

The Supreme Court of Ohio

CASE ANNOUNCEMENTS

January 25, 2013

[Cite as *01/25/2013 Case Announcements #2, 2013-Ohio-164.*]

MOTION AND PROCEDURAL RULINGS

1995-0042. State v. Wogenstahl.

Hamilton App. No. C-930222. This cause came on for further consideration upon appellee's motion to set execution date. Upon consideration thereof, it is ordered by the court that the motion is granted.

It is further ordered that Jeffrey A. Wogenstahl's sentence be carried into execution by the warden of the Southern Ohio Correctional Facility, or in his absence, by the deputy warden on Thursday, May 14, 2015, in accordance with the statutes so provided.

It is further ordered that a certified copy of this entry and a warrant under the seal of this court be duly certified to the warden of the Southern Ohio Correctional Facility and that said warden shall make due return thereof to the clerk of the Court of Common Pleas of Hamilton County.

O'Neill, J., dissents.

O'NEILL, J., dissenting.

{¶ 1} I would deny the state's motion to set an execution date, and I therefore dissent from the order issued by this court. If there exists a case that is appropriate for the imposition of the death sentence, this case clearly qualifies. Appellant was convicted of kidnapping a ten-year-old girl from her home, taking her to a secluded area, and stabbing her to death. 75 Ohio St.3d 344, 662 N.E.2d 311 (1996). There can be no disputing that this was a horrific act that is deserving of the strongest penalty possible.

{¶ 2} Without expressing an opinion as to appellant's guilt or innocence, however, I would hold that capital punishment violates the Eighth Amendment to the Constitution of the United States and Article I, Section 9 of the Ohio Constitution. The death penalty is inherently both cruel and unusual and therefore is unconstitutional.

{¶ 3} Capital punishment dates back to the days when decapitations, hangings, and brandings were also the norm. Surely, our society has evolved since those barbaric days. The United States is one of just a few civilized countries that still permit state executions.

{¶ 4} To date, 17 states and the District of Columbia have eliminated the death penalty altogether. It is clear that the death penalty is becoming increasingly rare both around the world and in America. By definition it is unusual.

{¶ 5} As Justice William J. Brennan of the United States Supreme Court stated in *Furman v. Georgia*, 408 U.S. 238, 92 S.Ct. 2726, 33 L.Ed.2d 346 (1972):

Death is truly an awesome punishment. The calculated killing of a human being by the State involves, by its very nature, a denial of the executed person's humanity. The contrast with the plight of a person punished by imprisonment is evident. An individual in prison does not lose "the right to have rights."

Id. at 290 (Brennan, J., concurring).

{¶ 6} Additionally, death, even by lethal injection, is a cruel punishment. One need only look at the recent Ohio case of Romell Broom for a demonstration of that proposition. *Cooley v. Kasich*, 801 F.Supp.2d 623 (S.D.Ohio 2011). Although the executioners spent over two hours attempting to find a vein through which to administer the lethal injection, they ultimately failed. Subsequently, the governor granted a one-week reprieve. *State v. Broom*, case

No. 1987-1674, available at http://www.sconet.state.oh.us/pdf_viewer/pdf_viewer.aspx?pdf=651254.pdf.

{¶ 7} Broom remains on death row today. A more chilling definition of cruel is hard to imagine.

{¶ 8} As stated by Justice Brennan in his dissent in *Gregg v. Georgia*, 428 U.S. 153, 96 S.Ct. 2909, 49 L.Ed.2d 859 (1976):

This Court inescapably has the duty, as the ultimate arbiter of the meaning of our Constitution, to say whether, when individuals condemned to death stand before our Bar, “moral concepts” require us to hold that the law has progressed to the point where we should declare that the punishment of death, like punishment on the rack, the screw, and the wheel, is no longer tolerable in our civilized society.

Id. at 229 (Brennan, J., dissenting).

{¶ 9} The time to end this outdated form of punishment in Ohio has arrived. While I recognize that capital punishment is the law of the land, I cannot participate in what I consider to be a violation of the Constitution I have sworn to uphold. I must respectfully dissent.
