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Florida Supreme Court upholds lethal injection procedures

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TALLAHASSEE

Florida's Supreme Court ruled Thursday that the state's lethal injection procedures are not cruel and unusual, which could clear the way for an execution scheduled for this month.

The justices wrote ``we reject the conclusion that lethal injection as applied in Florida is unconstitutional." The decision was unanimous.

Lethal injection procedures are also under review by the U.S. Supreme Court. The high court has allowed only one execution to be carried out since it agreed in September to hear a case from Kentucky that raises a similar challenge.

The state Supreme Court ruled that Florida's lethal injection procedure doesn't violate the constitutional ban on cruel and unusual punishment, particularly since safeguards were put in place after a problematic December execution.

In that execution, it took 34 minutes -- twice as long as usual -- for convicted killer Angel Diaz to die.

Although the court decided the procedure is valid, it didn't rule specifically on a request for a stay of execution for Mark Dean Schwab, one of two condemned inmates who challenged the procedure. Schwab is scheduled to be executed Nov. 15 if the stay isn't granted.

For now, the state is proceeding with plans to execute Schwab, who was convicted in the rape and murder of 11-year-old Junny Rios-Martinez in 1991.

``At this time, there is nothing prohibiting Schwab's execution from taking place as scheduled," said Sandi Copes, a spokeswoman for Attorney General Bill McCollum.

The Florida Constitution defines punishment as cruel and unusual when it violates the U.S. Constitution's ban on such punishment.

Schwab argued in his appeal that the chemical procedure used by Florida --which is also used in most states with lethal injection -- can cause excruciating pain. That's the same argument made in the Kentucky case currently before the U.S. Supreme Court.

Schwab also had argued that newly discovered evidence would show he suffers from a brain impairment, a claim the state Supreme Court also rejected Thursday.

Attorneys for Schwab didn't immediately respond to requests for comment.

Schwab's appeal was filed while the court was also considering an appeal by another condemned inmate, Ian Deco Lightbourne.

In Lightbourne's case, the Supreme Court said the way the Department of Corrections administers lethal injection under the new safeguards is legal.

Lightbourne's attorney, Suzanne Keffer, said the court made its decision without any answers from state officials to what she says are key issues that directly affect whether the procedure is cruel -- including whether the people who are charged with executing prisoners can do it correctly.

"We don't know what the qualifications of the people involved are. We don't know if the executioners are the same people who botched the Diaz execution," Keffer said.

Keffer said Lightbourne's lawyers were deciding whether to appeal Thursday's decision to the U.S. Supreme Court.

A date hasn't been set for Lightbourne's execution for killing Nancy O'Farrell in 1981 after breaking into her Marion County home.

After Diaz's execution in December, then-Gov. Jeb Bush suspended executions pending an investigation into the procedure. That probe found that the Diaz execution had problems, but not the procedure itself. Investigators said needles had been pushed through Diaz's veins into his flesh, reducing the effectiveness of the drugs.

Since Diaz's execution, the Department of Corrections has changed its procedures, including improved staffing and training. Death penalty opponents argue those procedures remain insufficient to prevent inmates from suffering painful deaths.

Gov. Charlie Crist lifted the moratorium in July by signing Schwab's death warrant, saying he saw no reason to wait until the U.S. Supreme Court rules on the Kentucky case.

A spokeswoman for the Department of Corrections said Thursday that the agency "stands ready to go forward," with an execution if the courts don't intervene.

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