Supreme Court Denies Stay of Execution for Marvin Wilson

The U.S. Supreme Court declined a request to stay the execution of Marvin Wilson scheduled for this evening. Wilson's lawyers argue that he is mentally disabled and should be exempted from the death penalty.

By: Brandi Grissom
Adapted by Fishtank Staff

Updated Aug. 7 at 5:15 p.m.

1 Lee Kovarsky, lawyer for Marvin Wilson, said that the U.S. Supreme Court denied the request to stay his execution scheduled for 6 p.m. Tuesday. He called the decision disappointing and said he was profoundly saddened.

2 "Ten years ago, this court categorically barred states from executing people with mental retardation," Kovarsky said. "Yet, tonight Texas will end the life of a man who was diagnosed with mental retardation by a court-appointed, board-certified specialist."

3 Kovarsky said the criteria Texas uses to determine mental disability in death penalty cases is a "decayed remainder of an uninformed stereotype that has been widely discredited."

4 Prosecutors in Jefferson County have maintained that Wilson is competent for execution and have called the claims of mental disability a "red herring."

Updated Aug. 7 at 9 a.m.:

5 Thomas Steinbeck said his father John Steinbeck would be "deeply angry and ashamed" to know that Texas used the fictional character Lennie Small from his famous book *Of Mice and Men* to help set the standard to judge whether a man is eligible for execution. Steinbeck joined anti-death penalty advocates in objecting to

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Grissom, B. (2012, August 7). Supreme Court denies stay of execution for Marvin Wilson. *The Texas Tribune*.
https://www.texastribune.org/2012/08/07/advocates-texas-will-execute-mentally-retarded-inm/

the lethal injection of Marvin Wilson — scheduled for this evening — whose lawyers say he has an IQ of 61, so low that his execution would be unconstitutional.

6 "I find the whole premise to be insulting, outrageous, ridiculous and profoundly tragic," Thomas said in a prepared statement.

7 The U.S. Supreme Court in 2002 ruled that states could not execute the mentally disabled. But it allowed states to develop their own criteria for mental disabilities. Lawyers for Wilson have asked the Supreme Court to stay his execution and rule that the criteria Texas has developed is unscientific.

8 In developing the three-part so-called *Briseño* factors that are used to determine mental disabilities, the Texas courts invoked, in part, an evaluation of Lennie from Steinbeck's book, writing that "most Texas citizens would agree that Steinbeck's Lennie should, by virtue of his lack of reasoning ability and adaptive skills, be exempt from execution. But does a consensus of Texas citizens agree that all persons who might legitimately qualify for assistance under the social services definition of mental retardation be exempt from an otherwise constitutional penalty?"

9 Steinbeck said he was deeply troubled by the state's plan to execute Wilson tonight based on a standard devised using a fictional character.

10 "His work was certainly not meant to be scientific, and the character of Lennie was never intended to be used to diagnose a medical condition like intellectual disability," he said.

11 As Wilson's execution draws closer, opponents have begun to issue a chorus of objections. State Rep. Lon Burnam, D-Fort Worth, on Monday wrote to Gov. Rick Perry seeking a stay of execution on Wilson's behalf. Human Rights Watch also decried the planned execution.

12 “Texas is circumventing the Constitution’s ban on cruel and unusual punishment,” said Antonio Ginatta, U.S. advocacy director at Human Rights Watch.

Original story:

13 A state senator joined anti-death penalty advocates on Friday in calling on Texas to halt next week's execution of Marvin Wilson, whose lawyers argue he is mentally retarded.

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14 "Unfortunately, Texas continues to circumvent the U.S. Supreme Court's categorical ban on the execution of offenders with mental retardation by developing its own set of determining factors for who will be exempt from execution," state Sen. Rodney Ellis, D-Houston, said in a press release.

15 Wilson, who was convicted of shooting to death 21-year-old Jerry Robert Williams of Beaumont nearly 20 years ago, is set to die on Tuesday. His lawyers have appealed to the Supreme Court, arguing that the standard Texas courts use to determine mental retardation is unreasonable and asking the court to clarify how states should gauge mental competency for execution.

16 Ed Shettle, an assistant district attorney in Jefferson County, where Wilson was prosecuted, said the convicted murderer was not determined to be mentally retarded during his two trials for the crime.

17 "The state courts found that he wasn't retarded," Shettle said. "That's really the long and short of that."

18 The Supreme Court ruled in 2002 that states cannot execute the mentally retarded but left it to them to determine guidelines for establishing whether a person is unfit to be put to death. Texas courts have generally adopted a three-part definition that requires the convicted inmate to have below average intellectual function, to lack adaptive behavior skills and to have had these problems prior to age 18.

19 In their petition to the Supreme Court, Wilson's lawyers argue that the Texas criteria "lack any scientific foundation" and unfairly exclude people who would otherwise legitimately be considered clinically mentally retarded.

20 "It is consistent with an approach that has gotten more and more aggressive in violating the rule that states cannot execute people with mental retardation through a process of defining that category down," said Wilson's attorney, Lee Kovarsky, an assistant professor of law at the University of Maryland.

21 Wilson's lawyers said he scored a 61 on the Wechsler Adult Intelligence Scale, placing him below the first percentile of human intelligence. Defense experts have diagnosed Wilson with mild retardation in comparison to others with the same diagnosis. And, the lawyers said, no state expert or evidence has contested Wilson's mental retardation claim. At the time of Wilson's original trial in 1992, Kovarsky said, lawyers

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did not present evidence of mental retardation because it would have been considered a factor that would have made him more dangerous and more likely to be sentenced to death.

22 Kovarsky said Wilson's lawyers want the Supreme Court to force Texas to use scientific standards for establishing mental retardation.

23 Amnesty International called the state's decision to execute Wilson "utterly shameful" and called on the Supreme Court to intervene.

24 "Texas seems to think it can buck even the Supreme Court," said Laura Moye, director of Amnesty International's death penalty abolition campaign. "The Supreme Court must hear this case if Texas refuses to commute the sentence."

25 Assistant district attorney Shettle said the issue of mental retardation in Wilson's case is a "red herring."

26 "But I certainly understand his defense attorney's efforts to save his life," Shettle said. "That’s how the system works."

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