

IN THE SUPREME COURT OF OHIO

STATE OF OHIO, : CASE NO. 04-586
Appellee-Respondent, : Common Pleas Case No. 03 CR 358
v. :
JOHN DRUMMOND, :
Appellant-Petitioner. : **This is a death penalty case.**

MOTION FOR STAY OF EXECUTION OF DEATH SENTENCE PENDING
DISPOSITION OF AVAILABLE STATE REMEDIES

PAUL J. GAINS
Prosecuting Attorney
Mahoning County, Ohio

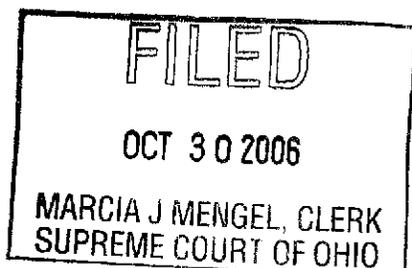
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IN THE SUPREME COURT OF OHIO

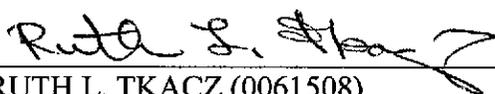
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**MOTION FOR STAY OF EXECUTION OF DEATH SENTENCE PENDING
DISPOSITION OF AVAILABLE STATE REMEDIES**

Appellant John Drummond respectfully moves this Court for an Order continuing his stay of execution pending exhaustion of his available state remedies. On January 28, 2005, Mr. Drummond timely filed a petition for postconviction relief in the Court of Common Pleas, Mahoning County, Ohio. Those proceedings are now on appeal to the Seventh Appellate District. The reasons for this motion are set forth in the attached Memorandum.

Respectfully submitted,

DAVID H. BODIKER
Ohio Public Defender


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Assistant State Public Defender
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MEMORANDUM

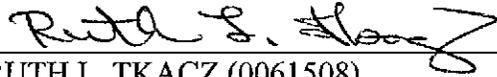
On October 18, 2006, this Court affirmed John Drummond's convictions and death sentence (Exhibit A). Previously, this Court granted a stay of execution for Mr. Drummond, pending his direct appeal. Upon the denial of that appeal, this Court has set January 23, 2007, as the new execution date for John Drummond.

Mr. Drummond now moves this Court for an order continuing his stay of execution pending the exhaustion of available postconviction remedies, including all appeals. Under State v. Steffen, 70 Ohio St. 3d 399 (1994), Mr. Drummond is entitled to a stay of execution until he has "exhausted ... one round of postconviction relief, and one motion for delayed reconsideration ... in the court of appeals" Id. at 412. See also State v. Glenn, 33 Ohio St. 3d 601 (1987).

On January 28, 2005, Mr. Drummond filed his Petition to Vacate or Set Aside Sentence Pursuant to Ohio Revised Code Section 2953.21 (Exhibit B). The trial court denied the petition without a hearing. Mr. Drummond filed a timely notice of appeal to the Seventh Appellate District (Exhibit C). That appeal is pending. State v. Drummond, Case No. 05-MA-197 (Mahoning App. Ct.). Thus, a stay is needed to ensure that the issues raised in his postconviction petition are fully resolved. This Court has granted similar motions. See, e.g., State v. Raglin, 85 Ohio St. 3d 1429 (1999).

WHEREFORE, Mr. Drummond respectfully requests that this Honorable Court grant a stay of execution pending the exhaustion of available state remedies, and more specifically, his postconviction proceedings, in accordance with State v. Steffen, 70 Ohio St. 3d 399 (1994).

Respectfully submitted,
DAVID H. BODIKER
Ohio Public Defender

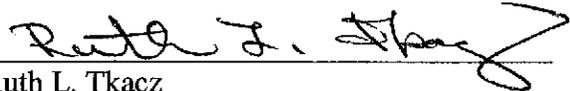


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CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing MOTION TO CONTINUE STAY OF EXECUTION FOR DISPOSITION OF AVAILABLE STATE REMEDIES was forwarded by regular U.S. mail to Rhys B. Cartwright-Jones, Assistant Mahoning County Prosecuting Attorney, 21 W. Boardman Street, 6th Floor, Youngstown, Ohio 44503, on the 30th day of October, 2006.



