

IN THE SUPREME COURT OF OHIO

STATE OF OHIO,

Appellee,

-vs-

DONALD J. KETTERER,

Appellant.

:

:

:

:

:

Case No.

07-1261

Appeal taken from Butler County
Court of Common Pleas

Case No. CR 2003-03-0309

This is a death penalty case.

NOTICE OF APPEAL OF APPELLANT DONALD J. KETTERER

ROBIN PIPER
Prosecuting Attorney

Daniel Eichel (0008259)
First Assistant Prosecuting Attorney

Michael A. Oster (0076491)
Assistant Prosecuting Attorney
Prosecuting Attorney

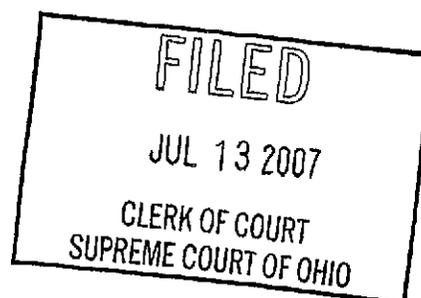
Butler County Prosecutor's Office
Government Services Center
315 High Street, 11th Floor
Hamilton, Ohio 45011
(513) 887-3474

COUNSEL FOR APPELLEE

DAVID H. BODIKER
Ohio Public Defender

RANDALL L. PORTER (0005835)
Assistant State Public Defender
Counsel of Record

Office of the Ohio Public Defender
8 East Long Street, 11th Floor
Columbus, Ohio 43215
(614) 466-5394 (Voice)
(614) 644-0703 (Facsimile)
COUNSEL FOR APPELLANT



IN THE SUPREME COURT OF OHIO

STATE OF OHIO, : **Case No.**
Appellee, :
-vs- : **Appeal taken from Butler County**
 : **Court of Common Pleas**
DONALD J. KETTERER, : **Case No. CR 2003-03-0309**
Appellant. : **This is a death penalty case.**

DONALD KETTERER'S NOTICE OF APPEAL

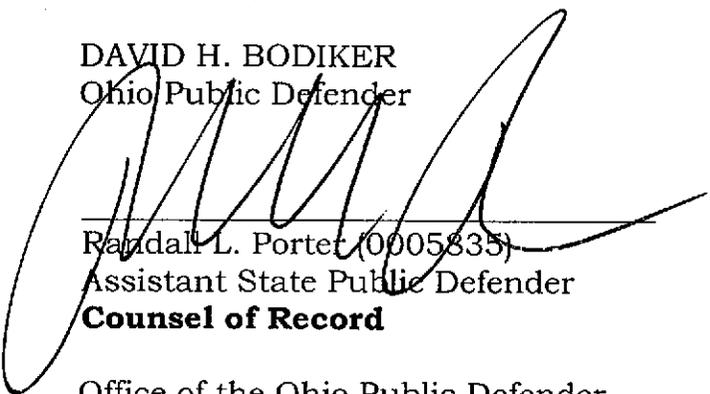
Appellant Donald J. Ketterer hereby gives notice of appeal to the Supreme Court of Ohio from the orders and judgment entry of the Butler County Court of Common Pleas entered in Case No. CR 2003-03-0309 on the following dates: May, 29, 2007 (Re-sentencing Judgment Entry of Conviction, Exhibit A); June 21, 2007 (Order Denying Defendant's Motion for The Disclosure of Favorable Evidence for Purposes of Re-Sentencing, Exhibit B) and June 21, 2007 (Order Denying Appellant's Motion to Withdraw Guilty Pleas, Exhibit C).

This is a capital case and the date of the offense is February 24, 2003. See Supreme Court Rule of Practice XIX, § 1(A). This Court has affirmed Donald Ketterer's convictions and death sentence. *State v. Ketterer* 111 Ohio St. 3d 70, 2006-Ohio-5283. On April 18, 2007, this Court vacated the non-capital offenses and remanded the matter for re-sentencing. *State v. Ketterer*

