

Florida attorney general says child killer's execution can go forward



Mark Dean Schwab (Florida Department of Corrections)

Brendan Farrington | The Associated Press
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TALLAHASSEE - Attorney General Bill McCollum asked the U.S. Supreme Court on Wednesday to allow Florida to proceed with the execution of child killer Mark Dean Schwab, shortly after the high court ruled that lethal injection is not cruel and unusual punishment.

Meanwhile, Gov. Charlie Crist asked for a "very short list" of the worst death row inmates so he can sign his next death warrant.

In a 7-2 vote, the Supreme Court upheld Kentucky's use of lethal injection to execute condemned killers, and McCollum said that should clear the way for executions in Florida because the states have nearly identical procedures. The court had stopped the Schwab execution, and McCollum's office filed paperwork Wednesday afternoon seeking to get the order lifted.

"In the most heinous of cases, the death penalty should be carried out," McCollum said. "Schwab is a very heinous case."

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Schwab, 40, a Merritt Island High School dropout and convicted sex offender, was slated to be executed last November for raping and murdering 11-year-old Junny Rios-Martinez of Cocoa in 1991. He was sentenced to death in July 1992.

But the Supreme Court stayed his execution on Nov. 15 -- four hours before he was scheduled to die -- so the court could hear related arguments in the Kentucky case.

McCollum said he was gratified that the victim's family would see justice and that his belief that Florida's executions "are constitutionally sound has been upheld by the highest legal authority in the nation."

Crist had said that he would wait until the high court's decision before moving ahead with other executions. He said he is considering the length of time on death row and the crime committed in choosing who should be executed after Schwab.

"Justice delayed is justice denied and an awful lot of families of the victims have been waiting for justice to be done," Crist said. "But in addition, the heinous nature of the crime itself is important to consider."

There are 388 offenders on death row in the state, according to the Florida Department of Corrections. Schwab is among three death warrants that have been signed and pending.

The ruling "removes the road block that brought the Schwab case to a halt," said Wayne Holmes, a Seminole-Brevard County state attorney chief of operations and prosecutor on the initial Schwab case. If the U.S. Supreme Court dismisses the stay currently in effect, Schwab could be executed as early as this summer, Holmes said.

Holmes said it appears Schwab's attorneys may have exhausted all appeals that could stop the execution again. "It's hard for me to imagine anything of merit that they could file," he said.

Holmes did not speak to the Rios-Martinez family Wednesday but a state attorney's office victim advocate did. "They are being cautiously optimistic," Holmes said.

Peter Cannon, an attorney representing Schwab, was not immediately available, his office in Tampa said. Calls to Vicki Rios-Martinez, the victim's mother, were unanswered.

Crist signed a death warrant for Schwab in July, lifting a moratorium on executions that his predecessor, Jeb Bush, had ordered after it took twice as long as usual -- 34 minutes -- for convicted killer Angel Diaz, 55, to die in December 2006.

An investigation found the needles had been pushed through Diaz's veins into his flesh, reducing the drugs' effectiveness.

Corrections officials responded by ordering more training and monitoring of its execution team. The new procedures also include a delay after the first chemical, the anesthetic sodium pentothal, is injected to make sure an inmate is unconscious before the other drugs are administered. The second chemical causes paralysis and the third stops the heart from beating, which can result in severe pain if a person is conscious.

Critics of the three-drug system say the paralyzing drug is unnecessary and prevents an inmate from showing any sign of pain. Some have advocated using only sodium pentothal because it also is lethal in large doses.

Orange-Osceola Public Defender Robert Wesley, who has handled numerous death penalty cases, said the high court ruled the chemical drug-execution system does not violate the Eighth Amendment's cruel-and-unusual-punishment standard if it's done perfectly. But he said the court did not address problems and potential room to improve the process.

"When judges and lawyers try to be scientists, we don't always get scientifically logical results," Wesley said.