IN THE SUPREME COURT OF OHIO
2006

STATE OF OHIO,	:	Case No. 03-647
Plaintiff-Appellee,	:	On Appeal from the Court of Common Pleas
vs.	:	Franklin County, Ohio
JAMES T. CONWAY, III,	:	Common Pleas No. 02 CR 1153
Defendant-Appellant.	:	DEATH PENALTY CASE

MEMORANDUM IN OPPOSITION TO MOTION TO SET EXECUTION DATE

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FILED
OCT 3 1 2006
MARCIA J MENGEL CLERK
SUPREME COURT OF OHIO

MEMORANDUM IN OPPOSITION TO MOTION TO SET EXECUTION DATE

The State of Ohio has filed a motion in the above styled case to set an execution date. For the following reasons Mr. Conway respectfully moves that This Court deny the setting of an execution date.

In the memorandum in support, the prosecution states that no other State court proceedings are pending in this matter, and that as a result this case should not be allowed to linger with no execution date set by This Court.

In response to the above, it is respectfully asserted that Mr. Conway obviously intends to file a petition in Federal habeas corpus under 28 U.S.C. §2254.

As This Court is aware, also under 28 U.S.C. §2244(d)(1), there is a one year period of limitation from the time of the conclusion of direct review, coupled with a State post-conviction.

In Keeney v. Tamayo-Reyes (1992) 504 U.S. 1, 10, the Supreme Court noted that the State must afford the petitioner a full and fair hearing on his Federal claim. Just in the direct review of this case, Mr. Conway brought forth over twenty issues which he deemed meritorious. State v. Conway 108 Ohio St.3d 214, 2006-Ohio-791).

This is separate and apart from the issues raised in his post-conviction petition.

In McFarland v. Scott (1994) 512 U.S. 849, the Supreme Court reviewed the petitioner's right to a stay of execution in advance

of filing of the habeas corpus. Essentially, a stay is granted to assure a opportunity on behalf of the petitioner to meaningfully investigate and prepare the petition itself. See also Barefoot v. Estelle (1993) 463 U.S. 800, at 889.

As a result of the above, petitioner, because of the one year period, noted above, has a number of months to conduct initial investigation before he files his notice of intent in the Federal District Court.

This Court also has denied motions like the above, i.e. to set an execution date, routinely. Just as an example, in State v. Turner, This Court recently denied the motion to set an execution date (111 Ohio St.3d 1406), under motion and procedural rulings, 102306.

For the above reasons it is respectfully requested that This Court deny the motion to set an execution date, and continue the stay until Mr. Conway files his notice of intent and the petition itself.

Respectfully submitted,

Todd Barstow/A.G.

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PROOF OF SERVICE

I certify that a copy of this Notice of Appeal was sent by ordinary U.S. mail to counsel for appellee, Steven L. Taylor, Franklin County Prosecuting Attorney, 373 South High Street, 13th Floor, Columbus, Ohio 43215 and Kathryn Sandford, Office of the Ohio Public Defender, 8 East Long Street, 11th Floor, Columbus, Ohio 43215 on this 31st day of October, 2006.

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