

PUBLIC

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Further information on UA 84/07 (AMR 51/067/2007, 12 April 2007) – Death penalty/Legal concern

USA (Nebraska)

Carey Dean Moore (m), white, aged 49

On 2 May, the Nebraska Supreme Court blocked the execution of Carey Moore, who had been due to be put to death in the electric chair on 8 May. He was sentenced to death in 1980 for the murder of two men in Omaha in August 1979. Carey Moore was aged 21 at the time of the crimes. He is now 49. He had given up his appeals. Nebraska has not carried out an execution for 10 years.

Nebraska is the only state in the USA which retains the electric chair as its sole method of execution. The state changed its method of electrocution in 2004 from a four-shock technique to a single 15-second shock of 2,450 volts. In April 2007, the Corrections Department revealed that the protocol had been changed again, to require a 20-second jolt of electricity. Under the new rules, there is a wait of 15 minutes before checking that the condemned inmate is dead. On 30 April, Nebraska Senator Ernie Chambers asked the state Supreme Court to suspend executions until it can review the execution protocol. In his letter to the Court, the Senator wrote: "This is such a serious issue and this execution protocol is shrouded in so much confusion and uncertainty – and so likely, in my view, to result in a 'botched' execution – that this court must satisfy itself there is not going to be a shameful fiasco on May 8, of such proportion and notoriety as to engage the critical attention of CNN and the world."

Three days later, the Nebraska Supreme Court blocked the execution. By four votes to three, it said that "on its own motion", it had reconsidered its order to issue a death warrant for Carey Moore. It had concluded that it had "acted prematurely" in ordering a death warrant before resolving the question of the constitutionality of the use of the electric chair, scheduled to be brought before the Court in another case in September 2007. The Court pointed out that "were we to conclude that electrocution is no longer constitutional, then we would have undeniably permitted a cruel and unusual punishment only a few months earlier. The damage to Moore, and to the integrity of the judicial process, would be irreparable... The purpose of a stay is to prevent a state from doing an act which is challenged and may be declared unlawful in a pending proceeding."

The Chief Justice of the Court was one of the judges who dissented from the order. He denounced the decision to issue a stay in the absence of a request from the condemned man. He stated that "we know of no case in which a court suspended a state's executions [without] a request for relief...by the condemned person". However, the narrow majority held that despite the fact that Moore had waived his appeals, "we are nonetheless required to ensure the integrity of death sentences in Nebraska... Although we respect the defendant's autonomy, the solemn business of executing a human being cannot be subordinated to the caprice of the accused. We must adhere to our heightened obligation to ensure the lawful and constitutional administration of the death penalty, regardless of the wishes of the defendant in any one case."

The Governor of Nebraska, Dave Heineman, issued a one-line response to the stay of execution: "This unprecedented judicial activism leaves me speechless."

No further action is requested at present. Many thanks to all who sent appeals.