

URGENT ACTION

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, but this attempt by lethal injection failed. The state will this time 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.

TAKE ACTION:

- Write a letter in your own words or using the sample below as a guide to one or both government officials listed. You can also email, fax, call or Tweet them.
- [Click here](#) to let us know the actions you took on **Urgent Action 51.7531.23**. It's important to report because we share the total number with the officials we are trying to persuade and the people we are trying to help.

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

Dear Governor,

Kenneth Eugene Smith is scheduled to be executed on January 25, 2024. I urge you to stop the execution. All but one of the 12 jurors at Kenneth Smith's 1996 retrial voted for a sentence of life imprisonment without the possibility of parole but were overridden by the judge. This would be the first execution in a judicial override case in Alabama since 2017, when you signed legislation banning the practice. Kenneth Smith's execution would contravene the criminal law principle recognized under international standards that those under sentence of death should benefit from retroactive leniency in the event of a change in the law after commission of the crime.

At the time of the 1988 murder, Kenneth Smith was 22, not long out of a childhood marked by exposure to severe domestic violence. Now 58, he is reported to have been a non-violent, respectful, and constructive member of society on death row. This would be the first execution in the world by "nitrogen hypoxia". Moreover, it comes a year after the state tried and failed to execute Kenneth Smith by lethal injection. A Circuit Judge on the 11th Circuit Court of Appeals described that episode as "horrifying", involving "protracted, severely painful, and grisly efforts" by the execution team. Three US Supreme Court Justices also described it as "torturous", with Kenneth Smith experiencing "severe pain and suffering" and left with Post-Traumatic Stress Disorder.

I appeal to you to use your clemency power to stop Kenneth Smith's execution and commute his death sentence.

Yours sincerely,

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.

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, obtained an associate degree, and 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. 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), which was exacerbated by the increased isolation to which he has been subjected by the removal of contact with others on death row. 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 him or her of oxygen. This method of execution had never been used before. 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”.

PREFERRED LANGUAGE TO ADDRESS TARGET: English or your own language.

PLEASE TAKE ACTION AS SOON AS POSSIBLE UNTIL: January 25, 2024.

NAME: Kenneth Eugene Smith