney Tom Hird described his client as a "person with serious mental illness whose schizophrenia and brain damage" led to him murdering his daughter, according to a statement. By the time of his death, Cole had "slipped into a world of delusion and darkness," Hird said, and was "often unable to interact with my colleagues and me in any meaningful way."

"Ben lacked a rational understanding of why Oklahoma took his life today," Hird said following the injection. "As Oklahoma proceeds with its relentless march to execute one mentally ill, traumatized man after another, we should pause to ask whether this is really who we are, and who we want to be." On

January 27, Oklahoma executed Donald Grant, 46, who suffered from schizophrenia and brain damage, according to his attorneys.

On Wednesday, the US Supreme Court denied Cole's request for a stay of execution in a two-paragraph order. Cole's attorneys also unsuccessfully asked a state appeals court to compel the prison warden to refer his case for review to the district attorney to initiate a competency hearing. The Oklahoma Pardon and Parole Board voted 4-1 to deny clemency to Cole on September 27.

Cole's petition for clemency argued that his struggles with mental health dated back to his early childhood when he was surrounded by "rampant" drug and alcohol abuse. He began to drink as a young child, encouraged by adults, and according to one of his brothers would get high huffing gasoline by the time he was 10 years old. He suffered years of verbal, physical and sexual abuse.

One psychiatrist diagnosed him with paranoid schizophrenia in 2009, finding that his mental condition deteriorated as he went untreated for almost 20 years. Cole's clemency petition said he had lived in dirty and "unkempt" conditions in complete darkness inside his prison cell, which he reportedly almost never left, surrounded by uneaten food that he hoarded.

The petition also cited a physician review of an MRI performed on Cole this year that found a lesion on his brain that "would be highly consistent" with Parkinson's disease.

However, Oklahoma Attorney General John O'Connor praised the parole board's vote to deny Cole clemency, commenting, "Although his attorneys claim Cole is mentally ill to the point of catatonia, the fact is

that Cole fully cooperated with a mental evaluation in July of this year” and that an evaluator had found that “Mr. Cole does not currently evidence any substantial, overt signs of mental illness, intellectual impairment, and/or neurocognitive impairment.”

Cole admitted to the brutal murder of his daughter, in which he grabbed her ankles while she was on her stomach and forced them up to her head, breaking her spine. He committed the crime to stop her from crying so he could return to his video game as his daughter bled to death.

He refused a plea deal that would have given him life in prison. He wanted the case to go to trial, because it was “God’s will,” he told his lawyers, and “his story ... would allow God to touch hearts and would allow [him] to walk away from it all a free man.” Despite these delusions, he was found competent to stand trial.

After an Oklahoma judge ruled this month that Cole was competent to be executed, Cole’s attorney Hird said, “His own attorneys have not been able to have a meaningful interaction with him for years, and the staff who interact with him in the prison every day confirm that he cannot communicate or take care of his most basic hygiene. He simply does not have a rational understanding of why Oklahoma seeks to execute him.”

In a 1986 decision, the US Supreme Court ruled that the execution of the severely mentally ill was unconstitutional. Justice Thurgood Marshall wrote at the time: “It is no less abhorrent today than it has been for centuries to exact in penance the life of one whose mental illness prevents him from comprehending the reasons for the penalty or its implications.”

In 2002, the Supreme Court ruled in *Atkins v. Virginia* that it is a violation of the Eighth Amendment’s ban on cruel and unusual punishment to execute death row inmates with “mental retardation.” However, according to the Death Penalty Information Center, in the years since this landmark decision, “at least 29—and likely many more—state and federal death-row prisoners have been executed despite strong evidence that they should have been protected by *Atkins*.”

But while the Supreme Court has ruled that executing the intellectually disabled and those sentenced to death for crimes committed as juveniles is unconstitutional, the high court has not specifically ruled since 1986 that executing those with serious mental illness such as

schizophrenia or bipolar disorder should be banned.

In a 5-4 decision in *Ford v. Wainwright*, the Supreme Court reaffirmed that a mentally ill person is entitled to Eighth Amendment protection if he or she does not have a rational understanding of the reason for his or her execution.

However, prisoners have repeatedly been tasked with proving their mental incompetence to avoid execution. Under conditions where defendants in capital cases are often represented by overworked, incompetent or disreputable counsel, and prosecutors rely on junk science and/or coerced witnesses to convict, condemned inmates are often unable to prove their mental illness or even obtain a competency hearing.

Benjamin Cole was the 1,552nd death row inmate executed since the Supreme Court reinstated the death penalty in 1976. Oklahoma has executed 115 men and three women during this period.



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