

latimes.com

California Supreme Court ends legal battle over execution

The state calls off the execution of Albert Greenwood Brown Jr. hours after justices refuse to change appeals deadlines. The execution would have been the state's first in five years.

By Jack Leonard and Victoria Kim, Los Angeles Times

September 30, 2010

California's effort to carry out its first execution in nearly five years collapsed Wednesday when the state Supreme Court ended a furious legal battle, giving a convicted rapist and murderer a reprieve that could last until at least next year.

The California Department of Corrections and Rehabilitation called off the execution hours after the Supreme Court refused to change long-established appeals deadlines to allow the execution of Albert Greenwood Brown Jr. to go forward.

The decision ended more than a week of legal wrangling between Brown's lawyers and the attorney general's office over whether the lethal injection should be administered.

Prison officials had scheduled Brown's execution for 9 p.m. Thursday, just three hours before the state's only supply of a key drug used in the lethal injection expires. State attorneys have said that fresh supplies of the powerful anesthetic sodium thiopental could not be obtained until at least next year.

The Supreme Court faulted the state for seeking to carry out the sentence so close to the drug's expiration date, saying that effort had "contributed to circumstances incompatible with the orderly resolution" of legal issues surrounding the death penalty.

A corrections spokeswoman said her agency was seeking fresh supplies of the drug.

Jan B. Norman, one of Brown's attorneys, said she was pleased that the process had been halted. She criticized the attorney general's office for failing to disclose that the state's drug supply was about to expire until shortly before Brown was to be executed.

"They had an obligation both for my client and the victim's family to proceed in an orderly and dignified way, and everybody suffered as a result of that not happening," Norman said.

Brown has spent 28 years on death row following his conviction in the 1980 rape and murder of a 15-year-old Riverside girl who disappeared as she walked to school.

Riverside County Dist. Atty. Rod Pacheco, whose office prosecuted Brown, described Wednesday's announcement as a tragedy for the victim's family.

"The bottom line is that they didn't get justice today," Pacheco said. "This system has denied them justice."

Gov. Arnold Schwarzenegger, who earlier Wednesday rejected a clemency request for Brown, released a statement describing the inmate's crimes as "heinous and unconscionable" and said the execution would be rescheduled once the court challenges were resolved.

"It is absurd that our legal system continues to prevent the state from carrying out the will of the people," Schwarzenegger said.

The state Supreme Court decision sealed the end of a legal fight in which Brown's attorneys had won the upper hand earlier this week when a federal judge stopped the execution to review the state's new lethal injection procedures.

U.S. District Judge Jeremy Fogel effectively halted executions in 2006 following concerns that lethal injections might have inflicted significant pain, violating the U.S. Constitution's guarantee against cruel and unusual punishment. On Tuesday, Fogel ruled that he needed time to examine whether the state had properly corrected its procedures.

The attorney general's office asked a federal appeals court Wednesday to reverse Fogel's order but conceded defeat after the California Supreme Court's decision.

The Supreme Court ruled that another inmate's challenge to the state resuming executions is not yet officially over. The state had asked the Supreme Court to finalize an appeal court's Sept. 20 ruling that cleared the way for executions to begin again if the inmate, Mitchell Sims, had not filed an appeal by 5 p.m. Thursday.

But the Supreme Court rejected that request, saying that Sims had the entire day to file his appeal. After that, the Supreme Court has another 30 days to decide on its own whether to review the appeal court's decision.

The attorney general's office "had everybody scrambling," said Laurie Levenson, a professor at Loyola Law School and a former prosecutor who has not taken a public position on the death penalty. "The Supreme Court is trying to put everything back in order, saying there are rules to be followed and there's no way in time for the execution date that you guys asked for."