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Death-row inmate Michael Duane Zack, 54, pictured in an undated prison photo, is scheduled to be executed Oct. 3, 2023, at the Florida State Prison near Raiford, Fla. Zack's lawyers have asked a federal appeals court for a stay of execution because they say he was "shut out" of a clemency process that could help spare him and suffers from intellectual disabilities due to fetal alcohol syndrome. In a Sept. 11 statement, the Florida Conference of Catholic Bishops urged Gov. Ron DeSantis, a Catholic, to to commute Zack's sentence to life without parole. (OSV News photo/Florida Department of Corrections)



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At the beginning of the 10th month of 2023, Florida might execute its sixth death-row inmate of the year; a person whose lawyers and death penalty foes say has suffered from intellectual disabilities and carries a deep sense of remorse.

This year, Florida's Gov. Ron Desantis, on behalf of Florida's citizens, has signed six warrants for execution since Jan. 24. Five men have died at the hands of the state since then. Michael Duane Zack, 54, is scheduled for execution Oct. 3.

With less than two weeks before his execution, Zack's lawyers have asked a federal appeals court for a stay of execution because they say he was "shut out" of a clemency process that could help spare him. According to News Service of Florida, Zack's attorneys filed a 26-page emergency motion Sept. 19, at the 11th U.S. Circuit Court of Appeals, after federal District Judge Robert Hinkle rejected the clemency arguments Sept. 18.

That decision stemmed from federal court documents filed by Zack's attorneys that said while the inmate had received a clemency interview in 2014, he and lawyers did not hear from the state until Aug. 17, 2023, when the governor issued his death warrant and clemency was denied.

State Attorney General Ashley Moody's office Sept. 13 had urged the Florida Supreme Court to reject arguments that the execution be blocked because Zack's attorneys contend the inmate suffered fetal alcohol syndrome when his pregnant

mother drank alcohol and that putting him to death would violate a constitutional ban on executing people who are intellectually disabled, which the U.S. Supreme Court held in its 2002 decision in *Atkins v. Virginia*. Executions of criminals with intellectual disabilities are "cruel and unusual punishments" prohibited by the Eighth Amendment, the court ruled.

Moody's office disputed Zack's arguments saying that his intellectual disability claim has been rejected in past appeals. Hinkle agreed.

This last appeals push might be Zack's last chance through the courts. There is no doubt that Ravonne Smith and Laura Rosillo lost their lives at the hands of Zack in 1996, when he was 27. He was convicted for the murder of Rosillo and sentenced to life. He also was convicted of murder in the death of Smith and was subsequently sentenced to death.

In a Sept. 11 letter to DeSantis on behalf of the bishops of Florida, Michael Sheedy, executive director of the Florida Conference of Catholic Bishops, recognized that Zack's "heinous and horrific crimes against these women have caused untold suffering to their families, friends, and communities." The conference is urging the governor's office to commute his sentence to life without parole.

"Yet, in taking the life of Mr. Zack, the state will do nothing to restore the victims' lives," Sheedy continued. "Rather, state-sanctioned killing will only further fuel the growing societal disrespect for the dignity of human life. The death penalty merely perpetuates the cycles of violence and vengeance that permeate our culture."

While not dismissing the violence Zack inflicted, the conference recognized the violence that had been inflicted on Zack throughout his life.

"In his youth, he endured an extremely abusive home environment, undergoing severe physical and sexual abuse at the hands of his stepfather. Neuroscientific research shows that such traumatic experiences can have lasting effects on a child's developing brain, which can profoundly affect behavior," the conference stated.

"His defense team presented expert testimony that Mr. Zack suffers from organic brain damage, fetal alcohol syndrome, and post-traumatic stress disorder," it added. "The mitigating circumstances found in his case make it clear that he was suffering from an extreme mental or emotional disturbance at the time of his crimes and was acting under extreme duress."

Before Zack's scheduled execution, Floridians will gather across the state to pray for him and Smith and Rosillo. There also will be continued prayers that DeSantis will stay the execution and end the cycle of violence in society by not using the death penalty.

