

IN THE SUPREME COURT OF OHIO

STATE OF OHIO, :  
Appellee, : Case No. 2007-1261  
-vs- : Appeal taken from Butler County  
DONALD J. KETTERER, : Court of Common Pleas  
: Case No. CR 2003-03-0309  
Appellant. : This is a death penalty case.

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APPELLANT DONALD J. KETTERER'S  
MOTION TO SUPPLEMENT THE RECORD

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ROBIN PIPER  
Prosecuting Attorney

Daniel Eichel (0008259)  
First Assistant Prosecuting Attorney

Michael A. Oster (0076491)  
Assistant Prosecuting Attorney

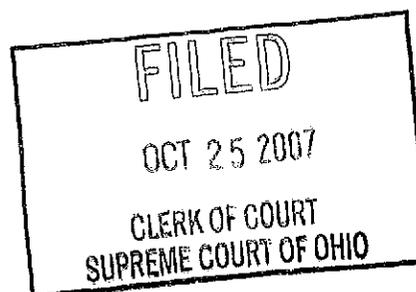
Butler County Prosecutor's Office  
Government Services Center  
315 High Street, 11th Floor  
Hamilton, Ohio 45011  
(513) 887-3474

COUNSEL FOR APPELLEE

DAVID H. BODIKER  
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COUNSEL FOR APPELLANT



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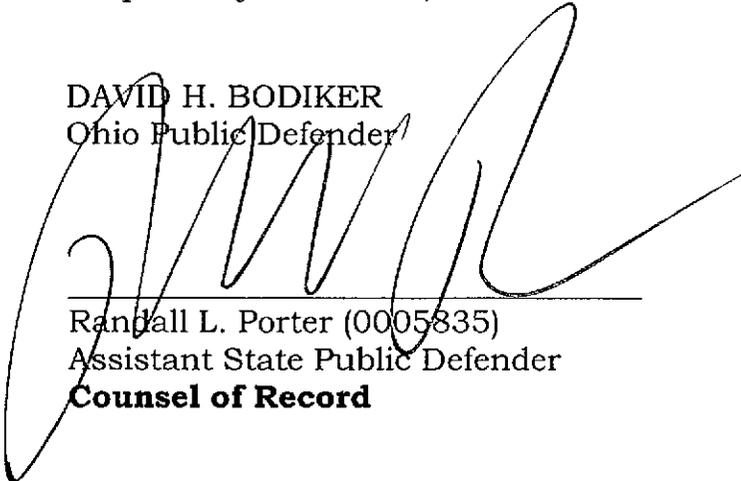
**APPELLANT DONALD J. KETTERER'S  
MOTION TO SUPPLEMENT THE RECORD**

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Donald Ketterer moves this Court to order the Clerk of the Butler County Court of Common Pleas to certify and transmit the transcript from the May 24, 2007 re-sentencing proceedings. Donald Ketterer has attached a memorandum of law which he incorporates in this pleading.

Respectfully submitted,

DAVID H. BODIKER  
Ohio Public Defender



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Randall L. Porter (0005835)  
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COUNSEL FOR APPELLANT

**MEMORANDUM IN SUPPORT**

On February 7, 2006, this Court 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 sentences and remanded the matter for re-sentencing. *State v. Ketterer* 113 Ohio St. 3d 1463, 2007-Ohio-1722.

On May 24, 2007, the three judge panel, pursuant to this court's remand order, re-sentenced Donald Ketterer. *State v. Ketterer*, Butler C.P. Case No. CR2003-03-0309. On July 13, 2007, Donald Ketterer timely initiated this appeal from the trial court's re-sentencing. On September 5, 2007, the Butler County Common Pleas Court Clerk filed the record with this Court. On October 12, 2007, Mr. Ketterer filed his stipulation extending the time for him to file his brief until November 4, 2007.

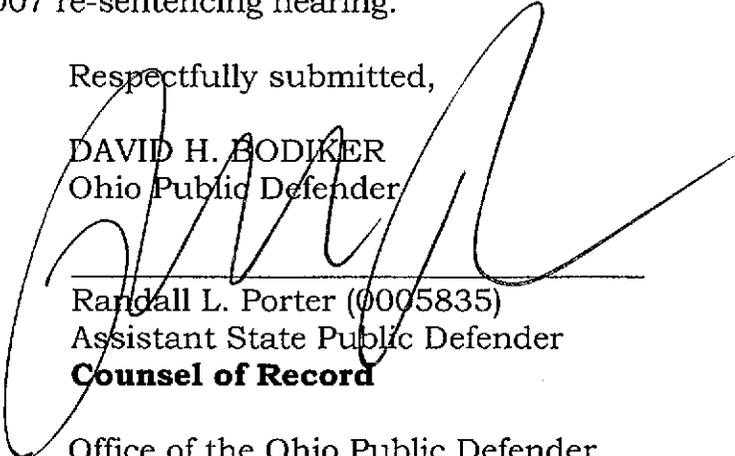
Undersigned counsel has discovered that the transcript from the May 24, 2007 re-sentencing hearing is not in the record before this Court. The court reporter has prepared the transcript because the Clerk of the Butler County Common Pleas Court filed it with the Butler County Court of Appeals in Mr. Ketterer's pending appeal in that court. [Exhibit 1].

