

IN THE SUPREME COURT OF OHIO

STATE OF OHIO,

*

Appellee,

*

Case No. 2006-1126

- vs -

*

Appeal taken from Clark County
Court of Common Pleas

JASON DEAN,

*

Case No. 05CR348

Appellant.

*

This is a death penalty case

FILED

OCT 09 2007

CLERK OF COURT
SUPREME COURT OF OHIO

STATE'S OPPOSITION TO DEAN'S MOTION
TO SUPPLEMENT THE RECORD ON APPEAL

The State opposes the supplementation of the record with collateral

materials involving Dean's trial counsel only, especially where those materials post date Dean's conviction and sentence. The hearing regarding the contempt action against Dean's trial counsel is no part of the record on this appeal, the subject of which is the fairness of Dean's conviction and sentence. The contempt hearing was an after-the-fact *in personam* action against trial counsel Butz and Mayhall, and consequently not pertinent to Dean's trial rights, which became fixed some months prior upon Dean's conviction and sentence. In other words, the contempt hearing involved adjudication of the rights of attorneys Butz and Mayhall, and not any rights held by Jason Dean.

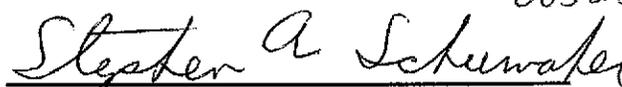
In this case, the record on appeal constitutes those trial proceedings that end with Dean's judgment of conviction and sentence. Nothing in Sup. Ct. Practice R. 19, Section 3(D), nor Appellate Rule 9(A) would hold to the contrary, where each provision refers to

the trial record, and certainly does not refer to post judgment proceedings against parties other than Jason Dean. It is Dean's case, not the case of Butz and Mayhall, that is before the Court, and it is Dean's trial record that constitutes the record on appeal..

Were this Court to deny supplementation, as it should, Dean is not without remedy. Dean should seek to add these materials to his post-conviction action. In that way, the Dean's contentions can be raised and fully adjudicated by the trial court and the intermediate appellate court that are already familiar with the contempt proceedings. Once that adjudication is completed, this Court, if it so chooses, could review the outcome by way of a grant of certiorari. In any event, this Court should deny supplementation of the record on appeal with materials not part of Dean's trial record.

Respectfully submitted,

BY S. MAHER
0032279



STEPHEN A. SCHUMAKER* (0014643)

** Counsel of Record*

Clark County Prosecutor

50 E. Columbia Street

P.O. Box 1608

Springfield, OH 45502

(phone) 937-521-1770

(fax) 937-328-2657

COUNSEL FOR APPELLEE

STATE OF OHIO

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing *State's Opposition Dean's Motion To Supplement The Record On Appeal* has been delivered via US Mail to Joseph Wilhelm, counsel of record, Assistant State Public Defender, Office of the Ohio Public Defender, 8 East Long Street, 11th Floor, Columbus, Ohio 43215-2998, on this the 9th day of October, 2007.

By S. MAKER
0032279

Stephen A. Schumaker

STEPHEN A. SCHUMAKER (0014643)
Clark County Prosecuting Attorney
Counsel Of Record For Appellee