

Florida carries out third execution of 2023

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Florida executed Darryl B. Barwick on Wednesday at the state prison in Bradford County. Barwick, 56, was convicted and sentenced to death for the March 1986 murder of Rebecca Wendt, 24, in Panama City.

Barwick's execution follows those of Florida death row inmates Donald Dillbeck, 56, on February 23, and Louis Gaskin, 56, on April 12. Florida Governor Ron DeSantis signed the three men's execution warrants, ending a more than three-year hiatus on state-sanctioned killings in the state. The US Supreme Court denied the appeals of all three men, allowing their executions to go forward.

The rush to carry out executions by DeSantis, who is positioning himself as the prime challenger to Donald Trump for the Republican presidential nomination, is in keeping with legislation he has signed recently to prohibit abortions after the first six weeks of pregnancy and a "constitutional carry" measure that eliminates the need for a permit to carry a concealed weapon.

The Associated Press (AP) reports that after being brought into the death chamber on Wednesday, Barwick stated, "I can't explain why I did what I did. It's time to apologize to the family ... I'm sorry." The AP reports that Barwick said that the state needs to show more compassion and kindness for people, criticizing Florida's sentencing of teenagers to life in prison. Barwick was 19 when he murdered Wendt.

Barwick died by lethal injection on Wednesday. He received a sedative at 6:02 p.m. and closed his eyes several minutes later, according to AP. He was pronounced dead at 6:14 p.m. after receiving the last of three chemicals used in the lethal injection protocol. Since January 2000, Florida has allowed a choice for condemned prisoners between the electric chair and lethal injection.

Barwick had confessed to killing Wendt, having followed her back to her apartment after watching her sunbathe. Barwick had been released less than three

months earlier from prison for raping a 21-year-old woman. He was linked to the murder by DNA and footprints at the scene as well as by a witness who saw him heading toward and then leaving the woman's apartment.

Barwick was convicted in November 1986 of first-degree murder, armed burglary, attempted sexual battery and armed robbery and sentenced to death two months later, on the 9-3 recommendation of the jury. His conviction was thrown out by the Florida Supreme Court due to prosecutorial misconduct. Barwick was convicted again at his 1992 retrial and that jury unanimously recommended a death sentence.

Until 2016, only a simple 7-5 majority of the jury was required to impose the ultimate sentence of death in Florida. However, the US Supreme Court struck down parts of the Florida statute as unconstitutional in *Hurst v. Florida* in 2016, with the concurring justices finding that state law did not give juries a big enough role in imposing a death sentence.

The Florida Supreme Court's interpretation of the high court's ruling meant that a unanimous jury vote was required to send a convicted defendant to his or her death, writing that "all the critical findings necessary before the trial court may consider imposing a sentence of death must be found unanimously by the jury." The jury was also required to determine whether there was at least one aggravating factor, e.g., the murder of a police officer, and weigh that determination against mitigating circumstances of the defendant, such as age or mental condition.

DeSantis has now signed a bill in defiance of the 2016 Supreme Court ruling, allowing an 8-4 vote of the jury to sentence a person to death. "Once a defendant in a capital case is found guilty by a unanimous jury, one juror should not be able to veto a capital sentence," the governor proclaimed on signing the bill April 20. But it is precisely such a juror "veto" that guards against

conviction in a case where there is reasonable doubt, and a sentence of death and execution that cannot be undone. Alabama is the only other state that currently allows execution of a person sentenced to death by a nonunanimous jury.

DeSantis says he pushed for the nonunanimous jury death sentencing after the jury in the case of Nikolas Cruz, who killed 17 people at Marjory Stoneman Douglas high school in 2017, failed to come to unanimous decision to sentence Cruz to death, resulting in a life sentence. The governor invited parents of the victims of the school shooting tragedy to the signing, exploiting their grief in an effort to channel it behind the reactionary measure.

“I’m proud to sign legislation that will prevent families from having to endure what the Parkland families have and ensure proper justice will be served in the state of Florida.” As the continual rash of mass shootings has shown, retribution and law-and-order measures will not stem the tide of these tragedies, which find their roots not in the evil minds of the shooters but in the decay wracking American society.

Both the US Constitution and its Sixth Amendment make clear that a defendant’s right to a jury does extend to sentencing, a precept that is rooted in common law and historical practices. However, in recent Sixth Amendment capital sentencing cases the US Supreme Court has not explicitly recognized such a right.

Louis Gaskin, who was executed April 12, was sentenced to death in 1990 by an 8-4 jury vote. Both the Florida and US Supreme Courts rejected his appeals, despite the fact that at the time of his execution a unanimous jury vote was required for a death sentence, refusing to apply the state law retroactively.

This is in keeping with rulings by the Supreme Court, which have banned the death penalty for the mentally impaired and for crimes committed as juveniles, but have consistently upheld capital punishment itself, rejecting arguments that state killing is “cruel and unusual punishment,” which is banned by the Eighth Amendment. The death penalty has been banned by a large majority of industrialized nations, and both the UN Human Rights Office and European Union advocate for its universal abolition.

DeSantis has signed another death penalty measure that could set up a future US Supreme Court case. In a

5-4 decision in 2008, the high court struck down a Louisiana law that allowed child rapists to be sentenced to death, barring states from executing child sex offenders unless they also murdered their victims.

On May 1, the governor signed a law that makes it a capital crime for an adult to rape a child under the age of 12, vowing that Florida “stands for the protection of children.” The measure had overwhelmingly passed the Florida legislature with bipartisan support.

Since the Supreme Court reinstated the death penalty in 1976 after a brief pause, Florida has carried out 102 executions, following behind only Texas, with 583 executions, Oklahoma, with 120, and Virginia, with 113. According to the Death Penalty Information Center, as of April 1, 2022, Florida had the second largest death row population in the US, with 323 inmates, second only to California, which has had an official moratorium on capital punishment since 2019.



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