Pursuant to § 16, Article I of the Ohio Constitution, Appellant is entitled to a “complete, full, and unabridged transcript of all proceedings against him so that he may prosecute an effective appeal.” *State ex. rel. Spirko v. Court of Appeals, Third Appellate Dist.* (1986), 27 Ohio St. 3d 13, 18, 501 N.E.2d 625, 629. In order for appellate counsel to completely present, and for this Court to accurately determine, any constitutional errors, the trial transcript must be added to the record. Without a complete record for review, counsel cannot provide effective representation to Appellant on his first appeal as of right. *See State v. Buell* (1994), 70 Ohio St. 3d 1211, 639 N.E.2d 110; *Evitts v. Lucey* (1985), 469 U.S. 387, 396-397.

WHEREFORE Appellant Donald Ketterer moves this Court to order the Clerk of the Butler County Common Pleas Court to supplement the record with the transcript of the May 24, 2007 re-sentencing hearing.

Respectfully submitted,

DAVID H. BODIKER  
Ohio Public Defender



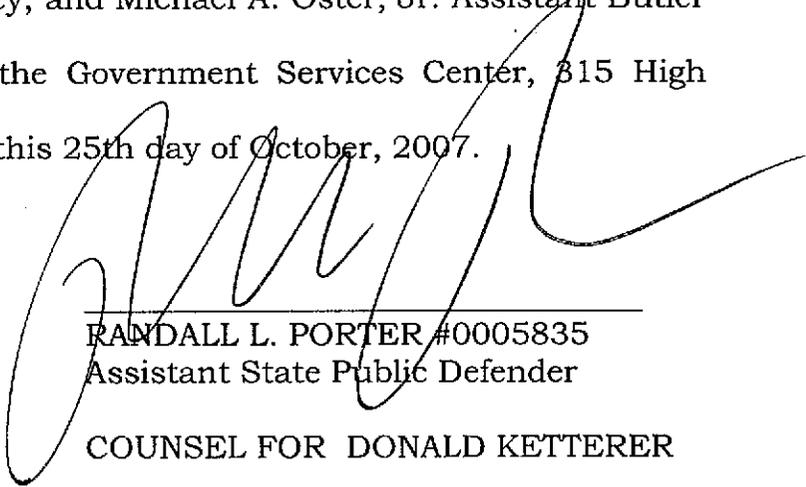
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COUNSEL FOR APPELLANT

**CERTIFICATE OF SERVICE**

I hereby certify that a true copy of the foregoing Appellant Donald J. Ketterer's Motion To Supplement The Record was forwarded both electronically and by first-class U.S. Mail, postage prepaid 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 25th day of October, 2007.



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RANDALL L. PORTER #0005835  
Assistant State Public Defender

COUNSEL FOR DONALD KETTERER

CINDY CARPENTER



CLERK OF COURTS

1000364034

**DONALD KETTERER c/o RANDALL L PORTER  
OFFICE OF THE OHIO PUBLIC DEFENDER  
8 EAST LONG ST., 11TH FLOOR  
COLUMBUS, OH 43215**

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Date: August 30, 2007

Case No.: CA 2007 06 0149

DONALD KETTERER vs. STATE OF OHIO

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**RULE 11(B) NOTICE OF COMPLETE RECORD  
12<sup>TH</sup> DISTRICT COURT OF APPEALS, BUTLER COUNTY, OHIO**

You are hereby notified that the record for appeal in the above mentioned case is complete. Please refer to the scheduling order issued by the Court to determine the dates when briefs are to be filed.

TRIAL COURT CASE NO.: CR03 03 0309

DATE DOCKET AND JOURNAL ENTRIES FILED: 6-26-07

DATE TRANSCRIPT OF PROCEEDINGS OR LOCAL RULE 5 NOTICE FILED: 8-20-07

CINDY CARPENTER  
Butler County Clerk of Courts

By: Rebecca Fleenor  
Deputy Clerk

cc: Court of Appeals  
All parties involved

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GOVERNMENT SERVICES CENTER • 315 HIGH STRBET • SUITE 550 • HAMILTON, OHIO 45011-6016

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BUTLER COUNTY CLERK OF COURTS  
[www.butlercountyclerk.org](http://www.butlercountyclerk.org)

