

Inmate executed after Supreme Court rejects obese argument

WASHINGTON (CNN) -- An Ohio death row inmate was executed Tuesday after the Supreme Court rejected his last-minute plea that he was too overweight to be executed.

Richard Cooley, 41, and an accomplice were convicted of the 1986 murders of two college students.

Richard Cooley was executed as scheduled at 10 a.m. ET, the Ohio Department of Corrections told CNN.

Cooley had exhausted his legal appeals and Gov. Ted Strickland earlier denied the 41-year-old prisoner's clemency petition. Cooley murdered two college students in 1986.

The justices turned down a stay of execution, and the opportunity to address the larger constitutional claims over when a convicted person is medically unfit for capital punishment. The court was also asked to review Ohio's lethal injection procedures, and whether they were cruel and unusual punishment.

His lawyers have argued that the inmate-- at 5-foot-7 and 267 pounds -- is "morbidly obese," and has gained about 70 pounds since his incarceration at age 19. Prison food and confinement in his cell for 23 hours a day, limiting his opportunities for exercise, contributed to his weight problem, his legal team asserted in recent court filings.

Cooley also contends regular medication he takes for migraines will weaken the effectiveness of an anesthetic used in the a three-drug cocktail administered during execution. He says his veins are weakened because of his health issues, and the lethal drugs would amount to cruel and unusual punishment.

In 2003, a judge stopped Cooley's execution a day before he was to die on issues unrelated to his health claims.

A federal appeals court ruled Thursday that Cooley waited too long raise the medical issues, saying Cooley "knew of and could have filed suit over vein access prior to July 2005."

Cooley and a then-17-year-old accomplice were convicted of the brutal murders of Wendy Offredo and Dawn McCreery, students at the University of Akron. The men had been tossing concrete slabs onto Interstate 77, and one of them struck Offredo's car.

Pretending to "rescue" the women, Cooley and Clinton Dickens took the victims to a remote field, according to prosecutors. There the students were subjected to a three-and-a-half-hour period of rape, torture, stabbing, and fatal bludgeoning. Cooley carved an "X" into the stomachs of both women, prosecutors said.

Each man blamed the other for delivering the fatal blows, but both were convicted of murder. Dickens received a life sentence because of his age.

Cooley tried to escape from death row in 2005, when corrections officials said he constructed a ladder from magazines and bed sheets in an effort to scale the barrier around an outdoor recreation area.

At an August clemency hearing, Jon Offredo, brother of one of the victims, said, "Our family has never gotten an apology from Richard Cooley. We've gotten blatant lies and excuses. Is an apology too much to ask? How could he commit such a heinous act and not feel regret?"

But Cooley's lawyer, Dana Cole, said his client is sorry for his crimes.

The high court has not offered clear guidelines on what medical standards need to be met before an inmate is eligible for death. But in a case five years ago, the justices allowed inmates to at least make a claim that their specific physical or medical issues could be cause to block an execution.

The high court had sided with a convicted Alabama killer who claimed his veins were so damaged from years of drug abuse that executioners might have to cut deeply into his flesh to administer the deadly drugs.

Writing for the unanimous court, then-Justice Sandra Day O'Connor said the court was not going to "open the floodgates to all manner of method-of-execution challenges," as Alabama feared. "Our holding is extremely limited." That inmate is still on death row.

Richard Dieter of the Death Penalty Information Center, a data-resource group that opposes capital punishment, said the Supreme Court indicated that "how you're going to be executed is a civil rights matter, the same as if you were discriminated on the basis of race or gender or something like that."

A Washington state killer was given a 1994 reprieve after claiming he was too obese to hang. Mitchell Rupe at one time was more than 425 pounds, but weight-loss surgery in prison had reduced that to 275 pounds over the years. Subsequent legal efforts to execute him failed. He died in prison two years ago from a long illness.

The Ohio case is *Cooley v. Kerns* (08-6722).