

Alabama executes Keith Gavin despite serious constitutional questions in his case

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18 July 2024

On Thursday evening, the state of Alabama executed Keith Edmund Gavin, who was convicted and sentenced to death for the 1998 shooting death of a 68-year-old courier van driver in Centre, Alabama.

Gavin, 64, filed a handwritten request Wednesday for a stay of execution with the US Supreme Court, but the Court rejected his request without comment less than an hour before the scheduled 6 p.m. start of his execution.

Gavin died by lethal injection in the death chamber at the William C. Holman Correctional Facility in Atmore, about 120 miles southwest of Montgomery. He was pronounced dead at 6:32 p.m.

With Gavin's execution, Alabama has now executed three inmates in 2024, the most this year of any state, including Texas, which historically has led the nation in the number of people put to death. Alabama has scheduled one more execution in 2024.

Alabama has earned two dubious death-penalty-related distinctions: (1) being the first US state to execute an individual by nitrogen hypoxia, more properly called nitrogen asphyxiation or suffocation; (2) being one of only two states, the other being Florida, that allows a death sentence based on a nonunanimous jury vote.

On June 17, Gavin filed a "Stay of Execution" motion without his attorneys to the Cherokee County Circuit Court. He asked the court for an "In Forma Pauperis" declaration, which allows poor people to have court filing fees waived. Circuit Court Judge Shaunathan C. Bell ruled July 10 that Gavin had more than enough in his prison account to pay the filing fee and dismissed Gavin's motion for relief from his conviction and death sentence.

On March 6, 1998, Gavin had arrived in Centre, Alabama, about 85 miles northeast of Birmingham, with his cousin Dewayne Meeks. The two had driven from Illinois, where Gavin had recently completed serving 17 years of a 34-year sentence for a 1982 murder.

According to court records, William Clayton had stopped after work to take out money from an ATM. Gavin and Meeks were stopped at a nearby intersection. Meeks testified in court that Gavin got out of the car, walked up to Clayton's van and fired two shots at Clayton. Meeks said he drove off in his car and Gavin then followed in Clayton's van with the victim in the passenger seat.

Danny Smith, an investigator with the local district attorney's office who was in the area and heard about the shooting on the radio, pursued the van. After several minutes the van abruptly

stopped, the driver jumped out and fired a shot before running into the woods nearby. Clayton, who was "barely alive" at this point, was taken to the hospital and died shortly thereafter.

Other law enforcement arrived, who chased and found Gavin. Court documents say Gavin "stopped when an officer fired a warning shot" and told police, "I hadn't shot anybody and I don't have a gun." A 40-caliber Glock pistol was later found in the area and ballistics tests confirmed it had been used to kill Clayton, according to court records.

Meeks, who had driven back to Chicago, was arrested weeks later on a murder charge. However, these charges were later dropped and Meeks became one of the prosecution's key witnesses at Gavin's trial. Two other witnesses reportedly identified Gavin as the shooter, but he has consistently maintained his innocence, claiming Meeks was the "true perpetrator" and turned on him in exchange for prosecutors dropping his indictment.

Ineffective counsel and a nonunanimous vote for death sentence

Gavin had argued that his attorneys were ineffective during his trial and that the prosecution lacked forensic or DNA evidence against him. Defense counsel failed to present mitigating evidence that might have led jurors to vote for a life sentence without the possibility of parole instead of a death sentence. Ten of 12 jurors voted to sentence Gavin to death, the minimum number required in Alabama; the judge agreed with their recommendation.

In 2020, a federal district court found that Gavin had received ineffective counsel and maintained that the US Constitution required a new sentencing trial. A US Supreme Court decision in *Woodson v. North Carolina* (1976) held that jurors must be "allowed consideration of the character and record of individual defendants before inflicting the death penalty." However, a federal appellate court reversed the district court's decision, finding that adequate counsel in Gavin's case would not have resulted in a different outcome.