Ruth L. Tkacz
Assistant State Public Defender
Counsel for Appellant-Petitioner

The Supreme Court of Ohio

FILED

OCT 18 2006

MARCIA J. MENGEL, CLERK
SUPREME COURT OF OHIO

State of Ohio

Case No. 04-586

v.

JUDGMENT ENTRY

John E. Drummond

APPEAL FROM THE COURT
OF COMMON PLEAS

This cause, here on appeal from the Court of Common Pleas for Mahoning County, was considered in the manner prescribed by law. On consideration thereof, the judgment of the Court of Common Pleas is affirmed consistent with the opinion rendered herein.

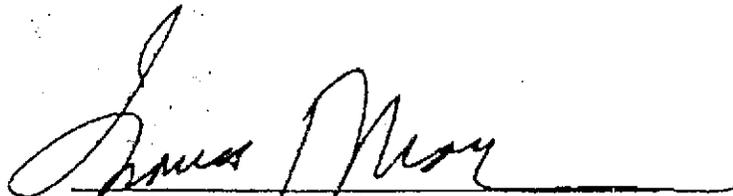
Furthermore, it appearing to the Court that the date fixed for the execution of judgment and sentence of the Court of Common Pleas has passed,

It is ordered by the Court that said sentence be carried into execution by the Warden of the Southern Ohio Correctional Facility or, in his absence, by the Deputy Warden on Tuesday, the 23rd day of January, 2007, in accordance with the statutes so provided.

It is further ordered that a certified copy of this entry and a warrant under the seal of this Court be certified to the Warden of the Southern Ohio Correctional Facility and that the Warden shall make due return thereof to the Clerk of the Court of Common Pleas for Mahoning County.

It is further ordered by the Court that a mandate be sent to the Court of Common Pleas for Mahoning County to carry this judgment into execution and that a copy of this entry be certified to the Clerk of the Court of Common Pleas for Mahoning County for entry.

(Mahoning County Court of Common Pleas; No. 03CR358)



THOMAS J. MOYER
Chief Justice



IN THE COURT OF COMMON PLEAS
MAHONING COUNTY, OHIO

JAN 28 2005

STATE OF OHIO,
Plaintiff-Respondent,

CASE NO. 03-CR-358

-vs-

JOHN DRUMMOND,
Defendant-Petitioner.

POST-CONVICTION PETITION

Capital Case

I. CASE HISTORY

TRIAL:

Charges (include specifications)

Disposition

Count 1: Aggravated Murder, R.C. 2903.01(A)(F) Specifications: (1) Course of Conduct, R.C. 2929.04(A)(5); (2) Victim under the Age of Thirteen, R.C. 2929.04(A)(9)	Death
Count 2: Aggravated Murder, 2903.01(C)(F) Specifications: Same as Count 1	Merged with Count 1
Count 3: Attempted Aggravated Murder, R.C. 2923.02(A)(E) and R.C. 2903.01(A)(F)	10 years (consecutive)
Count 4: Attempted Aggravated Murder, R.C. 2923.02(A)(E) and R.C. 2903.01(A)(F)	10 years (consecutive)
Count 5: Felonious Assault, R.C. 2903.11(A)(2)(D)	Merged with Count 3
Count 6: Felonious Assault, R.C. 2903.11(A)(2)(D)	Merged with Count 4
Count 7: Improperly Discharging Firearm into a Habitation, R.C. 2923.161(A)(1)(C)	8 years (consecutive)



IN THE COURT OF COMMON PLEAS
MAHONING COUNTY, OHIO

OCT 28 2005

STATE OF OHIO, :
 :
 Plaintiff-Appellee, : Trial Court Case No. 03 CR 358
 :
 -vs- :
 :
 JOHN DRUMMOND, :
 :
 Defendant-Appellant. : **This is a capital case.**

**NOTICE OF APPEAL TO THE SEVENTH DISTRICT COURT OF APPEALS
FROM A FINAL JUDGMENT ENTRY**

John Drummond, Appellant, hereby appeals to the Ohio Seventh District Court of Appeals from the decision of the Mahoning County Common Pleas Court, entry captioned "Judgment Entry" in Case No. 03-CR-358, dated September 29, 2005. A copy of this entry is attached.

Respectfully submitted,

DAVID H. BODIKER
Ohio Public Defender

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MAHONING COUNTY
CLERK OF COURTS

