

IN THE SUPREME COURT OF OHIO

STATE OF OHIO, :
Appellee-Respondent, : Case No. 05-192
-vs- :
FREDERICK A. MUNDT, :
Appellant-Petitioner. : **This is a death penalty case**

ON APPEAL FROM THE COURT OF
COMMON PLEAS OF NOBLE COUNTY
CASE NO. 204-2002

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

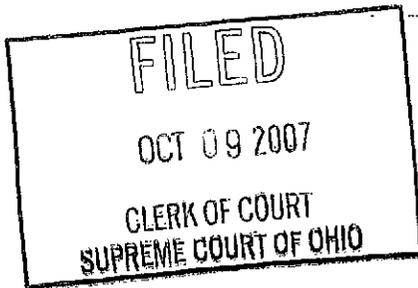
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COUNSEL FOR APPELLANT-PETITIONER

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Now comes Appellant Frederick Mundt, and respectfully moves this Honorable Court for an Order to continue his stay of execution pending exhaustion of his available state remedies. On May 2, 2006, Mundt timely filed a petition for post-conviction relief in the Court of Common Pleas, Noble County, Ohio. Mundt's post-conviction petition is still pending before the Noble County Court of Common Pleas. A memorandum in support is attached and incorporated herein.

Respectfully submitted,

DAVID H. BODIKER
Ohio Public Defender

RICHARD J. VICKERS – 0032997
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MEMORANDUM

On October 3, 2007, this Court affirmed Frederick Mundt's convictions and death sentence. Previously, this Court granted a stay of execution for Mundt, pending completion of his direct appeal. Upon the denial of that appeal, this Court set January 8, 2008, as his new execution date.

Mundt now moves this Court for an order continuing his stay of execution pending the exhaustion of available post-conviction remedies, including all appeals. Under State v. Steffen, 70 Ohio St. 3d 399 (1994), Mundt is entitled to a stay of execution until he has "exhausted . . . one round of post-conviction 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 May 2, 2006, Mundt filed his Petition to Vacate or Set Aside Sentence Pursuant to Ohio Revised Code Section 2953.21. Mundt's post-conviction petition is still pending before the Noble County Court of Common Pleas. Regardless of the outcome, an appeal will be taken and therefore a stay is needed to ensure that the issues raised in his post-conviction petition are fully resolved. This Court has granted similar motions. See State v. Craig, 111 Ohio St. 3d 1496 (2006); State v. Hutton, 100 Ohio St. 3d 176 (2003); State v. Tibbets, 93 Ohio St. 3d 1402 (2001); State v. Jones, 92 Ohio St. 3d 1421 (2001).

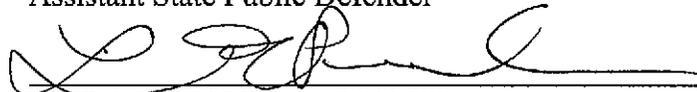
Furthermore, Mundt is permitted to file a petition for writ of certiorari in the Supreme Court of the United States, and he intends to do so should this court decline to review his post-conviction case. This Court granted a stay of execution to allow the death sentenced inmate to file for a writ of certiorari from this Court's denial of a memorandum in support of jurisdiction following state court post-conviction proceedings. See State v. Brinkley, 105 Ohio St. 3d 1547 (2005).

WHEREFORE, Mundt respectfully requests that this Honorable Court continue his stay of execution pending the exhaustion of available state remedies, and more specifically, his post-conviction proceedings, including a petition for writ of certiorari to the United States Supreme Court if necessary, in accordance with State v. Steffen, 70 Ohio St. 3d 399 (1994) and State v. Brinkley, 105 Ohio St. 3d 1547 (2005).

Respectfully submitted,

DAVID H. BODIKER
Ohio Public Defender

RICHARD J. VICKERS – 0032997
Assistant State Public Defender



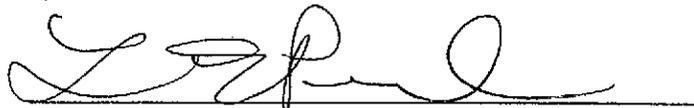
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CERTIFICATE OF SERVICE

I hereby certify that a true copy of the MOTION FOR STAY OF EXECUTION OF DEATH SENTENCE PENDING DISPOSITION OF AVAILABLE STATE REMEDIES was forwarded by regular U.S. Mail to Robert B. Watson, Noble County Prosecutor, 409 Poplar Street, Suite A, Caldwell, Ohio 43724 on this 7th day of October, 2007.



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COUNSEL FOR APPELLANT-PETITIONER