

IN THE SUPREME COURT OF OHIO

STATE OF OHIO, :  
Appellee, : Case No.: 2004-0041  
-vs- :  
PHILLIP ELMORE, :  
Appellant. : **Death Penalty Case**

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APPELLANT'S MOTION FOR STAY OF EXECUTION

EXECUTION DATE: March 13, 2007

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Prosecuting Attorney

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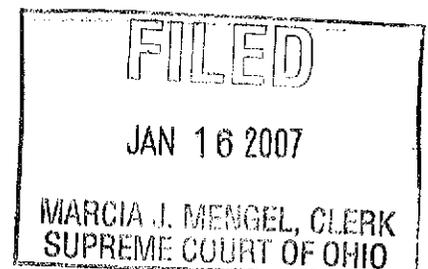
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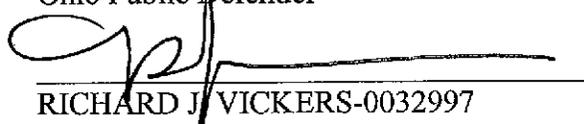
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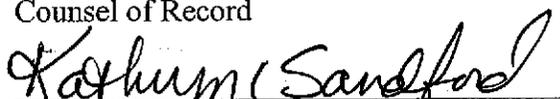
Now comes the Appellant, Phillip Elmore, by and through the undersigned counsel and moves this Court to stay Appellant's **execution set for March 13, 2007** pending filing and disposition of his petition for writ of certiorari in the Supreme Court of the United States. The reasons for this motion are more fully set forth in the attached memorandum.

Respectfully submitted,

DAVID H. BODIKER  
Ohio Public Defender



RICHARD J. VICKERS-0032997  
Supervising Attorney  
Death Penalty Division  
Counsel of Record



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**MEMORANDUM IN SUPPORT OF MOTION TO STAY EXECUTION PENDING  
FILING AND DISPOSITION OF PETITION FOR WRIT OF CERTIORARI**

Appellant, Phillip Elmore, was found guilty of Aggravated Murder and sentenced to death by the Licking County Court of Common Pleas. This Court affirmed Mr. Elmore's convictions and sentences on December 13, 2006. Mr. Elmore is currently sentenced to die on March 13, 2007. However, Mr. Elmore has not completed his direct review. "[I]f a federal question is involved, the process of direct review includes the right to petition the [Supreme] Court [of the United States] for a writ of certiorari." McDonald v. Missouri, 464 U.S. 1306, 1306-07 (Blackmun, Circuit Justice 1984) (internal quotations omitted) (citing Williams v. Missouri, 463 U.S. 1301 (Blackmun, Circuit Justice 1983) quoting Barefoot v. Estelle, 463 U.S. 880, 887 (1983)). See also Autry v. Estelle, 464 U.S. 1, 4 (1983) (per curiam). Moreover, this stay should be granted by the state tribunal. McDonald, 463 U.S. at 1307. Every criminal defendant has a right to the direct review of his death sentence prior to "paying the ultimate penalty." Id. Thus, "[i]t makes no sense to have the execution set on a date within the time specified for that review...and before the review is completed." Id. Accordingly, a stay is warranted to allow Mr. Elmore adequate time to file his petition for writ of certiorari and for the Supreme Court of the United States to consider said petition.

This Court affirmed Elmore's convictions and sentence on December 13, 2006. Elmore now has ninety days (90) to file his petition for writ of certiorari. Sup. Ct. R. 13. The Appellee then has thirty (30) days to oppose Elmore's petition. Sup. Ct. R. 15. Subsequent to the filings, the United States Supreme Court will review the case to determine if it will grant the writ. This process will not be completed before March 13, 2007. This Stay of Execution is being sought to allow a thorough and considered review of Elmore's petition for writ of certiorari.

Therefore, Phillip Elmore respectfully requests this Court stay his execution, pending the final disposition of his petition for writ of certiorari.

Respectfully submitted,

DAVID H. BODIKER  
Ohio Public Defender



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RICHARD J. VICKERS-0032997  
Supervising Attorney  
Death Penalty Division  
Counsel of Record



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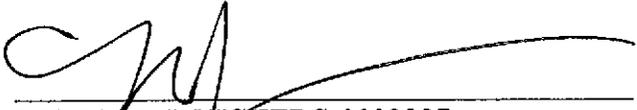
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COUNSEL FOR APPELLANT

**CERTIFICATE OF SERVICE**

I certify a copy of the foregoing has been sent by regular U.S. mail to Robert Becker, Prosecuting Attorney and Kenneth Oswalt, Assistant Prosecutor, Licking County, Administration Building, 20 South Second Street, Newark, Ohio 43055 on this 16<sup>th</sup> day of January, 2007.

  
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RICHARD J. VICKERS-0032997  
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