



State Justices Consider Delay Of Execution For Convict

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TALLAHASSEE - The U.S. Supreme Court, not its Florida counterpart, should decide whether to stay an execution scheduled next month while the federal justices consider a lethal injection challenge, a lawyer for the state argued Thursday.

The Florida Supreme Court heard oral arguments in similar lethal injection appeals from two death row inmates.

The federal and Florida challenges allege the three-chemical procedure used by most states with lethal injection can cause excruciating pain in violation of a constitutional ban on cruel and unusual punishment.

One Florida inmate, Mark Dean Schwab, 38, is scheduled to die Nov. 15 for the rape and murder of 11-year-old Junny Rios-Martinez of Cocoa, who was killed by smothering or choking.

Justice Harry Lee Anstead sharply questioned Assistant Attorney General Kenneth Nunnelley on his opposition to delaying Schwab's execution until the federal justices rule in a Kentucky case. "I'm having difficulty seeing what the urgency is of going forward with an execution when we're about to get the law from the horse's mouth," Anstead said.

Anstead raised the issue in the case of Ian Deco Lightbourne, 47, who is not yet under a death warrant. Lightbourne has been convicted of killing Nancy O'Farrell in 1981 after breaking into her Marion County home.

Nunnelley said the state justices should follow Florida law, which is based on prior U.S. Supreme Court rulings, because no new evidence has been presented to show the procedure is unconstitutional.

He made the same argument later in Schwab's case and said the state justices should leave the issue of a stay to the U.S. Supreme Court because "no one knows exactly what's going to happen" in the federal case.

Nunnelley predicted Florida's procedure would "meet any standard they may possibly choose to apply."

Lightbourne challenged the procedure in December, a day after it took twice as long as usual - 34 minutes - for convicted killer Angel Diaz, 55, to die. Then-Gov. Jeb Bush suspended executions pending an investigation that found needles had been pushed through Diaz's veins into his flesh, reducing the effectiveness of the drugs.

Gov. Charlie Crist lifted the moratorium in July by signing Schwab's death warrant.

Schwab's lawyer, Mark Gruber, urged the justices to order a trial court hearing at which he could present evidence showing a paralytic drug used in executions results in an unconstitutional risk of pain.

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