

URGENT ACTION

ARKANSAS CONDUCTS FIRST EXECUTION SINCE 2005

Ledell Lee was executed in Arkansas on 20 April shortly before the death warrant in his case expired at midnight. He was sentenced to death for a murder committed in 1993. This was the first execution in Arkansas since November 2005.

On 9 February 1993, 26-year-old Debra Reese was found dead in her home in Jacksonville, Arkansas. She had been beaten to death. **Ledell Lee**, aged 27, was charged with her murder. His first trial ended in a hung jury in 1994. At a new trial in October 1995, he was convicted and sentenced to death.

Ledell Lee was one of two men who were due to be executed in Arkansas on 20 April (the other received a stay) and one of eight originally scheduled to be put to death in an 11-day period in April (three of whom remain scheduled, and four with current stays of execution). On 6 April, the parole board voted against recommending clemency for Ledell Lee. The governor had the independent authority despite this recommendation to commute the death sentence.

In a joint appeal with the other prisoners, Ledell Lee's lawyers argued that the prejudice caused to him "on account of the State's rush to execute eight individuals in under two weeks and its corresponding haste in conducting clemency proceedings", had compounded the inadequate legal representation he had received at trial and on appeal. His lawyers maintained that no one has "ever conducted an adequate mitigation investigation". In a declaration signed on 17 April and filed in federal court after conducting an examination of Ledell Lee on 13 and 14 April, a psychologist retained by the lawyers concluded that "I believe Mr Lee has significant brain impairments, a neurodevelopmental disorder, a probably Fetal Alcohol Spectrum Disorder, and likely has either borderline or mild Intellectual Disability. I believe these are life-long impairments, that the physical markers of dysfunction are readily apparent, and would have been uncovered at any point since Mr Lee's trial had a competent psychologist or neuropsychologist evaluated Mr Lee."

In an order issued on 20 April, the federal District Court denied the appeal, stating: "Lee's amended motion is an expanded argument about why he was prejudiced by the compressed clemency process; the calendar, he says, didn't allow his current lawyers to make many new points about what his former lawyers did wrong at every stage of the case. Without using the words, he's arguing ineffective assistance of clemency counsel. As the Court has already ruled, though, the Constitution doesn't guarantee counsel as part of the due process minimum during clemency proceedings." The judge acknowledged that "The clemency process in Lee's case was...imperfect and sometimes shoddy. But Lee hasn't sufficiently connected those defects with his lawyers' not uncovering or presenting the new information about neuropsychological deficits, mitigation stumbles, and DNA testing before now. Weighing and balancing all the material considerations, Lee's latest arguments do not support a preliminary injunction related to the clemency process." On 20 April, the US Court of Appeals for the Eighth Circuit upheld the District Court's decision. One of the judges dissented, arguing that Ledell Lee and the other prisoners had demonstrated "a significant possibility that they were denied due process in their clemency proceedings", and should have their executions stayed.

After the US Supreme Court had rejected all final appeals, the execution went ahead. Ledell Lee was pronounced dead at 11.56 pm, 12 minutes after the execution began and four minutes before the death warrant expired. He declined to make a final statement before being killed by lethal injection.

No further action is requested from the UA network. Thank you to all those who sent appeals.

This is the first update of UA 84/17. Further information: www.amnesty.org/en/documents/amr51/6035/2017/en/

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ADDITIONAL INFORMATION

As Ledell Lee's execution approached, litigation on the constitutionality of the state's lethal injection protocol and its acquisition of drugs also continued. On 20 April, a trial-level judge in Pulaski County granted a preliminary injunction prohibiting the state from using the vecuronium bromide (a paralytic agent used in its three-drug execution protocol) it had obtained from McKesson Medical-Surgical Inc. The latter company had brought a complaint against the State of Arkansas seeking an injunction and return of the vecuronium it said it had supplied in the belief that it would be used only for legitimate medical purposes, not for execution. The state appealed the judge's order to the Arkansas Supreme Court, among other things arguing that "affirmatively alerting" the company that the state intended to use the drug from executions was "not required under any statute or common-law theory". On 20 April the state Supreme Court vacated the injunction.

In other litigation brought against the lethal injection protocol in the federal courts, the US Supreme Court denied stays of execution, by five votes to four on 20 April. One of the dissenting Justices, Stephen Breyer, wrote: "Arkansas set out to execute eight people over the course of 11 days. Why these eight? Why now? The apparent reason has nothing to do with the heinousness of their crimes or with the presence (or absence) of mitigating behavior. It has nothing to do with their mental state. It has nothing to do with the need for speedy punishment. Four have been on death row for over 20 years. All have been housed in solitary confinement for at least 10 years. Apparently the reason the State decided to proceed with these eight executions is that the 'use by' date of the State's execution drug is about to expire. In my view, that factor, when considered as a determining factor separating those who live from those who die, is close to random."

There have been seven executions in the USA this year, bringing the total to 1,449 since judicial killing resumed in the USA in 1977 under new capital statutes approved by the US Supreme Court in 1976. Arkansas accounts for 28 of these executions. Amnesty International opposes the death penalty, unconditionally.

Further information on UA: 84/17 Index: AMR 51/6101/2017 Date: 21 April 2017