

# Oregon's execution ban leaves death row inmates in limbo

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PORTLAND, Ore. (RNS) In planning for his death, Gary Haugen decided weeks ago he would take just one possession with him -- a postcard showing a bald eagle soaring high. On the back was a final blessing from the friend who sent it: "Fly free, brother."

Then Haugen expected to be strapped to a gurney and injected with three chemicals that would kill him.

But the day of his execution has come and Haugen is no closer to death, freedom or any kind of a resolution than he was four years ago when he joined the ranks of those on death row. Gov. John Kitzhaber last month (Nov. 22) declared a moratorium on executions while he remains in office and called for a statewide debate over Oregon's capital punishment system.

Haugen couldn't help but feel some pride in Kitzhaber's move, at least initially. The 49-year-old twice-convicted murderer was the one who provoked the governor's major policy reversal by waiving his legal appeals and demanding the state put him to death.

But the reality of a lifetime on death row is settling in. Haugen still spends as much as 23 hours a day in the same 6-by-10-foot cell. He still has a death sentence hanging over him. But he doesn't know how soon -- if ever -- the state will carry out or commute his punishment.

"I'm in ... limbo," Haugen said. "I didn't ask for this. I'm ready to go."

He now hopes to challenge the governor's reprieve, arguing that a death sentence that doesn't allow death amounts to cruel and unusual punishment.

While legal experts acknowledge Haugen has a point, they don't give him much chance of succeeding.

Kitzhaber cited Article 5, Section 14 of the state's constitution, which clearly states that the governor has the power to grant reprieves, commutations and pardons for all offenses except treason, "subject to such regulations as may be provided by law."

"The prisoner essentially has no rights in this sense," said Tung Yin, a criminal law professor at Lewis & Clark Law School in Portland. "You don't have the right to demand that the governor not issue a reprieve."

There is no "right" to be executed, said Clatsop County District Attorney Josh Marquis, a well-known supporter of the death penalty.

"As upset as I am at the governor at putting his personal feelings above his oath of office, he has the plenary power of commutation, reprieve and pardon and there is pretty much nothing anyone can do about it."

Haugen's case is complicated by the fact that it's fairly unusual. Richard Dieter, executive director of the Death Penalty Information Center, could recall only one other case when an inmate volunteered for execution and a governor overrode the wish. The center collects information about the death penalty and has a board with members opposed to capital punishment.

In 1996, Gov. Jim Edgar of Illinois commuted the death sentence of Guinevere Garcia who had opposed clemency requests by anti-death penalty groups. Yet she didn't oppose the commutation to life in prison once the governor granted it, Dieter said.

Still, Haugen's claim isn't frivolous, said Yin.

U.S. Supreme Court Justice Stephen Breyer recently issued a dissent arguing that the lengthy wait between sentencing and execution constitutes cruel and unusual punishment. He disagreed with the rest of the justices who denied a request to stay the execution of Manuel Valle in Florida. Valle was executed in September.

And the European Court of Human Rights has long held that the excessive wait of inmates living under a death sentence amounts to inhuman and degrading treatment, Yin said. That has factored into its decisions to refuse to extradite those in European custody to the United States unless prosecutors pledge not to seek the death penalty.

But Yin said he expects the argument would have little traction in the United States. "My sense is that American courts are not necessarily going to be receptive to this kind of claim," he said.

Haugen's attorney, Steven Gorham, said he agrees that the governor's reprieve with no resolution constitutes cruel and unusual punishment. He declined to comment on future legal strategy.

"We just don't know if it does get to court, what will happen," he said.

The next move may be up to the Legislature. Kitzhaber called on state lawmakers to come up with reforms for their 2013 session.

The death penalty, the governor said, has become "an extremely expensive" life sentence for all but the inmates who volunteer to waive their appeals. And the crimes of the 36 men and one woman on Oregon's death row often are similar to those of people serving life sentences, he said -- points that Haugen has often made in his criticisms of the state's death penalty.

Relatives of the two people killed by Haugen have said they're frustrated with Kitzhaber's decision to let the inmate live. It denies the families justice, said Ard Pratt, the ex-husband of victim Mary Archer. Haugen beat Archer to death with his fists, a baseball bat and a roofing hammer in 1981 in her northeast Portland home. She was the mother of his ex-girlfriend.

Haugen pleaded guilty and was sentenced to life in prison with the possibility of parole.

Clarinda Polin Perez, the widow of victim David Polin, told Oregon Public Broadcasting that she felt the execution would have helped her close that chapter of her life and move past her husband's murder. Polin had been serving time at the Oregon State Penitentiary when Haugen and another prisoner stabbed him 84 times and crushed his head in 2003. A jury convicted Haugen and co-defendant Jason Brumwell, and sentenced both to death.