

**IN THE SUPREME COURT OF OHIO**

**STATE OF OHIO,** :  
 :  
 **Plaintiff-Appellee** :  
 :  
 **-vs-** : **Case No. 04-0485**  
 :  
 **DONALD KETTERER** : **THIS IS A DEATH PENALTY CASE**  
 :  
 **Defendant-Appellant.**

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**MOTION FOR A STAY OF EXECUTION PENDING  
DISPOSITION OF STATE COURT REMEDIES**

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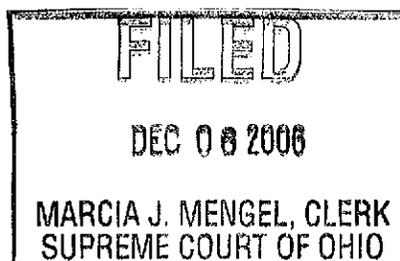
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Donald Ketterer moves this Court for a stay of execution pending exhaustion of his post-conviction remedies. Donald Ketterer timely filed post-conviction and intends to file an application for reopening. This Court must enter a stay to permit him to complete this litigation. Donald Ketterer has attached to this motion a memorandum which he incorporates in this pleading.

Respectfully submitted,

DAVID H. BODIKER  
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COUNSEL FOR DONALD KETTERER

## MEMORANDUM IN SUPPORT

On February 4, 2004, a three judge panel sentenced Donald Ketterer to death. On December 28, 2004, he timely filed his post-conviction petition in which he challenged his convictions and death sentence.

Since the filing of his post-conviction petition, a dispute has arisen between the parties concerning whether the judge initially assigned to his case or the three judge panel who sentence him to death should preside over his post-conviction proceedings. Donald Ketterer filed an original action in the Twelfth Appellate District which that court denied. *State, ex. rel. Donald Ketterer, vs. Patricia Oney, Judge*, Butler App. No. CA2006-07-171 (Oct. 3, 2006). That case is now on appeal to this Court. *State, ex. rel. Donald Ketterer, vs. Patricia Oney, Judge*, Ohio Supreme Court No. 06-2136 Donald Ketterer also intends to file an application for reopening pursuant to S. Ct. Prac. R. XI, Section 6.

This Court has set an execution date of January 30, 2007, for Donald Ketterer's execution. This Court should enter a stay to permit him Ketterer to complete the ongoing collateral litigation, as well as his application for reopening.

Capital defendants are "entitled to ... review before paying the ultimate penalty. The right of review is otherwise rendered utterly meaningless." *McDonald v. Missouri*, 464 U.S. 1306, 1307 (1984)(Blackmun, J., Circuit Justice). A capital defendant is entitled to a stay of execution until he has completed at least one round of post-conviction review. *State v. Steffen*,

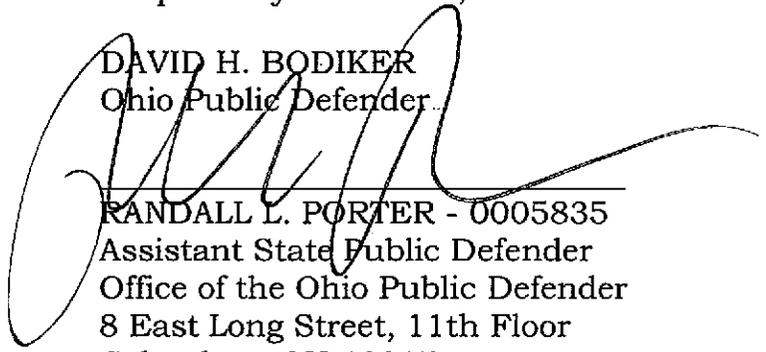
70 Ohio St.3d 399, 412 (1994); *State v. Glenn*, 33 Ohio St.3d 601 (1987).

Donald Ketterer has not completed his initial post-conviction litigation of his conviction and sentence, as well as yet to be filed his application for reopening.

WHEREFORE, Appellant Donald Ketterer respectfully requests that this Court stay his execution date so that he may exhaust his state post-conviction remedies.

Respectfully submitted,

DAVID H. BODIKER  
Ohio Public Defender



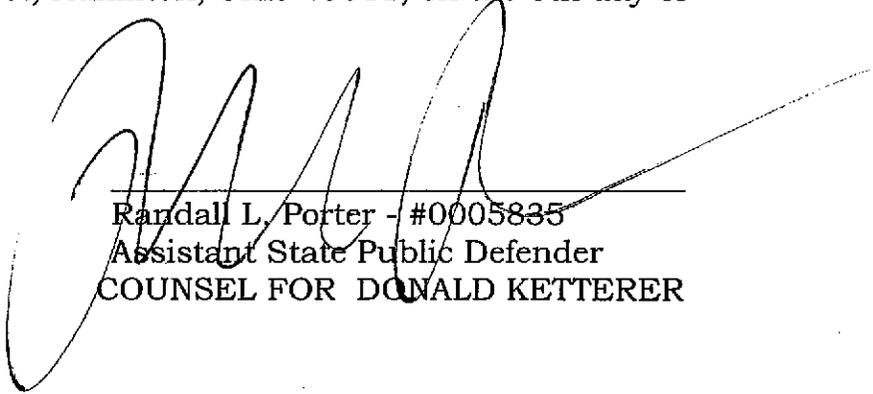
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**CERTIFICATE OF SERVICE**

I hereby certify that a true copy of the foregoing Motion for Stay of Execution Pending Disposition of State Court Remedies was forwarded by regular first-class U.S. mail to counsel of record, Daniel G. Eichel, First Assistant Butler County Prosecuting Attorney, and Michael A. Oster, Jr., Assistant Prosecutor, 315 High Street, Hamilton, Ohio 45011, on the 6th day of December, 2006.



\_\_\_\_\_  
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