

PUBLIC

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Further information on UA 100/07 (AMR 51/080/2007, 27 April 2007) – Death penalty/Legal concern

USA (Tennessee)

Philip Workman (m), white, aged 53

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Philip Workman was executed by lethal injection in Tennessee in the early hours of 9 May despite evidence that a key state witness lied at his trial and that Lieutenant Ronald Oliver, the police officer Workman was convicted of killing during a 1981 robbery, may have been accidentally shot by a fellow officer. Philip Workman had been on death row for 25 years.

On 4 May, a three-judge panel of the US Court of Appeals for the Sixth Circuit rejected Philip Workman's appeal for a stay of execution to pursue his claim of innocence. Two of the judges ruled that Philip Workman had "not met his burden of showing a likelihood of success" on the merits of his appeal. They continued: "Nearly twenty-five years after Workman's capital sentence and five stays of execution later, both the state and the public have an interest in finality..." The third judge, Judge Cole, dissented from the refusal to stay the execution. He argued that Workman had "made the necessary showing" that he was likely to succeed, at least in his bid to obtain an evidentiary hearing on his claims, and that that was enough to warrant a stay. Judge Cole also pointed out that another three-judge panel of the Sixth Circuit had recently granted a stay of execution to a death row prisoner in similar circumstances. He said: "I simply cannot conclude that this inconsistency in the administration of the death penalty is permissible."

Across the USA, legal challenges to the constitutionality of lethal injection procedures are continuing amid mounting evidence that they do not guarantee the "humane" and painless death that the proponents of lethal injection claim, and that the combination of chemicals used can mask an inmate's pain during execution. On 1 February 2007, noting that the state authorities had identified "deficiencies" in Tennessee's lethal injection procedures, Governor Phil Bredesen had issued an executive order suspending executions while the Department of Correction conducted a "comprehensive review" of the procedures. On 30 April, the Governor announced that the review had been completed and that the moratorium on executions would expire on 2 May.

Philip Workman's lawyers filed a motion for a temporary restraining order (TRO) to stop the execution under the new protocol, at least until it could be judicially reviewed. On 4 May, a federal district court judge granted the motion, issuing a TRO until a hearing on a preliminary injunction could be held on 14 May. The judge concluded that Workman had demonstrated a "strong or substantial likelihood of success on the merits of his constitutional claims," and that any harm to the government of postponing the execution until a full review of the new execution protocol could be undertaken did not outweigh the undisputed and irreparable harm that would be done to Workman if the execution went ahead. The judge added that the government has "no interest in proceeding with an execution protocol which may ultimately be found to be unconstitutional."

On 7 May, the same three-judge panel of the Sixth Circuit that had refused to stay his execution on the innocence claim vacated the TRO. The two judges in the majority stated that "the district court's order, if upheld, would be Workman's *sixth* stay of an execution date set by the State over the last seven years." They concluded that "Workman has a small likelihood of success with respect to this challenge because his contention is unsupported by current law, which offers no basis for finding lethal injection protocols unconstitutional". It ended its ruling by stating that "at some point in time, the State has a right to impose a sentence – not just because the State's interests in finality are compelling, but also because there is a powerful and legitimate interest in punishing the guilty, which attaches to the State and victims of crime alike. Twenty-five years after the imposition of this sentence, that time, it seems to us, has come."

Again, Judge Cole dissented. Firstly, he argued that under procedural rules, the Court did not have the jurisdiction to vacate the temporary restraining order. He continued: "Just as troubling, despite the extensive and detailed allegations Workman raises tending to show that Tennessee's new lethal-injection protocol will subject him to pain and suffering in violation of the Eighth Amendment; despite that Workman supports his allegations with testimony from physicians familiar with lethal-injection protocols, medical studies, and evidence from recent botched executions; despite the statements from federal courts across the United States expressing deep scepticism with similar lethal-injection protocols adopted by other states; and despite the deference that an appellate court owes to the judgment of a district court, the majority concludes that Workman's concerns are insufficiently compelling to warrant a brief five-day preservation of the status quo to determine whether his claims have merit... The majority raises the unremarkable point that no court has yet made a final ruling on the merits that these lethal-injection procedures violate the Eighth Amendment. This is of course not surprising considering that these lethal-injection challenges are in their infancy... It is unfortunate that the majority chooses to foreclose the limited inquiry — an inquiry that does no more than preserve the status quo for a mere five days — that could very well confirm its conclusion that Philip Workman has nothing to fear from Tennessee's new lethal-injection protocol. The majority's reasons for doing so are unconvincing. Whatever harm the State might sustain by the issuance of the TRO — if indeed "harm" it can be called — pales next to the damage done to our Constitution by allowing a single defendant to perish under a method of execution that violates his rights."

The US Supreme Court refused to intervene in the case. Philip Workman was pronounced dead at 1.38am local time on 9 May.

A newly published study, conducted under the auspices of the American Bar Association (ABA), which takes no position for or against the death penalty per se, has found that "Tennessee's death penalty is plagued with serious problems." Among these problems, the study found, were inadequate procedures to address innocence claims, inadequate qualification and performance standards for defence counsel, lack of transparency in the clemency process and racial and geographic disparities in capital sentencing.

On 2 May, the House Judiciary Committee in the Tennessee legislature unanimously approved a bill that would establish a commission to review the state's capital justice system. If eventually passed by the legislature, the commission would include representatives appointed by the Governor, the Senate and the House, as well as defence and prosecution lawyers, mental health advocates, and victims' rights advocates. The commission would make recommendations to the legislature as to how any problems it identified should be addressed.

Philip Workman becomes the 18<sup>th</sup> prisoner to be executed in the USA this year and the 1,075<sup>th</sup> to be put to death there since judicial killing resumed in 1977. Tennessee has now put three prisoners to death since resuming executions in 2000.

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