

Supreme Court Halts Va. Inmate's Execution

Ruling Could Lead To National Hiatus In Lethal Injections

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The Supreme Court stopped the execution of Virginia death row inmate Christopher Scott Emmett yesterday, a move that legal experts said might signal a nationwide halt to lethal injections until the justices decide next year whether the procedure amounts to cruel and unusual punishment.

The court granted the stay of execution just four hours before Emmett was to be put to death. It is the second time the justices have stopped an execution since agreeing to decide whether lethal injections carry the potential for pain that would violate constitutional standards.

"I think this is a de facto moratorium," said Douglas A. Berman, a sentencing expert at Ohio State University's law school. Since almost all executions are carried out by lethal injection, he said a halt "would mean the most profound hiatus in the operation of the death penalty in at least two decades."

The justices review applications for stays on a case-by-case basis and gave no indication what their decision means for other death row inmates. They gave no reason for halting Emmett's execution, saying only that the stay would last until a federal appeals court in Richmond rules on the case "or further order of this court."

Emmett's attorneys have brought numerous appeals, and the Supreme Court turned down his latest Oct. 1. Emmett, 36, beat a co-worker to death with a brass lamp in a Danville, Va., motel room in 2001 and then stole his money to buy crack.

"The Supreme Court has spoken, and we will follow their decision," said David Clementson, a spokesman for Virginia Attorney General Robert F. McDonnell (R), who had urged that the execution be carried out.

Gov. Timothy M. Kaine (D), who previously had delayed Emmett's execution so the justices could consider his latest appeal, said in a statement that he "had no reason to question the prosecutor's decision to seek the death penalty or the jury's decision that death was an appropriate punishment."

The court's action spared Kaine, who personally opposes the death penalty but has overseen four executions in his time as governor, from having to make the decision to

either halt the execution or allow it to go forward before the justices decide whether lethal injection is constitutional.

Other governors and courts are facing the same question. Executions by lethal injection have been delayed in at least six states, including Texas, which leads the nation in executions, since the court announced Sept. 25 that it was taking up the issue by accepting a Kentucky case. Other states had suspended the use of lethal injections because of questions about it.

"I think you'll see that very few states want to be the outliers when the court seems ready to step in and stop" the planned executions, Berman said.

Richard Dieter, executive director of the Washington-based Death Penalty Information Center, agreed. "I believe this stay in Virginia, combined with previous stays in a number of other states, confirms that a moratorium on all lethal injections is in place in this country until the Supreme Court rules on the issue," he said.

Lethal injection is the primary method of execution in 37 of the 38 states that have the death penalty. Nebraska uses electrocutions, but no executions are scheduled there.

Kent Scheidegger, legal director and general counsel for the Criminal Justice Legal Foundation, which favors capital punishment and opposes expansion of criminal rights, said he had hoped the court would explain its reasoning in its case-by-case review of the stay requests. Another appeal, from Georgia, is likely to reach the court this week.

If the court's action amounts to a moratorium, Scheidegger said, it would dilute "the deterrence effect" of the death penalty and "cause more innocent people to die."

Even without a halt to the use of lethal injections, the pace of executions nationally is the slowest in a decade. A Texas execution carried out on the day the court announced it had accepted the Kentucky case was the last.

The case, *Baze v. Rees*, does not question the constitutionality of the death penalty but whether lethal injection violates the Eighth Amendment's prohibition of cruel and unusual punishment.

Since accepting the case, the justices have issued stays in two executions that lower courts in Texas and Virginia had said could move forward. Tuesday night, they refused to vacate a stay that the U.S. Court of Appeals for the Eighth Circuit had issued for an Arkansas death row inmate.

Justice Antonin Scalia dissented from that decision, saying that the appeals court applied the "mistaken premise" that the court's decision to take *Baze* "calls for the stay of every execution in which an individual raises an Eighth Amendment challenge to the lethal injection protocol."

No other justice signaled agreement with Scalia, and he did not note a dissent in the stay of Emmett's execution.

States began using lethal injection in 1978 on the grounds that it was more humane than electrocution and the gas chamber. Almost all the states that employ lethal injection use the same combination of three chemicals: sodium thiopental, a barbiturate intended to render the inmate unconscious at the start of the procedure; pancuronium bromide, which paralyzes the muscles; and potassium chloride, to stop the heart.

Studies have shown that if the barbiturate is not administered properly, some inmates might be fully aware as the paralyzing agent cuts off their ability to breathe. Moreover, pancuronium is known to cause severe pain, but the inmate would be unable to express that.

Maryland's method of lethal injection is being challenged in federal court, and the state's highest court ruled in December that state officials had not properly adopted the regulations for carrying it out. Gov. Martin O'Malley (D), an opponent of capital punishment, has delayed issuing those regulations.

Virginia's Clementson said the commonwealth's procedures have been reviewed by the courts "and always found to be humane and constitutional." The state has no more executions scheduled this year.