

Appeals court: execution can proceed

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JACKSONVILLE, Fla. — A federal appeals court has ruled that the execution of child killer Mark Dean Schwab can proceed Thursday.

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The decision whether to allow Schwab's death by lethal injection at 6 p.m. Thursday rests in the hands of the U.S. Supreme Court, with whom the killer already has an appeal. But Florida Attorney General Bill McCollum expected the execution to proceed.

"At this time, there is nothing impeding the execution," said Sandi Copes, a spokeswoman for McCollum.

If Schwab's execution for the 1991 killing Junny Rios-Martinez goes forward, it would be the first in the state since the botched execution of Angel Diaz last Dec. 13. It took 34 minutes for Diaz to die — twice as long as normal — because the guards pushed the needles through his veins.

But many observers expect the U.S. Supreme Court to block Schwab's killing. The high court is considering the appeals of two Kentucky inmates challenging the toxic three-drug combination administered there.

Florida uses the same drugs and Schwab's attorneys claim the chemicals violate the Eighth Amendment ban on cruel and unusual punishment.

The decision by the 11th Circuit Court of Appeals in Atlanta, which came a day after a federal court in Orlando blocked the execution, noted the Supreme Court had not yet ruled in the Kentucky case, allowing Schwab's execution to go forward.

"We don't know how the Supreme Court is going to decide the issues on which it has granted review," the court wrote in an 11-page opinion. "And the Supreme Court itself probably does not know given the fact that briefing has not been completed in that case."

Schwab was released from prison after serving three years of an eight-year sexual assault sentence in March 1991. During the same month, a newspaper published a picture of Junny for winning a kite contest. Schwab gained the confidence of Junny's family, claiming he was with the newspaper and was writing an article on the boy.

On April 18, Schwab called Junny's school and pretended to be Junny's father and asked that the boy meet him after school. A friend saw Junny get into a truck with a man. Two days later, Schwab called his aunt in Ohio and claimed that someone named Donald had made him kidnap and rape the boy.

He was later arrested and told police where he left Junny's body — in a footlocker in a rural part of Brevard County.

After the boy's murder, the Legislature passed the Junny Rios-Martinez Act, which prohibits sex offenders from early release from prison.

Schwab waived a jury trial and argued his case before a trial judge. He was found guilty and sentenced to death.

During the trial, it was revealed that Schwab kidnapped the boy, bound his hands and face with duct tape and cut off the boy's clothes. He raped the crying boy before strangling him.