



Judge rejects challenge to Florida's execution drug

By Patricia Mazzei, Miami Herald

Lawyers for a man who shot and killed a Coral Gables police officer 33 years ago failed to prove that the new use of a drug in Florida's lethal injections would cause inmates serious pain, a Miami-Dade judge ruled Wednesday.

Circuit Judge Jacqueline Hogan Scola rejected the argument by lawyers for Manuel Valle that the state's switch to pentobarbital, a barbiturate, in its three-drug lethal injection could constitute cruel and unusual punishment.

The matter now heads to the Florida Supreme Court for review. The execution of Valle, who fatally shot Officer Louis Pena in 1978, is scheduled for Sept. 1.

Valle, 61, would be the first inmate executed using pentobarbital. The state changed its lethal-injection protocol in June, after production of the anesthetic sodium thiopental was discontinued.

Pentobarbital is intended to knock out inmates before a second drug paralyzes them and a third stops their heart.

Valle's defense had argued that the use of pentobarbital as an anesthetic has not been extensively studied and that the drug is ineffective at rendering inmates unconscious.

In her 21-page decision, Scola ruled that it was not enough for the defense's expert witness, Dr. David Waisel, an anesthesiologist with Children's Hospital of Boston, to testify that the consequences of using pentobarbital are unknown. Instead, the defense needed to prove that the drug caused substantial risk of serious harm. The defense did not do so, she ruled.

"(T)his court finds that usage of pentobarbital does not create an objectively unreasonable risk of suffering," Scola wrote.

The judge cited a 2008 U.S. Supreme Court ruling that pain that may result in an execution does not necessarily violate the Eighth Amendment's protection against cruel and unusual punishment.

Scola called the testimony of the prosecution's anesthesiologist, Dr. Mark Dershwitz of the University of Massachusetts Memorial Medical Center - who said the state's five-gram dose of pentobarbital would likely be lethal by itself - "credible and persuasive."

"Further, he refuted any suggestion that the dose of pentobarbital in the Florida lethal injection protocol would leave an inmate conscious and able to experience pain and suffering during the lethal injection process," she wrote.

Valle's execution was originally scheduled for Aug. 2. The Florida Supreme Court temporarily stayed the execution so Scola could hold a hearing on the efficacy of the drug.

The high court has already set a timeline for lawyers on both sides to file an appeal. Oral arguments are tentatively scheduled for Aug. 24.