

First state killing of 2023: Missouri executes transgender woman Amber McLaughlin

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On Tuesday evening, the state of Missouri executed Amber McLaughlin, the first openly transgender woman to be put to death in the United States. Governor Mike Parson, a Republican, denied her clemency. The US Supreme Court had earlier refused to hear McLaughlin's case. Her execution was the first in 2023 and the 17th of a woman since the US Supreme Court reinstated the death penalty in 1976.

In 2006, McLaughlin, 49, was convicted of first-degree murder, forcible rape and armed criminal action in the killing of her ex-girlfriend Beverly Guenther in St. Louis County in 2003. She was tried as Scott McLaughlin.

McLaughlin submitted her final statement to the Department of Corrections on New Year's Day, saying, "I am sorry for what I did. I am a loving and caring person." She was executed at the Eastern Reception, Diagnostic and Correctional Center in Bonne Terre, Missouri, just hours after Parson denied her clemency. The lethal injection began at 6:39 p.m. and she was declared dead at 6:51 p.m.

According to court records, McLaughlin and the victim had been in a relationship but had separated by the time of the killing. Guenther had received an order of protection against McLaughlin after she was arrested for burglarizing Guenther's home. McLaughlin waited for Guenther outside the victim's workplace and then repeatedly stabbed and raped her.

Although McLaughlin was convicted of murder, the jury deadlocked on her sentence, rejecting three of the four aggravating circumstances advanced by the prosecution. Under Missouri law, a nonunanimous jury vote is considered a hung jury, triggering a statutory provision that allowed the trial judge to impose a death sentence. Missouri and Indiana are the only states that permit a judge to override a jury deadlocked on sentencing.

In their 27-page petition for clemency, McLaughlin's

lawyers argued that her execution would subvert the will of the jury, which had not agreed on a death sentence. The attorneys also raised their client's struggles with mental health and history of childhood trauma.

In the petition, McLaughlin's attorneys said that her trial lawyer had indicated in his penalty-phase opening statement that he would be presenting expert mental health testimony, but then failed to do so when his superiors made a last-minute decision to pull the expert witness due to issues arising with the expert's history.

Judge Steven H. Goldman, the trial judge, handed down a death sentence when the jury agreed that McLaughlin had acted with the depravity of mind to be executed, but were deadlocked on whether that was trumped by other mitigating factors. Before he was a judge, Goldman was a prosecutor and helped draft language for the statute that allows a judge in Missouri to decide punishment in a capital case if a jury is deadlocked on sentencing.

McLaughlin's clemency petition received the support of seven former Missouri trial and appellate judges and Missouri members of Congress Cori Bush and Emanuel Cleaver. The group of judges argued in their letter, referring to McLaughlin's gender at the time of her trial, "Mr. McLaughlin was deprived of his right to a jury," because they could not agree on a sentence.

The judges wrote, "McLaughlin's jury deadlocked and refused to return a death verdict. Had the mental health evidence that included brain damage been presented, it would have resulted in a life recommendation."

Bush and Cleaver wrote to the governor, "Alongside this horrendous abuse, she was also silently struggling with her identity, grappling with what we now understand is gender dysphoria. The abuse, coupled with the persistent mental turmoil surrounding her identity, led to mild neurological brain damage and multiple suicide attempts both as a child and as an adult."

McLaughlin's counsel described the chronic trauma

McLaughlin suffered as a child, including physical and sexual abuse, time spent in foster care, brain damage resulting from fetal alcohol exposure and mental illness. In one foster care placement, she had “feces thrust into her face,” her attorneys argued in the clemency petition.

Rejecting these arguments, Governor Parson confirmed Tuesday morning that McLaughlin’s execution would proceed, writing in a statement, “McLaughlin’s conviction and sentence remains after multiple, thorough examinations of Missouri law. McLaughlin stalked, raped, and murdered Ms. Guenther. McLaughlin is a violent criminal.”

McLaughlin appealed her conviction on the grounds of her Sixth Amendment right to a trial by jury. McLaughlin’s sister testified that their adoptive father, a police officer, used a Taser and nightstick on McLaughlin, and that their adoptive mother would force the children to drown pregnant cats.

A psychologist and a pediatrician said McLaughlin had trouble with cognitive ability. Her defense lawyers said she had an IQ of 82, and had “borderline intellectual and personality disorders, intermittent explosive disorder and learning disorders.” She left school after the 11th grade and worked as a factory assembler, dishwasher and day laborer, and at other odd jobs.

A federal district court overturned McLaughlin’s death sentence in 2016, calling the failure to present the mental health evidence at her trial a “grievous” error. However, the Court of Appeals for the Eighth Circuit reversed this ruling and reinstated the death sentence, and the US Supreme Court declined to review her case.

In another recent capital case involving a transgender woman, the Ohio Supreme Court affirmed the death sentence imposed on Victoria Drain, a transgender woman who was convicted of murdering a fellow inmate at the Warren Correctional Institution in 2019.

The Ohio high court noted that Drain had suffered traumas as a child, including spending 20 days in solitary confinement as a 13-year-old juvenile offender. A psychologist who conducted interviews with Drain and examined her prison records said that she had been diagnosed with gender dysphoria, post-traumatic stress disorder, borderline personality and antisocial personality disorder. However, the court concluded that “the aggravating circumstances in this case are so grave that they outweigh the mitigating factors beyond a reasonable doubt.

One of McLaughlin’s friends in prison was Jessica Hicklin, a transgender woman paroled last January after

serving 26 years for murder. In 2018, Hicklin won a federal lawsuit that challenged the Missouri Department of Corrections’ policy that barred treatment for transgender inmates who had not been receiving hormone therapy before they were incarcerated.

The lawsuit challenged the state’s refusal to provide hormone therapy, permanent hair removal and access to gender-affirming care products, arguing this refusal constituted cruel and unusual punishment, which is banned under the Eighth Amendment. Missouri now covers hormone therapy but does not cover gender-reassignment surgery for prisoners. Hicklin told the *Kansas City Star* that she knew of more than 30 inmates in Missouri prisons last year who identified as transgender and that fewer than a dozen were undergoing hormone therapy.

However, to be eligible for hormone therapy, McLaughlin was expected to live a full year as a woman, using a female name, pronouns and “dressing effeminately,” Hicklin said. McLaughlin completed this “real-life experience” about six months ago. McLaughlin was living in the men’s prison because prison assignments are based on “genitalia rather than on gender identity,” Department of Corrections spokeswoman Karen Pojmann said. Hicklin spent months in protective custody at the Potosi prison.

Missouri was one of only six US states that carried out an execution in 2022, executing Carman Deck on May 3 and Kevin Johnson on November 29. Leonard Tayler is set to be executed on February 7. Although no executions have been scheduled beyond February, the state attorney general has asked the Missouri Supreme Court to set execution dates for Michael Tisius and Johnny Johnson. Missouri has executed 93 men since the Supreme Court’s reinstatement of the death penalty.



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