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Judge affirms Wash. lethal injection method

By RACHEL LA CORTE
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Attorney General Rob McKenna will ask the Washington state Supreme Court to lift the stay of execution of a death row inmate after a judge ruled Friday that the state's lethal injection procedures were constitutional.

Assistant Attorney General John Samson said that they will file a motion with the court next week to vacate the stay of execution of Cal Coburn Brown after Friday morning's ruling by Thurston County Superior Court Judge Chris Wickham.

Brown was one of three death-row inmates who argued that Washington's preferred method of execution needed a major overhaul to satisfy constitutional bans on cruel punishment.

But Wickham ruled that the inmates presented no evidence that the state "intended to impose punishment that was 'cruel.'" He said the method was constitutional under both the state and U.S. Constitutions.

"The procedure to be used by defendants, although not fail-safe, appears to have been designed to administer the death penalty in a way that is humane for the inmate and the observers," Wickham wrote. "It is an attempt to provide some dignity to this most grave event."

In March, the state Supreme Court stayed Brown's execution just hours before he was set to die. The stay was granted based on the Thurston County lawsuit.

Now that that ruling has been issued, McKenna spokeswoman Janelle Guthrie said that the state can seek to have the stay lifted.

Two attorneys for the inmates, Sherilyn Peterson and Scott Engelhard, said they had not yet had a chance to look at the ruling Friday morning, but Peterson said it would be appealed to the state Court of Appeals, and they would ask the state Supreme Court to review it as well.

"I hope that the Supreme Court looks at the facts and the record much more closely than the trial court did," she said.

Samson said that the high court could decide to vacate the stay immediately, could deny the motion to vacate the stay, or could defer ruling until they hear any appeal from the inmates.

The inmates' lawsuit did not seek to end the death penalty in Washington. Instead, the inmates' lawyers asked the state to trade its current mix of three intravenous drugs for a large dose of one powerful

sedative - an approach that plaintiffs said would kill a condemned prisoner with virtually no risk of pain or suffering.

Attorneys for the state countered that Washington's lethal injection system passes constitutional tests because it is substantially similar to a Kentucky system upheld last year by the U.S. Supreme Court.

Washington, like roughly three dozen states, performs lethal injections by administering successive doses of three separate drugs. The chemicals are intended to render a condemned prisoner unconscious, then paralyze the person's body, and, finally, stop the inmate's heart.

The lawsuit, however, argued that Washington's lethal injection procedures are so sloppy and inconsistent that inmates might be partially conscious when fatal drugs flow into their veins. If that happened, the condemned person could be subjected to suffocation and excruciating pain.

The lawsuit alleged a long list of shortcomings in the state's lethal injection methods: No supervision by doctors or nurses, inadequate training and rehearsals for the execution team, and lack of medical qualifications for everyone involved.

At trial, lawyers for the state said the lawsuit essentially demanded "a perfect execution." But the state said prison officials were not required to prove that execution procedures would be followed in a flawless manner that eliminated all risk of pain.

Moreover, the similarities between Washington's policies and those of Kentucky - including the requirement of some medical training or experience for the execution team - are strong enough to prevent a substantial, intolerable risk of harm, the state said.

The state also rejected the plaintiffs' argument that the Washington Constitution offers a stronger protection against cruel punishment than the U.S. Constitution's Eighth Amendment.

Eldon Vail, head of the state's Department of Corrections, said he was "gratified that the court agrees that the protocols and policies are consistent with the U.S. Constitution."

"This is a very difficult thing to do and we take it very seriously," he said.

The case is a combined lawsuit on behalf of three death row inmates: Darold Stenson, who shot his wife and business partner in Clallam County; Brown, who tortured and killed a Burien woman; and Jonathan Gentry, who killed a 12-year-old girl in Kitsap County.

"The families of the victims are one step closer to finality in all three of these cases," Washington state Attorney General Rob McKenna said. "And it's a big step."

Washington death row inmates may opt for hanging instead of lethal injection. The last hanging was of Charles Campbell in May 1994. The state's last execution was the lethal injection death of James Elledge in 2001.

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Associated Press Writer Curt Woodward contributed to this report.

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