

IN THE SUPREME COURT OF OHIO

JEFFREY C. KEITH,

Appellant,

v.

Case No. 07-1982

DAVID BOBBY, WARDEN,

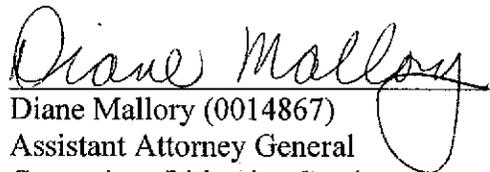
Appellee.

MOTION TO STRIKE APPELLANT'S MOTION FOR SUMMARY JUDGMENT

This case is before this Court pursuant to Appellant's appeal from a decision of the Portage County Court of Appeals denying his petition for a writ of habeas corpus. Appellant has filed a motion for summary judgment pursuant to Civ.R. 56. Appellee moves the Court to strike his motion. A Memorandum in Support is attached.

Respectfully submitted,

Marc Dann
Ohio Attorney General



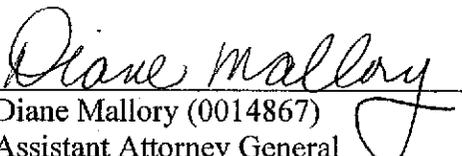
Diane Mallory (0014867)
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150 East Gay Street, 16th Floor
Columbus, Ohio 43215
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MEMORANDUM IN SUPPORT

Appellant, whose case is on appeal before this Court, has filed a motion for summary judgment pursuant to Civ.R. 56. The civil rules do not apply to cases on appeal. Rule 1(C) of the Ohio Rules of Civil Procedure. Further, such a pleading is not permitted by this Court's rules. Rule VI, Section 2, of the Rules of Practice of the supreme Court of Ohio, states that in every appeal, the appellant shall file a merit brief. Rule VI, Section 4, states that the appellant may file a reply brief within a certain period of time after receiving the appellee's brief. Rule VI, Section 8, states that the briefs shall not be supplemented and that neither party may file additional arguments. Appellant's motion for summary judgment is exactly the kind of supplemental pleading that is not permitted—he makes additional arguments as to why he should prevail in this action. Therefore, Appellant's motion for summary judgment should be stricken from the record. If the Court denies this motion to strike, the Court should refuse to consider any arguments made in Appellant's motion for summary judgment.

Respectfully submitted,

Marc Dann
Ohio Attorney General


Diane Mallory (0014867)
Assistant Attorney General
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Columbus, Ohio 43215
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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was mailed by regular, first-class mail to Jeffery Keith, #334-054, Trumbull Correctional Institution, 5701 Burnett Road, Leavittsburg, Ohio 44430, on the 13th day of March, 2008.

