



FEDERAL JUDGE SAYS ALABAMA CAN CONDUCT NATION'S 1ST EXECUTION WITH NITROGEN GAS; APPEAL PLANNED - ASSOCIATED PRESS

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Alabama will be allowed to put an inmate to death with nitrogen gas later this month, a federal judge ruled Wednesday, clearing the way for what would be the nation's first execution using a new method the inmate's lawyers criticize as cruel and experimental.

U.S. District Judge R. Austin Huffaker rejected inmate Kenneth Eugene Smith's request for a preliminary injunction to stop his scheduled Jan. 25 execution by nitrogen hypoxia. Smith's attorneys have said Alabama is trying to make Smith the "test subject" for an untried execution method after he survived the state's previous attempt to put him to death by lethal injection.

Smith's attorney, Robert Grass, said he will appeal the decision but declined further comment. The question of whether the execution can ultimately proceed could end up before the U.S. Supreme Court.

Smith, now 58, was one of two men convicted of the murder-for-hire of a preacher's wife that rocked Alabama in 1988. Prosecutors said Smith and the other man were each paid \$1,000 to kill Elizabeth Sennett on behalf of her husband, who was deeply in debt and wanted to collect on insurance.

Alabama Attorney General Steve Marshall praised Wednesday's decision, saying it moves the state closer to "holding Kenneth Smith accountable for the heinous murder-for-hire slaying" he was convicted of committing.

"Smith has avoided his lawful death sentence for over 35 years, but the court's rejection today of Smith's speculative claims removes an obstacle to finally seeing justice done," his statement added.

The state's plans call for placing a respirator-type face mask over Smith's nose and mouth to replace breathable air with nitrogen, causing him to die from lack of oxygen. Three states — Alabama, Mississippi and Oklahoma — have authorized nitrogen hypoxia as an execution method, but none has used it so far.

Smith's attorneys argued the new protocol is riddled with unknowns and potential problems and violates a constitutional ban on cruel and unusual punishment.

Huffaker acknowledged that execution by nitrogen hypoxia is a new method but noted that lethal injection — now the most common execution method in the country — once was also new. He said while Smith had shown the theoretical risks of pain and suffering under Alabama's protocol, those risks don't rise to an unconstitutional violation.

"Smith is not guaranteed a painless death. On this record, Smith has not shown, and the court cannot conclude, the Protocol inflicts both cruel and unusual punishment rendering it constitutionally infirm under the prevailing legal framework," Huffaker wrote in the 48-page ruling.

Huffaker also wrote that there wasn't enough evidence to find the method "is substantially likely to cause Smith superadded pain short of death or a prolonged death."

Smith survived a prior attempt to execute him. The Alabama Department of Corrections tried to give Smith a lethal injection in 2022 but called it off when authorities couldn't connect two intravenous lines.

The Rev. Dr. Jeff Hood, Smith's spiritual adviser who plans to be with Smith during the execution, said he was troubled by the ruling. "Horror is an understatement. The State of Alabama now has the permission of a federal court to suffocate its citizens," Hood said.

Experts appointed by the United Nations Human Rights Council earlier this month cautioned that, in their view, the execution method would violate the prohibition on torture and other cruel, inhuman or degrading punishment.

Wednesday's ruling followed a December court hearing and legal filings in which attorneys for Smith and Alabama gave diverging descriptions of the risks and humaneness of death from nitrogen gas exposure.

The state attorney general's office had argued that the deprivation of oxygen would "cause unconsciousness within seconds, and cause death within minutes." Its court filings compared the new execution method to industrial accidents in which people passed out quickly and died after exposure to nitrogen gas.

But Smith's attorneys noted in court filings that the American Veterinary Medical Association wrote in 2020 euthanasia guidelines that nitrogen hypoxia is an acceptable method of euthanasia for pigs but not for other mammals because it could create an "anoxic environment that is distressing for some species."

Smith's attorneys also argued that the gas mask, which sits over the nose and mouth, would interfere with Smith's ability to pray aloud or make a final death chamber statement.

The attorney general's office called those concerns speculative.

Alabama's prison system agreed to minor changes to settle concerns that Smith's spiritual adviser would be unable to minister to him before the execution. The state wrote in a court filing that the adviser could enter the execution chamber before the mask was placed on Smith's face to pray with him and anoint him with oil.

The murder victim Sennett was found dead on March 18, 1988, in the home she shared with her husband Charles Sennett Sr. in Alabama's northern Colbert County. The coroner testified the 45-year-old woman had been stabbed repeatedly. Her husband, then the pastor of the Westside Church of Christ, killed himself when the murder investigation focused on him as a suspect, according to court documents.

Smith's initial 1989 conviction was overturned on appeal. He was retried and convicted again in 1996. The jury recommended a life sentence by a vote of 11-1, but a judge overrode the recommendation and sentenced Smith to death. Alabama no longer allows a judge to override a jury's decision on death penalty decisions.

John Forrest Parker, the other man convicted in the case, was executed in 2010.

