

IN THE SUPREME COURT OF OHIO

State of Ohio

Plaintiff,

Donna Marie Roberts

Defendant.

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Case No. 2007-2288

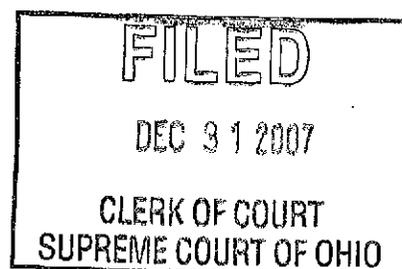
DEATH PENALTY APPEAL

On appeal from the Trumbull
County Court of Common Pleas
Case No. 2001 CR 0793

OFFICE OF DISCIPLINARY COUNSEL'S
MOTION TO UNSEAL EXHIBIT

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Now comes the Disciplinary Counsel of the Supreme Court of Ohio and hereby moves the Supreme Court of Ohio for an order unsealing "Sentencing Exhibit A" in the above-named case.

On October 8, 2007 the Board of Commissioners on Grievances and Discipline (Board) certified a disciplinary complaint against Attorney's Kenneth N. Bailey and Christopher D. Becker and a second disciplinary complaint against Judge John M. Stuard. The two complaints charge Bailey, Becker and Judge Stuard with engaging in improper ex parte communications with each other related to the creation of the June 20, 2003 sentencing entry for Defendant

Donna Roberts. These disciplinary complaints have been consolidated and are currently pending before the Board.

On June 20, 2003, Judge Stuard sentenced Roberts to death as well as two consecutive 10-year sentences for the aggravated robbery and aggravated burglary convictions. At the sentencing hearing, Judge Stuard read aloud his sentencing opinion. As Judge Stuard was doing so, Roberts' Defense Counsel J. Gerald Ingram, noticed that Bailey was also looking at a document. Ingram further noted that Bailey appeared to be reading along with Judge Stuard and that Judge Stuard and Bailey were turning pages in unison.

After Judge Stuard finished reading his sentencing opinion, Ingram raised a "vehement" objection to Bailey and/or Becker's apparent ex parte involvement with the sentencing opinion. During the on-the-record discussion that followed, Judge Stuard admitted that he had given handwritten notes to the Bailey and/or Becker and instructed them to draft the sentencing entry. The transcript from this proceeding indicates that on June 20, 2003, Ingram requested and the trial court ordered that the sentencing-related documents in the possession of Bailey be marked as "Sentencing Exhibit A" and entered into evidence. [A copy of the transcript of these proceedings is attached as Exhibit A]. These sentencing-related documents were then sealed and made a part of the appellate record at the request of Ingram.

In the pending disciplinary matter, the key issue is what communications took place between Bailey, Becker and Judge Stuard and whether these communications constitute an improper ex parte communication. The Office of Disciplinary Counsel has previously been advised by counsel for Bailey, Becker and Judge Stuard that the only documentary evidence in

their possession regarding the communications between the three of them is the final, journalized Roberts sentencing entry. Because the currently sealed "Sentencing Exhibit A" represents contemporaneous documentation regarding the communications between Bailey, Becker and Judge Stuard and because this documentation is clearly relevant to the currently pending disciplinary proceedings, The Office of Disciplinary Counsel requests that "Sentencing Exhibit A" be unsealed by this court and copies provided to The Office of Disciplinary Counsel and legal counsel for Bailey, Becker and Judge Stuard.

CONCLUSION

For the reasons stated above, relator respectfully requests this Honorable Court unseal "Sentencing Exhibit A" and provide copies to all parties to the pending disciplinary proceedings.

Respectfully submitted,



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Disciplinary Counsel



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CERTIFICATE OF SERVICE

I hereby certify that the foregoing Office of Disciplinary Counsel's Motion to Unseal Exhibit was served via U.S. Mail, postage prepaid, this 31 day, of December, 2007, upon Trumbull County Prosecutor Dennis Watkins, Trumbull County Prosecutor's Office, 160 High Street N.W., Warren, OH 44481, Counsel for Donna Roberts, David Doughten, 4403 Saint Clair Avenue, Cleveland, OH 44103, Counsel for Respondent's Bailey and Becker, Geoffrey Stern, Esq., Kegler Brown Hill & Ritter, Capitol Square, Suite 1800, 65 East State Street, Columbus, OH 43215-4294, Counsel for Respondent Stuard, Charles L. Richards, The First Place, Suite 300, 159 East Market Street, Warren, OH 44481-1112.



Robert R. Berger
Counsel for Relator

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