

Texas Board of Pardons and Paroles denies clemency for Robert Roberson despite an outcry over his impending execution

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The Texas Board of Pardons and Paroles on Wednesday voted unanimously, 6-0, to deny clemency for death row inmate Robert Roberson. The state board's decision comes despite widespread calls to stop his execution. Roberson, 57, will be put to death by lethal injection on Thursday at 6 p.m. unless either Republican Governor Greg Abbott or the US Supreme Court intervenes—both highly unlikely prospects.

Gretchen Sween, one of Roberson's attorneys, commented in a statement following the Texas board's vote:

It is not shocking that the criminal justice system failed Mr. Roberson so badly. What's shocking is that, so far, the system has been unable to correct itself—when Texas lawmakers recognized the problem with wrongful convictions based on discredited “science” over ten years ago. We have tried multiple times to utilize that law. Multiple times we have been turned away—without explanation or consideration of the new evidence. We will ask Governor Abbott to issue a 30-day reprieve so we can continue to pursue Mr. Roberson's innocence claim. We pray that Governor Abbott does everything in his power to prevent the tragic, irreversible mistake of executing an innocent man.

According to Texas law, the governor must follow the recommendation of the Texas Board of Pardons and Paroles. However, he does have the power to grant a one-time 30-day reprieve without their recommendation. If the governor refuses to grant even this short reprieve—when the life of a man whose claim of innocence has widespread support hangs in the balance—this can only be interpreted as murderous retribution aimed at upholding the state's right to kill.

If Roberson is put to death, he will be the first person in the United States convicted and executed based on now widely discredited scientific criteria for determining “shaken baby syndrome” (SBS). He was accused of causing the death of his two-year-old daughter Nikki Curtis by violently shaking her, a claim he has consistently disputed.

“I would like the public to know that I'm innocent,” Roberson said in an interview with NBC News from death row earlier this month. “I'm not guilty of this.” He urged Governor Abbott to pardon him and “let me go home.”

Roberson's plea for mercy from the Republican governor—who has overseen 77 executions since taking office and granted clemency to a death row prisoner only once—has fallen on deaf ears. Members of the Texas board that makes recommendations on whether a condemned inmate should live or die are handpicked by the governor.

The US Supreme Court rarely issues stays of execution. The nation's

high court, dominated now by six fascist minded judges, usually denies death row inmates' requests for stays without comment. The Court already rejected an appeal in Roberson's case in 2023.

The facts of the case

Roberson was convicted of capital murder and sentenced to death in 2003, a time when the prevailing medical consensus held that a baby who presented with a triad of subdural bleeding, brain swelling and retinal hemorrhages had died of SBS, and whoever was the caregiver was guilty of killing the child.

The jury never heard how sick Nikki had been since birth, nor that she had been to the hospital more than 40 times before she died. Two days before her death, Roberson took her to a doctor, where she registered a 104.5-degree temperature. She was prescribed a medication that is now not given to children because it suppresses breathing.

Roberson took Nikki to the ER two days later, when she stopped breathing a few hours after she suffered a short fall from bed. The in-house “child abuse pediatrician” immediately suspected SBS without ruling out other causes and before an autopsy had been performed.

Hospital personnel were suspicious of Roberson's flat emotional affect, due to his then undiagnosed autism spectrum disorder. The hospital informed the police, and Roberson was arrested by the Palestine, Texas, police and charged with murder.

In 2018, scans of Nikki's brain were discovered in the basement of the local district clerk's office which prove she did not die of SBS. Roberson's defense states that medical specialists from multiple disciplines, including a lung pathologist, a medical toxicologist and a pediatric radiologist, have now conclusively established that Nikki died of a severe undiagnosed pneumonia that progressed to sepsis, which was likely accelerated by the inappropriate medications she was prescribed in her final days.

Two decades of rejected appeals

Roberson has never had a day in court to present this new evidence, which clearly shows that he is innocent of violently shaking Nikki, and that her death was the tragic end to two years of ill-health. Lost in the refusal of the courts to retry the case are the impoverished conditions that

she and her father lived in; difficulties compounded by Roberson's undiagnosed autism.

