

URGENT ACTION

JUDGE BLOCKS KENTUCKY EXECUTION

A local judge in Kentucky has blocked the execution of Gregory Wilson, a 53-year-old African American man who was scheduled to be put to death by lethal injection in Kentucky State Penitentiary, USA, on 16 September after more than two decades on death row.

Franklin County Circuit Judge Phillip Shepherd issued a stay of execution on 10 September, ruling that he had “at least two substantial questions of law” about Kentucky’s administrative regulations for carrying out an execution. Firstly, he noted that the regulations prohibit the use of a single drug in lethal injections, whereas, Judge Shepherd found, the statute “explicitly allows the use of single drug”. In April 2008, in *Baze v. Rees*, the US Supreme Court had upheld the constitutionality of the method of lethal injection used by Kentucky, involving the use of three drugs. In November 2009, the Kentucky Supreme Court halted executions in the state on the grounds that the authorities had not followed the proper administrative process when adopting its lethal injection protocol. The state Department of Corrections re-implemented the protocol in May 2010. Judge Shepherd noted that the Department had been urged by various parties prior to May 2010 to allow the use of the single drug, but the Department had responded that the three-drug cocktail had been approved by the US Supreme Court in *Baze v. Rees*. Judge Shepherd ruled that its failure to provide any further “explanation or rationale” raised “serious questions as to whether the elimination of the single drug option is arbitrary and capricious” in violation of the state constitution.

Secondly, Judge Shepherd found that the regulations “contain no means of determining if a condemned inmate is mentally retarded” as defined under Kentucky law and under the 2002 US Supreme Court ruling *Atkins v Virginia*. **Gregory Wilson’s** lawyers had previously filed a motion with another judge claiming that Wilson has mental retardation, presenting evidence that as a 14-year-old, he had been assessed as having an IQ of 62 and that he was “mildly retarded”. The judge denied the motion without a hearing in early September 2010. Judge Shepherd noted that “it appears that Wilson’s execution has been scheduled before there has been any determination of his mental capacity”, and found that “there is a good faith belief that Wilson may be ineligible for the death penalty”.

Judge Shepherd noted the “remarkable course of events” at Gregory Wilson’s 1988 trial when he had to represent himself “because of a dispute with the trial judge over the judge’s appointment as his counsel of a volunteer attorney with no death penalty trial or appellate experience”. As a result, Judge Shepherd added, “Mr Wilson appears to be the only inmate on death row in Kentucky who had no lawyer at trial”. Judge Shepherd also noted the revelations since the trial – not disclosed by the prosecution – that Gregory Wilson’s co-defendant, Brenda Humphrey, “had a long running sexual affair” before and during the trial with another judge in the courthouse “who was a colleague and close friend” of the judge presiding over their trial. Judge Shepherd said that “in light of the irregularities in Wilson’s trial, and the question of whether he had the mental capacity to waive his constitutional right to counsel and other constitutional rights, the Court believes that equities weigh heavily in favour of requiring that issue to be fully and fairly resolved prior to the execution of the death warrant”.

The state appealed to the Kentucky Supreme Court, but Gregory Wilson’s lawyers were not required to respond until after the execution warrant had expired. In a statement issued on 16 September, the state noted that “we remain enjoined by the Franklin Circuit Court from carrying out the execution until further orders of the [Supreme] Court.”

Gregory Wilson’s lawyers said: “It was a team effort involving assistance in some form or fashion from virtually every division of our office, as well as many individuals, entities and organizations outside of our office, locally and from across the state, nation and international community. Thanks to all who contributed to this life-saving endeavor”.

No further action by the UA Network is requested at present. Many thanks to all who sent appeals.

This is the second update of UA 196/10 (AMR 51/082/2010). Further information: <http://www.amnesty.org/en/library/info/AMR51/082/2010/en>
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