Zack's history of trauma and abuse is stunning enough for even seasoned veterans who deal with the death penalty to stop and take notice.

Maria DeLiberato had served as an assistant state attorney in Miami-Dade County and then 13 years at Capital Collateral Regional Counsel, representing individuals on Florida's death row in their post-conviction appeals. Now she serves as executive director of Floridians for Alternatives to the Death Penalty, or FADP.

She had read his story and found it "horrifying." As she wrote to supporters of FADP, Zack grew in the womb of an alcoholic mother who went into labor prematurely following a car accident. His stepfather was "sadistically" abusive toward Zack and his sisters.

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"(Zack) suffers from post-traumatic stress disorder, chronic depression, fetal alcohol syndrome, and organic brain damage. Mental health experts opined that he had the mental and emotional age of a 10- or 11-year-old child," DeLiberato wrote to supporters. "(He) is remorseful, has been peaceful on death row, and with his limited intellectual functioning, has learned to read and write. He has tried to make sense of how his traumatic upbringing impacted the choices he made as an adult. He can and should remain in prison for the remainder of his natural life."

But those realities, thus far, have been ignored by the governor's office who signed the warrants, the state attorney general who has fought appeals, and the courts that have rejected the appeals.

And this leaves the citizenry of Florida desensitized from a tangible reality -- the state is committing murder on its behalf. Although shrouded in a law-and-order, tough-on-crime cloak, it is manipulative rhetoric to state the death penalty is a "popular" law that keeps society safe.

"We don't need the death penalty to be safer," DeLiberato said. "Murder rates are not impacted by the use of the death penalty. Over and over, it has been shown to be wasteful (financially) as it costs more money than life in prison without parole. And it is harmful to society. To say it is a deterrent is just nonsense."

Is the death penalty used as a political tool? DeLiberato would say, "yes." Politicians and elected officials have used emotional appeals to uphold the death penalty and even change legislation that had previously been voted into effect by Florida voters.

The increased use of the death penalty in Florida has disturbed proponents of the death penalty beyond the Sunshine State.

Krisanne Vaillancourt Murphy, executive director of Catholic Mobilizing Network, regards the escalating number of executions in Florida as a "troubling uptick" that is a "moral outrage" that contradicts the Catholic faith.

"The church unequivocally condemns the death penalty in all circumstances. ... Each life is precious, no matter the harm one has caused or suffered," Murphy said.

Murphy remarked the Catholic governor's track record of signing warrants and prompting legislation to eliminate unanimous jury recommendations have "given Florida the lowest standard for death sentences in the nation." And Murphy added while national trends show that "capital punishment is falling out of favor with the American public."

"This dubious distinction is made all the more troubling by Florida's infamous record of wrongful convictions and racial bias in capital cases," Murphy said. "Of the 195 U.S. death-row exonerations since 1973, the largest number -- 30 -- come from Florida."

Finding ways to strengthen Florida's death grip on capital punishment continues. During the appeal process for death-row inmate Zack, the News Service of Florida reported that Moody, the state's attorney general, urged the Florida Supreme Court to use "Marsy's Law" to reject Zack's request for a stay of execution. "Marsy's Law" is a constitutional amendment about victim's rights that was passed by voters in 2018.

"The Marsy's Law amendments to the Florida Constitution require Florida's courts to modify the stay-of-execution standard to account for the victims' rights to be free

from unreasonable delay and prompt finality," Moody's office argued.

Signed warrants, executions and the changing and sometimes manipulation of legislation to strengthen the use of capital punishment serve to dishearten death penalty proponents. DeLiberato admitted that so many executions in such little time -- possibly six in 222 days, which averages for one every 37 days -- could cause complacency among Floridians.

But that's just one more reason advocacy is vital in this cause.

"We can't become a society desensitized by violence. We have to stay vigilant. Defense lawyers, activists, journalists, leaders of faith communities -- we all have to speak up and say, 'Not in our name,' " DeLiberato said.

Murphy echoed DeLiberato's rallying cry. She said faith calls members of the faith to "champion justice and honor victims of crime," but also to safeguard the sanctity of life, even the lives of those who have committed grave harm.