

URGENT ACTION

STAY OF EXECUTION ON LETHAL INJECTION ISSUE

The Supreme Court of the US state of Georgia granted a stay of execution to Warren Hill a few hours before he was to be put to death on the evening of 23 July.

The Georgia Supreme Court issued the stay of execution on 23 July so it could consider a question: not the matter of executing a man with **Warren Hill's** level of mental disability, but rather the state's recent switch to a single drug for lethal injections.

On 17 July, the day before Warren Hill was originally scheduled to be executed, the Georgia Department of Corrections announced that, with immediate effect, the prison authorities were switching from a three-drug lethal injection process to a one-drug protocol. In executions under this new protocol, the prisoner would be injected with an overdose of the sedative pentobarbital. The announcement stated that the Department of Corrections had been using pentobarbital in its three-drug process, and that "based upon the experience of other states and competent medical testimony, the drug has proven to be effective" (see also the report *USA: An embarrassment of hitches: Reflections on the death penalty, 35 years after Gregg v. Georgia, as states scramble for lethal injection drugs*, 1 July 2011, <http://www.amnesty.org/en/library/info/AMR51/058/2011/en>)

After the US Supreme Court ruled, in *Atkins v. Virginia* in 2002 that the execution of people with "mental retardation" violates the US Constitution, a trial-level court in Georgia had decided that by "a preponderance of the evidence" – not the higher "beyond a reasonable doubt" standard in the Georgia law – Warren Hill's impairment amounted to mental retardation. However, the state authorities appealed to the Georgia Supreme Court which in 2003 ruled by four votes to three that the "beyond a reasonable doubt" standard was acceptable in this context. The majority reasoned that the US Supreme Court had left it up to individual states to decide how to comply with *Atkins*, and had not specified what the burden of proof for determining mental retardation should be. Warren Hill's case was sent back to the lower court which reinstated its original 2002 ruling that under the "beyond a reasonable doubt" standard, he did not have mental retardation.

On 19 July 2012, the trial-level court affirmed that its earlier determination that Warren Hill "has an IQ of 70 beyond a reasonable doubt and meets the overall criteria for mental retardation by a preponderance of the evidence is justified by the evidence in this case." Nevertheless, the judge denied Hill's motion for a stay of execution because his mental retardation had not been proven "beyond a reasonable doubt". On 23 July, the Georgia Supreme Court voted 6-1 not to consider an appeal. No other death penalty state in the USA uses the "beyond a reasonable doubt" standard for such determinations. Most use the "preponderance of the evidence" test.

Among those opposing the execution was the Executive Director of the American Association on Intellectual and Developmental Disabilities, who wrote: "The US Supreme Court should move to protect Mr Hill from execution because of his undisputed intellectual disability. The court has already found that our constitution protects those who are intellectually disabled from execution; now they must ensure that those rights are applied in a fair and just manner." The US Supreme Court had not announced whether it would stop the execution to consider the mental disability issue when the state Supreme Court voted to issue a stay to consider the question of the switch to a single drug protocol and whether the change complies with state law.

Warren Hill had eaten his "final meal" before being told that he was not going to be put to death that evening. The stay of execution is indefinite.

No further action is requested from the UA network. Many thanks to all who sent appeals.

This is the second update of UA 197/12. Further information: <http://amnesty.org/en/library/info/AMR51/058/2012/en>.

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