

NONPRECEDENTIAL DISPOSITION

To be cited only in accordance with
Fed. R. App. P. 32.1

United States Court of Appeals

**For the Seventh Circuit
Chicago, Illinois 60604**

Submitted June 13, 2007

Decided June 14, 2007

Before

Hon. KENNETH F. RIPPLE, *Circuit Judge*

Hon. MICHAEL S. KANNE, *Circuit Judge*

Hon. TERENCE T. EVANS, *Circuit Judge*

No 07-2378

MICHAEL ALLEN LAMBERT,
Intervenor Plaintiff-Appellant,

v.

ED BUSS, Superintendent,
Defendant-Appellee.

Appeal from the United States District
Court for the Southern District of Indiana,
Indianapolis Division.

No. 06 C 1859

Richard L. Young, *Judge.*

O R D E R

Michael Lambert, who is scheduled to be executed by the State of Indiana before sunrise on June 15, 2007, is here for the fourth time. His three prior visits involved challenges to the death sentence he received growing out of the murder of a Muncie, Indiana, police officer in 1990. Just two days ago, on June 12, we denied Mr. Lambert's motion to recall the mandates in his first two appeals.

While challenges to his conviction and sentence have been going on for over 16 years, Lambert also intervened (on March 1, 2007) in a civil suit filed by another Indiana capital defendant, Norman Timberlake. David Woods, another Indiana capital defendant, was also an intervenor in the Timberlake civil suit.

The Timberlake suit involved a challenge to the constitutionality of the means by which Indiana carries out death sentences. Under a statute enacted in 1995, Indiana requires that execution be carried out by lethal injection. The first execution under the 1995 law occurred on July 18, 1996. The fifteenth execution under the law, that of Mr. Woods, occurred on May 5, 2007.

Mr. Woods moved for a preliminary injunction and a stay of execution in the Timberlake case, and those motions were denied, after a hearing, by District Judge Richard L. Young. We denied Woods's appeal from Judge Young's order on May 3, 2007. Woods v. Buss, No. 07-2001 (7th Cir).

On June 6, 2007, Mr. Lambert filed a request for a preliminary injunction in the Timberlake case. Judge Young notified the parties that he would consider the evidence presented during Woods's preliminary injunction hearing when ruling on Lambert's motion. Lambert did not object. On June 12, Judge Young, in a thorough and thoughtful decision, denied Lambert's motion for a preliminary injunction. Lambert now seeks a stay of execution pending his appeal from Judge Young's order.

The lethal injection procedure to be used on Lambert, called Operational Directive ISP 06-26, requires the introduction by intravenous catheter of 5 grams of sodium pentothal (an anesthetic to render the prisoner unconscious), followed by 50 mg of sterile saline, followed by 100 mg of pancuronium bromide (a paralytic agent), followed by 50 mg of sterile saline, followed by 200 mEq of potassium chloride. The final drug stops the heart. This protocol is the same one used by Indiana to execute Mr. Woods last month.

Judge Young concluded that Mr. Lambert could not satisfy the stringent requirements for obtaining a preliminary injunction. Lambert, among other things, could not, said the judge, establish the requirement that he demonstrate a likelihood of success on the merits. We agree and adopt Judge Young's decision as our own. And with that, Lambert's motion for a stay of execution must be **DENIED**.

SO ORDERED.