113 Ohio St. 3d 1463, 2007-Ohio-1722. The instant appeal is from the remand proceedings in the trial court.

Respectfully submitted,

DAVID H. BODIKER
Ohio Public Defender



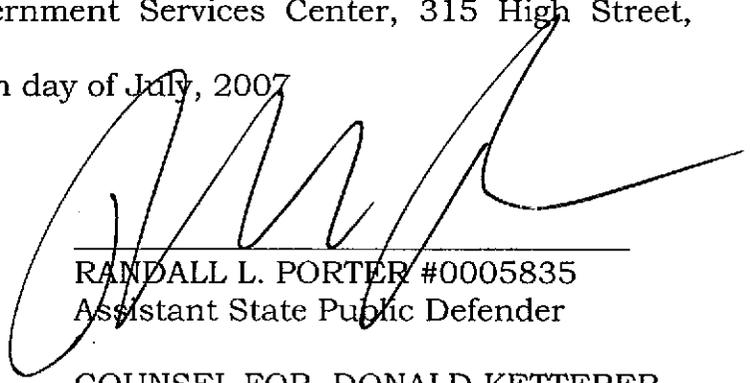
Randall L. Porter (0005835)
Assistant State Public Defender
Counsel of Record

Office of the Ohio Public Defender
8 East Long Street, 11th Floor
Columbus, Ohio 43215
(614) 466-5394
(614) 644-0703 (Fax)
Randall.Porter@OPD.Ohio.gov

COUNSEL FOR APPELLANT

CERTIFICATE OF SERVICE

I certify a copy of the foregoing NOTICE OF APPEAL has been sent by regular U.S. mail to Daniel G. Eichel, First Assistant Butler County Prosecuting Attorney, and Michael A. Oster, Jr. Assistant Butler County Prosecuting Attorney at the Government Services Center, 315 High Street, Hamilton, Ohio 45011 on this 13th day of July, 2007



RANDALL L. PORTER #0005835
Assistant State Public Defender

COUNSEL FOR DONALD KETTERER

h. Pollock

COURT OF COMMON PLEAS
BUTLER COUNTY, OHIO

FILED in Common Pleas Court
BUTLER COUNTY, OHIO

MAY 29 2007

CINDY CARPENTER
CLERK OF COURTS

STATE OF OHIO

CASE NO. CR2003-03-0309

Plaintiff

ONEY, J., SAGE, J. and CREHAN, J.

vs.

RE-SENTENCING
JUDGMENT OF CONVICTION ENTRY

DONALD JOSEPH KETTERER

Defendant

On May 24, 2007 defendant's re-sentencing hearing was held on the noncapital offenses, Counts Two, Three, Four and Five, pursuant to Ohio Revised Code Section 2929.19 and the decision in State v. Ketterer, 113 Ohio St.3d 1463, 2007-Ohio-1722, the previous judgment of conviction and sentence as to Count One having been affirmed in State vs. Ketterer, 111 Ohio St.3d 70, 2006-Ohio-5283, certiorari denied (May 14, 2007), _____ U.S. _____, 2007 WL812004. Defense attorney Randall Porter, and the defendant were present and defendant was advised of and afforded all rights pursuant to Crim. R. 32. The Court has considered the record, the charges, the defendant's Guilty Finding by Judges, and findings as set forth on the record and herein, oral statements, any victim impact statement and pre-sentence report, as well as the principles and purposes of sentencing under Ohio Revised Code Section 2929.11, and has balanced the seriousness and recidivism factors of Ohio Revised Code Section 2929.12 and whether or not community control is appropriate pursuant to Ohio Revised Code Section 2929.13, and finds that the defendant is not amenable to an available community control sanction. Further, the Court has considered the defendant's present and future ability to pay the amount of any sanction, fine or attorney's fees.

The Court finds that the defendant has been found guilty of:

AGGRAVATED ROBBERY as to Count Two, a violation of Revised Code Section 2911.01(A)(3) a first degree felony. With respect to this Count, the defendant is hereby sentenced to:

Prison for a period of 9 years.
This sentence will be served **consecutive** to Count One.
Fine in the amount of \$2,000

AGGRAVATED BURGLARY as to Count Three, a violation of Revised Code Section 2911.11(A)(1) a first degree felony. With respect to this Count, the defendant is hereby sentenced to:

Prison for a period of 9 years.
This sentence will be served **consecutive** to Count Two.
Fine in the amount of \$2,000

GRAND THEFT as to Count Four, a violation of Revised Code Section 2913.02(A)(1) a fourth degree felony. With respect to this Count, the defendant is hereby sentenced to:

Prison for a period of 17 months.
This sentence will be served **concurrent** with Count(s) Two and Three.

BURGLARY as to Count Five, a violation of Revised Code Section 2911.12(A)(3) a third degree felony. With respect to this Count, the defendant is hereby sentenced to:

Prison for a period of 4 years.

