Bucklew v. Precythe

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Introduction

The Eighth Amendment to the United States Constitution was adopted on December 15, 1791, along with the rest of the Bill of Rights. It states that excessive fines and bail should not be imposed, nor "cruel and unusual punishments."[1] During the second half of the twentieth century, those convicted of crimes have relied on the Eighth Amendment to challenge their sentences, including the death penalty and prison conditions, as unconstitutional. In 2019, one such challenge was decided by the United States Supreme Court in *Bucklew v. Precythe*.[2]

Facts

Russell Bucklew was born on May 16, 1968 and was executed on October 1, 2019. In March of 1996, he murdered a man named Michael Sanders, who sheltered Bucklew's ex-girlfriend, Stephanie Ray, after Ray and

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[1] U.S. CONST. amend. VIII.
[2] 139 S. Ct. 1112 (2019).

Bucklew broke up.[3] Russell then proceeded to kidnap and rape Stephanie Ray.[4] While awaiting trial, Bucklew escaped and attacked Ray's mother.[5] Bucklew was convicted of rape, murder, and kidnapping.

Legal Background

After his conviction, Bucklew went through a series of unsuccessful appeals.[6] Seemingly out of options, Bucklew claimed that the Missouri execution process, which calls for a lethal injection of five grams of pentobarbital, would constitute "cruel and unusual punishment" in violation of the Eighth Amendment.[7] Before Bucklew's challenge reached the United States Supreme Court, the Court upheld a similar execution method in Kentucky.[8] Bucklew and other inmates continued their challenges in state and federal court, without success.[9] In 2014, Missouri changed its injection protocol as a result of pressure from anti-death penalty groups.[10] With this new protocol in place, the execution date for Bucklew was set for May 21, 2014.[11]

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[3] *Id*. at 1119.
[4] *Id*.
[5] *Id*.
[6] *Id*.
[7] *Id*.
[8] *Id*. (citing Baze v. Rees, 553 U.S. 35, 52 (2008)).
[9] *Bucklew*, 139 S. Ct. at 1120.
[10] *Id*.
[11] *Id*.

Bucklew filed a new lawsuit twelve days before his execution was scheduled to take place.[12] In it, Bucklew argued that because he suffered from a unique congenital medical condition, the lethal injection could cause him to hemorrhage and experience severe pain if injected.[13] The district court found that Bucklew failed to present sufficient evidence that the Missouri execution policy would cause needless suffering.[14] However, the district court did stay the execution to allow the Court of Appeals to hear an appeal.[15] The United States Court of Appeals for the Eighth Circuit affirmed the district court's decision.[16] Not long after the Eighth Circuit ruling, in a separate case, the Supreme Court ruled that executions can be challenged only if alternatives are presented.[17] The case returned to the district court and the Eighth Circuit, and again the courts ruled against Bucklew.[18] The Supreme Court granted certiorari to hear the case.

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[12] *Id*.
[13] *Id*.
[14] *Id*.
[15] *Id*. at 1121.
[16] *Id*.
[17] *Id*. (citing Glossip v. Gross, 135 S. Ct 2726, 2737 (2015)).
[18] *Bucklew*, 139 S. Ct. at 1121-22.

Holding & Reasoning

The Court, in a 5-4 ruling, held that in order for a person to challenge the constitutionality of a method of execution on the basis of the Eighth Amendment, that person must identify "feasible and readily implemented alternative methods that would significantly reduce a substantial risk of severe pain," and show that "the state refused to adopt the method without a legitimate penological reason."[19] The majority, in a decision written by Justice Gorsuch, concluded that Bucklew did not meet those requirements because he had not produced sufficient evidence for the Court to be able to determine that the presented alternative method, nitrogen hypoxia, could be "readily implemented."[20] The court also held that Bucklew had not met his burden to show that Missouri lacked a valid reason to continue to utilize their lethal injection process rather than using a method that is "untried and untested."[21] Lastly, the Court concluded that Bucklew had not established that an alternative injection would reduce the amount of pain suffered.[22]

Central to *Bucklew* was the Court's prior ruling, also a 5-4 decision, in

[19] *Id*. at 1125.
[20] *Id*. at 1129.
[21] *Id*. at 1130.
[22] *Id*. at 1132.

Glossip v. Gross.[23] In Oklahoma, a death row inmate, Clayton Lockett, was executed using a three-drug lethal injection protocol. Lockett woke up after the injections and did not die until forty minutes later.[24] In *Glossip*, twenty death row inmates sued state officials, arguing that the use of midazolam as the first drug in the execution protocol violated the Eighth Amendment's restriction against cruel and unusual punishment. The Court held that Oklahoma's lethal injection protocol did not violate the Eighth Amendment because petitioners can only succeed in having a method of execution held unconstitutional under the Eighth Amendment if they can present an alternative method.[25] The petitioners in *Glossip* were unable to identify a reasonable alternative that presented a significantly lower risk of pain, and therefore did not succeed in their challenge. *Glossip* was quite similar to *Bucklew* because in both cases inmates were challenging the existing execution methods, which they argued would cause unnecessary pain. Based on the Court's application of *Glossip*, Bucklew lost his final challenge and was ultimately executed by the state of Missouri.

[23] 135 S. Ct. 2726 (2015).
[24] *Id*. at 2782.
[25] *Bucklew*, 139 S. Ct. at 1121 (citing *Glossip*, 135 S. Ct. at 2737).

Analysis

The Court made the correct decision based on the precedent set in *Glossip*. Bucklew failed to present "a risk that is sure or very likely to cause serious illness and needless suffering, and gave rise to sufficiently imminent dangers," and failed to propose a feasible alternative that would substantially reduce the risk of needless suffering.[26]

However, despite the appropriate application of precedent, there exists a contradicting moral and legal argument here. Although there is no federal precedent banning a method of execution, there are precedents at the state level.[27] For example, in *State v. Gregory*,[28] the Washington Supreme Court found that the death penalty was unconstitutional in their state.[29] The Eighth Amendment of the U.S. Constitution states that there can be no "cruel and unusual punishment."[30] Per this idea, no undue suffering should be placed on anyone facing the death penalty. Additionally, the Bill of Rights places the burden on the Government of protecting the rights enshrined in the Constitution. Per this idea, the Court should not place the burden of presenting

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[26] *See supra* note 19 and accompanying text.
[27] DEATH PENALTY INFORMATION CENTER, METHODS OF EXECUTION, https://deathpenaltyinfo.org/executions/methods-of-execution (last visited Jun. 10, 2021).
[28] 427 P.3d 621 (Wash. 2018).
[29] *Id*. at 626-27.
[30] U.S. CONST. amend. VII.

an alternative on the individual facing the death penalty.

Regarding future court cases, the threshold may increase for what constitutes a sufficient amount of pain for a method of execution to be in violation of the "cruel and unusual punishments" clause of the Eighth Amendment. In future situations where the defense argues that the Eighth Amendment should protect an inmate from unnecessary pain during execution, the prosecution would be able to use the case at hand as precedent to invalidate the argument. Although some may argue that a "cruel and excessive punishment" would be a punishment in which excessive pain occurs, *Bucklew* provides precedent to counter this argument. *Bucklew* places the burden of providing a less painful method of execution on the person who will be executed. [31] Therefore, in future cases, the Eighth Amendment won't automatically protect individuals from undue pain. This burden is left to the people who will be executed. As long as no alternative is presented, some methods of execution that could bring about excessive pain may be deemed constitutional.

[31] *Id.*