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USA JURY VOTED FOR LIFE, STATE RESETS EXECUTION

Kenneth Smith is scheduled to be executed in Alabama on January 25, 2024. His jury voted for life imprisonment without the possibility of parole, but the judge imposed a death sentence, under a judicial override system outlawed in Alabama in 2017. The state tried to execute Kenneth Smith in 2022 by lethal injection but this attempt failed. This time around, the state will deprive him of oxygen using nitrogen gas, an execution method not previously used. Twenty-two years old at the time of the crime, Kenneth Smith is now 58. His prison record is one of non-violence, self-improvement and helping others.

Write to the Governor of Alabama urging her to:

- Use her clemency power to stop Kenneth Smith's execution and commute his death sentence.

Write to:

The Office of Governor Kay Ivey
State Capitol, 600 Dexter Avenue
Montgomery, AL 36130, USA

Email: <https://contact.governor.alabama.gov/contact.aspx>

Fax: +1 334 353 0004

ADDITIONAL INFORMATION

The crime involved the murder of a 45-year-old woman in her home in Alabama on March 18, 1988. The prosecution submitted evidence that her husband had recruited Billy Williams, who then engaged Kenneth Smith and John Parker, to kill her. The husband, a preacher who was in debt and wanted to collect life insurance, committed suicide a week after the murder. Billy Williams was convicted of capital murder and sentenced to life imprisonment without the possibility of parole (LWOP); John Parker, was sentenced to death, and executed in 2010. Kenneth Smith was also sentenced to death, but his 1989 conviction and death sentence were overturned on appeal because of racist prosecutorial jury selection tactics at the trial. At the 1996 retrial, Kenneth Smith was again convicted. The jury – made up of seven Black women, four Black men, and one white woman – voted 11-1 for LWOP, but the judge overrode their decision and passed a death sentence.

The judge found one aggravating factor – that the murder was committed for pecuniary gain – and decided that this outweighed the mitigating circumstances. These were Kenneth Smith's young age at the time of the crime, his lack of significant history of prior criminal activity, good prison record, childhood deprivation and neglect, as well as his remorse and voluntary confession to his participation in the crime. The judge would later suggest in an interview that he had overridden the jury's vote because Kenneth Smith "*deserved the death penalty*" and that "*some people serving on juries... don't want the responsibility to sentence someone to death*".

In a dissent in an Alabama case in 2013, two US Supreme Court Justices noted that 95 death sentences had been passed in Alabama on judicial override since 1976, at a rate 10 times higher than overrides in the other direction. They noted that since the late 1990s Alabama had become a “clear outlier” on life-to-death overrides and concluded that “*the only answer that is supported by empirical evidence*” as to why this was the case, was that “*Alabama judges, who are elected in partisan proceedings, appear to have succumbed to electoral pressures*”. Alabama got rid of its override system in 2017. The US Court of Appeals for the 11th Circuit noted in 2021, “*If Smith’s trial had occurred today, he would not be eligible for execution because, in 2017, Alabama amended its capital-sentencing scheme prospectively to repeal trial judges’ authority to override capital jury sentencing determinations.*”

Kenneth Smith had no history of violence before the crime and none since. His lawyers have said his prison record has been one of respectfulness towards others; he has pursued religious and educational activities, obtaining an associate degree and was described by an instructor as “*very conscientious*”. He has counselled others on death row, as well as his family members and friends during personal crises. Some prison officers have confided in him too.

On November 17, 2022, Kenneth Smith survived the state’s attempt to execute him by lethal injection, the third consecutive execution in Alabama in 2022 that was botched or failed. In another case in July 2023, three US Supreme Court Justices recalled how during these execution attempts “*prison officials spent multiple hours digging for prisoners’ veins in an attempt to set IV lines*” and described the treatment as “*torturous* “. Kenneth Smith’s lawyers have said that during the four hours he was strapped to the gurney he had experienced “*severe and ongoing physical and psychological pain*” and had been left with post-traumatic stress disorder (PTSD), his symptoms including nightmares, hypervigilance, hyperarousal, and disassociation. They say his PTSD is being exacerbated by the increased isolation to which he has been subjected by the removal of contact with others on death row since his execution date was set on November 8, and which will amount to a total of 78 days by the time of his execution date.

The state is proposing to attempt again to execute Kenneth Smith, this time by the method of “*nitrogen hypoxia*” during which nitrogen is fed by tube into an airtight face mask worn by the person being executed, depriving them of oxygen and causing eventual death. The US Supreme Court noted in 2019 that nitrogen hypoxia had “*never been used to carry out an execution*” and that the first state to do so would be “*the first to experiment with a new untried and untested method*”. Now Alabama, a state with a record of botched executions and a lack of transparency and inquiry into such failures, is the one moving ahead with this method. Kenneth Smith’s lawyers assert that he is being used as “*the test subject for this novel and experimental method*” and that “*if not performed correctly, execution by nitrogen hypoxia can result in another botched execution that risks leaving Mr Smith with permanent injuries*”.

There have been 1,582 executions in the USA since 1976 – by electrocution, gas asphyxiation, hanging, firing squad and lethal injection. Amnesty International opposes the death penalty unconditionally, regardless of the execution method used. Cruelty is an inescapable part of sentencing someone to death and holding them under that sentence.

*Please send your appeals until **January 25, 2024**. If there’s the need for further action after that date, the UA will be duly updated.*