PROSECUTING ATTORNEY, BUTLER COUNTY, OHIO
P.O. BOX 515, HAMILTON, OH 45012-0515

EXHIBIT
 A

This sentence will be served **consecutive** to Count(s) Two and Three.
Fine in the amount of \$1,000

Credit for 1556 served is granted as of this date.

As to Count(s) Two, Three, Four and Five:

The Court has notified the defendant that post release control is in this case up to a maximum of years, as well as the consequences for violating conditions of post release control imposed by the Parole Board under Revised Code Section 2967.28. The defendant is ordered to serve as part of this sentence any term of post release control imposed by the Parole Board, and any prison term for violation of that post release control. The defendant is therefore ORDERED conveyed to the custody of the Ohio Department of Rehabilitation and Correction.

Defendant is ORDERED to pay:

Costs of prosecution, supervision and any supervision fees permitted pursuant to Revised Code Section 2929.18(A)(4).

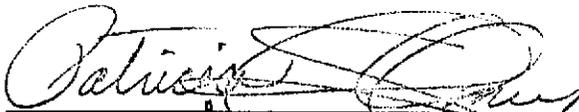
The Court further advised the defendant of all of his/her rights pursuant to Criminal Rule 32, including his/her right to appeal the judgment, his/her right to appointed counsel at no cost, his/her right to have court documents provided to him/her at no costs, and his / her right to have notice of appeal filed on his behalf.

Directive to Ohio Department of Rehabilitation and Correction: Please notify the Butler County Court of Common Pleas of any major changes of incarceration status including but not limited to release, transfer, execution or death of the defendant.

APPROVED AS TO FORM:

ENTER

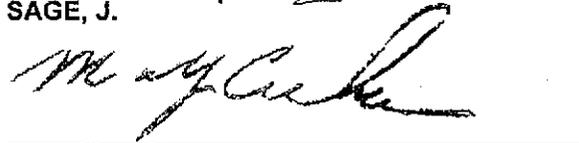
**ROBIN N. PIPER
PROSECUTING ATTORNEY
BUTLER COUNTY, OHIO**



ONEY, J.



SAGE, J.



CREHAN, J.

MAO/beg
May 25, 2007

h. foltz

COURT OF COMMON PLEAS
BUTLER COUNTY, OHIO

JUN 21 2007
CLERK OF COURTS

STATE OF OHIO

CASE NO. CR2003-03-0309

Plaintiff

ONEY, J.

vs.

ORDER DENYING DEFENDANT'S MOTION
FOR THE DISCLOSURE OF FAVORABLE
EVIDENCE FOR PURPOSES OF RE-
SENTENCING

DONALD JOSEPH KETTERER

Defendant

This matter came before the Court, on May 24, 2007, upon Defendant's Motion for the disclosure of favorable evidence for purposes of re-sentencing. After due consideration of the Motion, Legal Memorandum and Oral Argument from both parties on said Motion, the Court finds that said motion is not well taken.

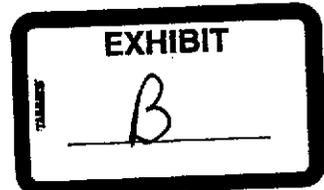
It is, **THEREFORE, ORDERED, ADJUDGED AND DECREED** that Defendant's Motion for the disclosure of favorable evidence for purposes of re-sentencing is hereby denied.

[Handwritten Signature]
Oney, J.

APPROVED AS TO FORM:

ROBIN PIPER
PROSECUTING ATTORNEY
BUTLER COUNTY, OHIO

MAO/beg
June 19, 2007



COURT OF COMMON PLEAS
BUTLER COUNTY, OHIO

FILED in Common Pleas Court
BUTLER COUNTY, OHIO
JUN 21 2007
JANEY CAMPBELL
CLERK OF COURTS

STATE OF OHIO

Plaintiff

vs.

DONALD JOSEPH KETTERER

Defendant

CASE NO. CR2003-03-0309

ONEY, J.

ORDER DENYING DEFENDANT'S MOTION
TO WITHDRAW GUILTY PLEAS

This matter came before the Court, on May 24, 2007, upon Defendant's Motion to withdraw guilty pleas. After due consideration of the Motion, Legal Memorandum and the Oral Argument from both parties, the Court finds that the motion is not well taken.

It is, **THEREFORE, ORDERED, ADJUDGED AND DECREED** that Defendant's Motion to withdraw his guilty pleas is hereby denied.



Oney, J.

APPROVED AS TO FORM:

ROBIN PIPER
PROSECUTING ATTORNEY
BUTLER COUNTY, OHIO

MAO/beg
June 19, 2007

