

UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

Willie Tyron Trottie v. Brad Livingston

766 F.3d 450 (5th Cir. 2014) · No. 14-70028 · Decided September 9, 2014

SUMMARY

The Fifth Circuit affirmed the denial of Willie Tyrone Trottie's motion for a preliminary injunction or temporary restraining order seeking to stay his execution. Trottie alleged that Texas's failure to disclose additional information about the source, preparation, and testing of the pentobarbital created an unconstitutional risk of severe pain and violated due process. The court held that his claims were foreclosed by circuit precedent because speculation about execution procedures did not establish a cognizable liberty interest or a likelihood of success on the merits.

CASE DETAILS

COURT	United States Court of Appeals for the Fifth Circuit
WRITING FOR THE COURT	Higginbotham; Davis; Elrod
JURISDICTION	Federal
DECIDED	September 9, 2014
DOCKET	14-70028
DISPOSITION	affirmed
PROCEDURAL POSTURE	Trottie brought an action under 42 U.S.C. § 1983 challenging Texas's execution method under the Eighth and Fourteenth Amendments and sought a temporary restraining order or preliminary injunction. After the district court denied relief, he appealed.
STANDARD OF REVIEW	Denial of a motion for preliminary injunction is reviewed for abuse of discretion.
PRECEDENTIAL VALUE	published and precedential
PARTIES	Willie Tyron Trottie v. Brad Livingston, et al.

TOPICS

[section 1983](#) [cruel and unusual punishment](#) [procedural due process](#) [equitable relief](#) [appellate procedure](#)

PRACTICE AREAS

[constitutional law](#) [civil rights](#) [capital punishment](#) [appellate procedure](#) [equitable remedies](#)

QUESTIONS PRESENTED

1. Whether Trottie was entitled to a preliminary injunction or temporary restraining order staying his execution based on alleged Eighth Amendment risks arising from the State's failure to disclose additional information about the pentobarbital and execution protocol.
2. Whether Trottie had a cognizable due process liberty interest in obtaining information about the source, preparation, testing, and storage of the execution drug.

HOLDINGS

1. Trottie was not entitled to a preliminary injunction or temporary restraining order because he failed to show a likelihood of success on his constitutional claims.
2. Trottie did not identify a cognizable due process liberty interest in obtaining information about the execution drug or protocol because his asserted risk was based only on speculation.
3. The panel was bound by Sells under the Fifth Circuit's rule of orderliness because Trottie identified no intervening change in law.

KEY QUOTATIONS

“To be entitled to a preliminary injunction, a movant must establish (1) a likelihood of success on the merits; (2) a substantial threat of irreparable injury; (3) that the threatened injury if the injunction is denied outweighs any harm that will result if the injunction is granted; and (4) that the grant of an injunction will not disserve the public interest.” (at 452)

“A death row inmate is entitled to an injunction if he points to “some hypothetical situation, based on science and fact, showing a likelihood of severe pain.”” (at 453)

“It is a well-settled Fifth Circuit rule of orderliness that one panel of our court may not overturn another panel’s decision, absent an intervening change in the law, such as by a statutory amendment, or the Supreme Court, or our en banc court.” (at 454)

FACTUAL BACKGROUND

Trottie was scheduled to be executed in Texas on September 10, 2014, using a 5-gram dose of pentobarbital obtained from a licensed compounding pharmacy. The State disclosed that the drug had been independently tested, was 108% potent, was free from contaminants, and would not expire until September 30, 2014. The execution was to follow the Texas Department of Criminal Justice's July 9, 2012, execution procedure, which had been used in numerous Texas executions.

PROCEDURAL HISTORY

Trottie was convicted and sentenced to death in Texas, and his direct appeal and initial state and federal habeas proceedings were unsuccessful. Shortly before his scheduled execution, he filed a § 1983 action alleging that the State's failure to disclose information about the source, preparation, testing, and storage of pentobarbital created an unconstitutional risk of severe pain and violated due process. The Southern District of Texas denied his motion for a temporary restraining order or preliminary injunction, and the Fifth Circuit affirmed.

DISPOSITION

affirmed

CASES CITED

- Trottie v. State, No. 71,793 (Tex. Crim. App. 1995)
- Ex parte Trottie, No. 70,302-01 (Tex. Crim. App. Feb. 11, 2009)
- Trottie v. Stephens, 720 F.3d 231 (5th Cir. 2013)
- Ex parte Trottie, No. 70,302-02 (Tex. Crim. App. Sept. 4, 2014)
- Janvey v. Alguire, 647 F.3d 585, 591-92, 595 (5th Cir. 2011)
- Baze v. Rees, 553 U.S. 35, 61 (2008)
- Hill v. McDonough, 547 U.S. 573, 583-85 (2006)
- Nelson v. Campbell, 541 U.S. 647, 649-50 (2004)
- Sells v. Livingston, 750 F.3d 480, 481 (5th Cir. 2014)
- Sepulvado v. Jindal, 729 F.3d 413, 420 (5th Cir. 2013)
- Whitaker v. Livingston, 732 F.3d 465, 468-69 (5th Cir. 2013)
- Raby v. Livingston, 600 F.3d 552, 555-56 (5th Cir. 2010)
- Thorson v. Epps, 701 F.3d 444, 447 n.3 (5th Cir. 2012)
- Campbell v. Livingston, et al., 2014 WL 1887578 (5th Cir. May 12, 2014)
- Jacobs v. National Drug Intelligence Center, 548 F.3d 375, 378 (5th Cir. 2008)