March 18, 2025

SUPREME COURT OF LOUISIANA

No. 2025-KD-00327

STATE OF LOUISIANA

VS.

JESSIE D. HOFFMAN

On Supervisory Writ to the 22nd Judicial District Court, Parish of St. Tammany

McCALLUM, J., additionally concurs and assigns reasons.

The United States Supreme Court has made clear that capital punishment is constitutional. *See Gregg v. Georgia*, 428 U.S. 153, 177-78, 96 S. Ct. 2909 (1976) ("For nearly two centuries, this Court, repeatedly and often expressly, has recognized that capital punishment is not invalid per se.").[1] "It necessarily follows that there must be a means of carrying it out. Some risk of pain is inherent in any method of execution – no matter how humane – if only from the prospect of error in following the required procedure. It is clear, then, that the Constitution does not demand the avoidance of all risk of pain in carrying out executions." *Baze v. Rees*, 553 U.S. 35, 47 (2008).

Later, in *Glossip v. Gross*, 576 U.S. 863, 869 (2015), the Court observed that "while most humans wish to die a painless death, many do not have that good fortune," making the following astute observation:

> Holding that the Eighth Amendment demands the elimination of essentially all risk of pain would effectively outlaw the death penalty altogether.

Glossip v. Gross, 576 U.S. 863, 869 (2015). *See also*, *Bucklew*, 587 U.S. at 132-33 ("the Eighth Amendment does not guarantee a prisoner a painless death – something

[1] Since *Gregg*, the United States Supreme Court has continued to consistently uphold the constitutionality of the death penalty. *See, e.g.*, *Bucklew v. Precythe*, 587 U.S. 119, 129 (2019) ("The Constitution allows capital punishment."); *Baze v. Rees*, 553 U.S. 35 (2008).

that, of course, isn't guaranteed to many people, including most victims of capital crimes.").

The main target of the defendant's latest flurry of pleadings is the manner of execution – nitrogen hypoxia – which defendant maintains violates Article I, § 20 of the Louisiana Constitution and the Eighth Amendment to the United States Constitution, both of which bar cruel or unusual punishment.[2] Importantly, the courts which have considered this argument have repeatedly declined to declare execution by nitrogen hypoxia unconstitutional. *See Grayson v. Comm'r, Alabama Dep't of Corr*., 121 F. 4th 894 (11th Cir.), *cert. denied sub nom. Grayson v. Hamm*, 145 S.Ct. 586 (2024); *Smith v. Alabama*, 144 S.Ct. 715 (2024); *Hoffman v. Westcott*, --- F.4th ---, 2025 WL 816734 (5th Cir. 3/14/2025) (slip opinion). Therefore, the only thing the defendant is really attempting to gain in this Court is the very thing he denied his victim – more time.

Defendant also asserts that this particular method of execution violates his religious freedom rights as a Buddhist. He argues in his filings that "his ability to practice his faith at the moment he is put to death is thus substantially burdened under the Nitrogen Gassing Protocol." I find no merit to this claim. Defendant's arguments, taken to their logical extreme, would result in the abolition of the death penalty for anyone whose religious beliefs were expansive enough to prohibit any form of execution as being in contravention of his theological and moral tenants.

While over the years, the methods of execution have changed, the United States Supreme Court "has never invalidated a State's chosen procedure for carrying out a sentence of death as the infliction of cruel and unusual punishment." *Glossip*, 576 U.S. at 869, quoting *Baze*, 553 U.S. at 48. Both the United States Supreme Court and this Court have on more than one occasion found execution by electric

[2] The language of Article I, § 20 of the Louisiana Constitution varies slightly from the Eighth Amendment of the United States Constitution. While the former bars "cruel … or unusual punishment," the latter bars "cruel and unusual punishments."

chair to be constitutional and not violative of either the Eighth Amendment or Article I, § 20. *See, e.g., State of La. ex rel. Francis v. Resweber*, 329 U.S. 459 (1947); *State v. Crook*, 221 So. 2d 473 (La. 1969); *In re Kemmler*, 136 U.S. 436 (1890). It is clear to me that if execution by electric chair is constitutional, then execution by nitrogen hypoxia is also constitutional. Certainly, this method of execution is more humane than that which the defendant inflicted upon his victim.

As to the defendant's arguments that a change in the method of execution violates the prohibition on *ex post facto* punishment, such is not the case. First, defendant has already unsuccessfully raised this issue in the Middle District Court of Louisiana. *See Hoffman v. Westcott*, CV 25-169-SDD-SDJ, 2025 WL 763945 (M.D. La. Mar. 11, 2025), at *13. He has provided no new evidence or legal theory for why this Court should not hold the same. Second, the United States Supreme Court, and likewise, this Court, have previously found such an argument without merit in determining that changing the method of execution does not constitute a prohibited *ex post facto* punishment. *See Weaver v. Graham*, 450 U.S. 24, 32 n. 17, 101 S.Ct. 960, 966 (1981); *State ex rel. Pierre v. Jones*, 823, 9 So. 2d 42 (1942). Additionally, I find persuasive the following language from *State ex rel. Pierre*:

> The constitutional inhibition of *ex post facto* laws was intended to secure substantial personal rights against arbitrary and oppressive legislative action, and not to obstruct mere alteration in conditions deemed necessary for the orderly infliction of humane punishment.

Id., 9 So. 2d at 44.

Furthermore, the exclusive grounds for post-conviction relief are set forth in La. C.Cr. P. art. 930.3. Article 930.3 does not recognize the claim that a sentence violates a defendant's right to humane treatment under La. Const. Art. I, § 20. To

the contrary, there are limited grounds upon which post-conviction relief made be granted.[3]

For these reasons, I concur in the denial of the defendant's writ application.

[3] Those exclusive grounds are as follows: "(1) The conviction was obtained in violation of the constitution of the United States or the state of Louisiana. (2) The court exceeded its jurisdiction. (3) The conviction or sentence subjected him to double jeopardy. (4) The limitations on the institution of prosecution had expired. (5) The statute creating the offense for which he was convicted and sentenced is unconstitutional. (6) The conviction or sentence constitute the ex post facto application of law in violation of the constitution of the United States or the state of Louisiana. (7) The results of DNA testing performed pursuant to an application granted under Article 926.1 proves by clear and convincing evidence that the petitioner is factually innocent of the crime for which he was convicted. (8) The petitioner is determined by clear and convincing evidence to be factually innocent under Article 926.2." La. C.Cr.P. art. 930.3.