But his appeals have been rejected at every turn: by the Texas Court of Criminal Appeals (CCA) in 2007, the US Fifth Circuit Court of Appeals in 2015, again by the CCA in 2023, and the US Supreme Court in 2023. A final appeal to the CCA was rejected on October 11, 2024, and Anderson County District Court rejected Roberson's arguments that his previous judge was not properly assigned to his case and that her bias warranted her removal from the case.

If Roberson's execution proceeds, all these courts and the Texas Board of Pardons and Paroles will have the blood of an innocent man on their hands. Their refusal to allow a new trial is even more vengeful in the face of the new scientific evidence which clearly shows that no crime in fact took place.

The CCA's denial of a new trial for Roberson last week is all the more merciless in that it followed a ruling of the same court two days earlier which found that the 2000 conviction of Andrew Roark, whose case was remarkably similar to Roberson's, should be overturned and Roark granted a new trial because scientific understanding of SBS has evolved since that time.

Widespread calls to halt the execution

The following is just a small selection of the statements of support for Roberson and outrage over his impending execution.

- Brian Wharton, the former police detective who led the investigation and subsequent arrest of Roberson, now believes in Roberson's innocence. Wharton, who is now an ordained minister, told *USA Today*:

I was wrong. I didn't see Robert. I did not hear Robert. I can tell you now, he is a good man. He is a kind man. He is a gracious man. And he did not do what the state of Texas and I have accused him of. ...

That emotional charge in the hospital that here is a 2-year-old little girl that is about to die, somebody did this to her, who did it, how did it happen? And the first thing you hear is abuse, shaken baby syndrome, and we just take it and run with it, and we find all the facts that we need to make it stand up.

- Members of the Criminal Justice Reform Caucus of the Texas House of Representatives wrote to the Texas Board of Pardons and Paroles:

We urge you to recommend clemency for Mr. Roberson out of grave concern that Texas may put him to death for a crime that did not occur, as new evidence suggests. Unless you or the courts intervene, Mr. Roberson will become the first person in the United States executed based on the "shaken baby syndrome" hypothesis, which many medical professionals now consider junk science after two decades of advances in what is now known as abusive head trauma. ...

It appears that both the trial court and the Court of Criminal Appeals refused to acknowledge or engage with this voluminous new scientific evidence and instead simply denied Mr. Roberson a new trial.

- In a statement condemning Roberson's death sentence, the Autistic Self Advocacy Network (ASAN) wrote:

Mr. Roberson is at risk of execution not just because of bad science but also due to others' reaction to his disability. Responses to grief vary. They can be particularly unconventional in people with intellectual and developmental disabilities. Many autistic people sincerely feel the loss of a loved one but do not display it in the same way as their neurotypical peers. There is no correct way to mourn. Processing emotions unusually is not evidence of criminal acts or violent proclivities.

- Novelist John Grisham, who serves on the board of the Innocence Project, wrote in a column in the *Palestine Herald*:

We expect our courts to weigh the evidence before them carefully and thoughtfully. But in Mr. Roberson's case, and in a shocking number of wrongful convictions, judges simply agree with prosecutors and protect bad convictions despite overwhelming evidence of innocence. We should demand more from judges than a copy-and-paste job that entirely ignores changes in the scientific understanding of a case, especially when a life is on the line.

Nikki's death was a tragedy, not a crime. Robert Roberson may be out of options unless Texas authorities recognize the injustice of Mr. Robertson's conviction and death sentence, reverse course, and grant him a new trial.

- A group of over two dozen scientists and medical professionals wrote to the Texas Board of Pardons and Paroles:

As scientists and medical professionals with decades of experience in an array of disciplines, we write to urge you to recommend that Governor Abbott grant clemency to Robert Roberson by commuting his sentence or granting a reprieve of his scheduled October 17, 2024, execution so that the courts have time to review the compelling **new evidence of his innocence**. ...

The combination of the severe pneumonia and septic shock, the dangerous prescription medications, the radiological evidence, and her DIC entirely explain her medical findings which were mistakenly deemed to be due to inflicted head trauma.

In other words, there was no homicide. Mr. Roberson should not have been convicted, let alone convicted and sentenced to death.



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