

In the Supreme Court of Ohio

State of Ohio, :  
Appellee, : Case No. 88-0351  
-vs- :  
Richard Cooley, : **Death Penalty Case**  
Appellant. :

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Appellant's Response Opposing Motion to Set Execution Date

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Office of the  
Ohio Public Defender

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Chief Counsel,  
Death Penalty Division

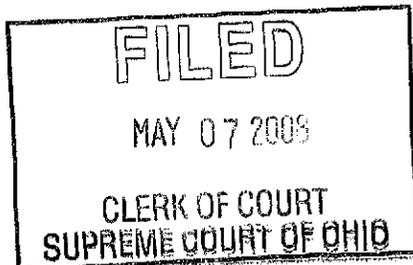
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In the Supreme Court of Ohio

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Appellant's Response Opposing Motion to Set Execution Date

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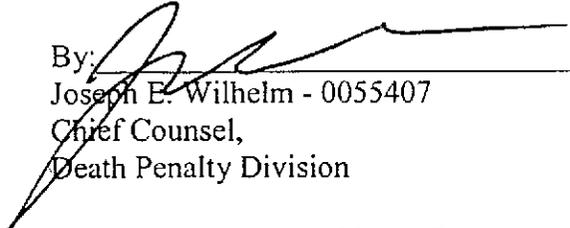
Appellant Richard Cooley opposes the State's motion requesting that his execution date be set. The State's request is premature. Cooley still has a law suit pending in federal court.

The United States Supreme Court denied certiorari in Cooley's federal civil rights suit on April 21, 2008. See 42 U.S.C. § 1983. Under the United States Supreme Court's rules, Cooley has twenty-five days to seek rehearing of that decision — and the mandate does not issue in the United States Supreme Court until the time for rehearing expires. Sup. Ct. R. 44, 45. Moreover, once a petition for rehearing is filed, that Court's mandate is stayed until the Court rules on the petition for rehearing. Sup. Ct. R. 45.

Cooley will file a timely petition for rehearing in the United States Supreme Court. Accordingly, no execution date should be set until the United States Supreme Court rules on Cooley's petition for rehearing on the denial of certiorari. Additionally, no execution date should be set at this time because the mandate has not been issued by Sixth Circuit. See Fed. R. App. 41. Cooley has asked the Sixth Circuit to stay the mandate in his § 1983 appeal pending his petition for rehearing in the United States Supreme Court. The State's motion to set an execution date should be denied because the request is premature.

Respectfully submitted,

Office of the  
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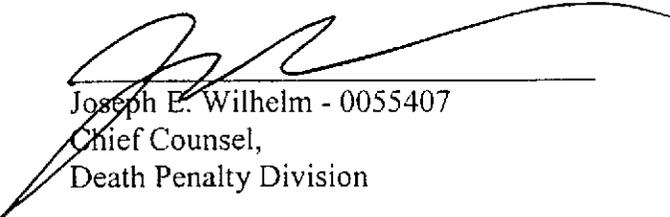
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### CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Appellant's Response Opposing Motion to Set Execution Date was sent by regular U.S. Mail to Sherri B. Walsh, Prosecutor, Summit County, 53 University Avenue - 7<sup>th</sup> Fl., Safety Bldg., Akron, Ohio 44308 on this 7<sup>TH</sup> day of May, 2008.

  
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