The mitigating evidence not heard by jurors in the sentencing phase of Gavin's trial was harrowing. According to federal appellate court documents filed in 2016, Gavin "grew up in a gang-

infested housing project in Chicago, living in overcrowded houses that were in poor condition, where he was surrounded by drug activity, crime, violence, and riots.” His father beat his wife and children with extension cords, sticks, hoses and fists, with Gavin often bearing the brunt of these beatings.

Most of Gavin’s siblings were into drugs and gangs. In one incident, his brother shot two gang members after they had beaten Gavin with baseball bats and guns when he was 17, court records say.

The district court found that Gavin’s lawyers “were totally unprepared for the penalty phase.” They called only two witnesses at the penalty phase: a minister spoken to by counsel only five minutes before they put him on the stand, and his mother, who had not been prepared for her testimony by counsel.

The Equal Justice Initiative wrote on Gavin’s case:

Mr. Gavin’s unreliable death sentence bears the hallmarks of the exceptionally flawed death penalty system in Alabama.

Even among death penalty states, Alabama stands out for its failure to provide adequate counsel to people facing the death penalty. Compensation rates for capital trial attorneys are extremely low, preventing qualified lawyers from providing adequate representation, and there is no statewide public defender system.

Alabama’s failure to provide constitutionally adequate legal representation for people facing the death penalty is a main reason why the state consistently ranks among the nation’s highest per capita death sentencing and execution rates.

US Supreme Court issues rare stay of execution for Texas inmate

The day before its ruling in Gavin’s case, the US Supreme Court issued a rare, last-minute stay of execution for Texas death row inmate Ruben Gutierrez, just 20 minutes before he was scheduled to be executed by lethal injection. Attorneys for Gutierrez had asked the Court to intervene because the state has denied access to testing crime scene DNA that they said would rule out Gutierrez as the person responsible for the murder of Escolastica Harrison, 85.

In support of his claim that he did not kill Harrison, Gutierrez has said that DNA testing on items collected at the crime scene would prove he was innocent. These items include fingernail scrapings, hair, clothing and blood samples.

Gutierrez was sentenced to death under Texas’ so-called law of parties, which allows individuals not directly involved in a murder to stand trial in a capital case. Two of the original jurors at his trial signed on to his clemency application, saying he should not be executed.

Harrison was targeted because, not trusting in banks, she reportedly kept \$600,000 in cash in her home. Gutierrez had

befriended the woman, socializing and drinking with her nephew at her home and running errands for her. Gutierrez and two other men, Pedro Gracia and Rene Garcia, hatched a plan to rob her.

The robbery turned violent, and Harrison ended up “face down in a pool of blood” having been beaten and stabbed 13 times, court records show. A medical examiner testified at trial that she fought for her life and died from “massive blows to the left side of her face.”

The three men who planned the robbery all met different fates. Gracia disappeared after being released on bond more than 20 years ago and never stood trial. Garcia is serving a life sentence in Huntsville for his role in the crime. Gutierrez stood trial in 1999 and was sentenced to death.

The state’s original theory was that Gutierrez and Garcia had killed Harrison. However, under Texas’ “law of parties” the prosecution did not have to prove that Gutierrez hurt the victim or even touched the murder weapon. Gutierrez maintained that he remained outside Harrison’s home, did not expect the robbery to turn violent, and did not participate in the murder. His defense argued that “he didn’t even know of any plan by anyone to assault or kill her.”

The law of parties was instituted in Texas in 1973, supposedly to prosecute individuals for capital murder who hire other individuals to carry out killings. The *Texas Observer* spoke to Jessica Dickerson, director of the Law of Parties Campaign with Texas Prisons Community Advocates. The newspaper writes, “She’s found a startling trend: The person who pulled the trigger usually gets the lightest sentence.”

The main contributing factor for this skewed outcome, Dickerson says, is that the person who in fact committed the murder often pleads guilty and strikes a deal for a lesser sentence. Other co-defendants are more likely to fight their murder charges in court, where juries can find them guilty by association and sentence them to death.

In Gutierrez’s case, prosecutors told the jury that he was “a party” to the murder, and he was convicted and sentenced to death. His conviction was upheld in appeals court in 2002 and several subsequent appeals were unsuccessful. The US Supreme Court will now decide whether to review Gutierrez’s appeal request.



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