
Court leaves Miss. executions in limbo

Debate centers on whether lethal injection method is constitutional

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ST. LOUIS - A federal appeals court has refused to consider whether Missouri's lethal injection method of capital punishment is constitutional, leaving it unclear whether executions will resume in the state.

The 8th U.S. Circuit Court of Appeals on Tuesday denied a request by condemned inmate Michael Taylor to consider the question. The inmate's attorney vowed to appeal to the U.S. Supreme Court.

Taylor had appealed to the full appeals court after a three-judge panel ruled in June that Missouri's execution procedure is not cruel and unusual punishment. That ruling had overturned another judge's decision to ban executions until the lethal injection process was reformed.

Taylor's attorney said Wednesday that she will ask the U.S. Supreme Court to review the case. And while the high court accepts only a small percentage of the thousands of cases it is asked to review each year, "this has a better shot than most," attorney Ginger Anders said. "It's an extremely important issue, one that is going on in a lot of states."

A Kansas City federal judge's order last year to suspend executions could be lifted within a week, freeing the Missouri Supreme Court to set execution dates.

But if Taylor asks, and the appeals court agrees, the moratorium could continue while the U.S. Supreme Court decides whether to consider his case.

'Step toward resolution'

Brian Hauswirth, a state Corrections Department spokesman, called the ruling "another step toward resolution of the legal challenges to lethal injection."

Taylor's case had prompted a federal judge last year to place a moratorium on executions in Missouri. U.S. District Judge Fernando Gaitan Jr. said he wanted to be sure that the three-drug injection method did not cause risk of pain and suffering.

Gaitan wanted the state to involve a doctor specializing in anesthesia, but the state has been unable to find such a doctor willing to participate in the executions.

The three-judge appeals panel on June 4 reversed Gaitan's ruling, saying the state's execution protocol "is designed to ensure a quick, indeed a painless, death."

But Taylor argued the panel focused too narrowly on the protocol rather than how it is implemented, or any accidents or mistakes by staff that may result.

Days after the June 4 ruling opened the way for restarting executions in Missouri, Attorney General Jay Nixon asked the state Supreme Court to set execution dates for 10 condemned inmates — more than one-fifth of the state's 44 death row inmates.

Drugs contested

The debate centers on the three drugs used in executions. The argument is that if the initial anesthetic does not take hold, a third drug that stops the heart can be excruciatingly painful. But the inmate would not be able to communicate the pain because of a second drug that paralyzes him.

Missouri is among at least nine states that had put executions on hold as they consider whether lethal injection is inhumane.

Taylor was convicted of killing a 15-year-old girl in Kansas City in 1989 after kidnapping her from a school bus stop. He was hours away from being executed in February 2006 when the procedure was halted.

Missouri hasn't executed an inmate since convicted killer Marlin Gray was put to death in October 2005.

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