

**IN THE
SUPREME COURT OF OHIO**

STATE OF OHIO : **NO. 94-355**
Plaintiff-Appellee :
vs. : **Death Penalty Case**
JEFFREY D. HILL :
Defendant-Appellant :

MOTION TO SET EXECUTION DATE

Joseph T. Deters (0012084P)
Prosecuting Attorney

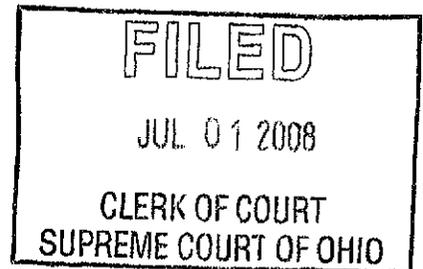
Philip R. Cummings (0041497P)
Assistant Prosecuting Attorney
Counsel of Record

230 East Ninth Street, Suite 4000
Cincinnati, Ohio 45202
(513) 946-3012
Fax No. (513) 946-3021

COUNSEL FOR PLAINTIFF-APPELLEE, STATE OF OHIO

Gary Wayne Crim
Attorney at Law
943 Manhattan Ave.
Dayton, Ohio 45406-5141
(937) 276-5770

COUNSEL FOR DEFENDANT-APPELLANT, JEFFREY D. HILL



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The State of Ohio respectfully requests this Court to set an execution date for Defendant, Jeffrey D. Hill. The reasons in support of this motion are stated in the attached memorandum.

Respectfully submitted,

Joseph T. Deters, 0012084P
Prosecuting Attorney


Philip R. Cummings, 0041497P
Assistant Prosecuting Attorney
230 East Ninth Street, Suite 4000
Cincinnati, Ohio 45202
Phone: (513) 946-3012

Attorneys for Plaintiff-Appellee

MEMORANDUM IN SUPPORT

STATE COURT PROCEEDINGS

Hill is under a sentence of death for murder of his mother in March of 1991. On April 30, 1991, the grand jury of Hamilton County, Ohio, indicted Hill on charges of aggravated murder in violation of Ohio Revised Code (R.C.) 2903.01, with a specification charging the death-penalty aggravating circumstance of purposeful murder during the course of committing aggravated Robbery (Count One); aggravated robbery, in violation of R.C. 2911.01 (Count Two); aggravated burglary, in violation of R. C. 2911.11 (Count Three); and grand theft of a motor vehicle, in violation of R. C. 2913.02, with a specification alleging physical harm (Count Four). Hill pleaded not guilty by reason of insanity with respect to all charges and specifications.

Following his evaluation by experts, the trial court found Hill competent to stand trial. Trial before a jury began on May 28, 2002. On June 1, 1992, Hill was found guilty as charged. On June 4, 1992, the mitigation phase of the trial began. On the same day, following the presentation of evidence and testimony by the defense, the jury recommended a sentence of death on Count One. On June 19, 1992, the trial court accepted the jury's recommended verdict and sentenced Hill to death. Hill was also sentenced to concurrent 10 to 25 year terms of imprisonment on Counts Two and Three, and to a 3 to 5 year concurrent term of imprisonment on Count Four.

Represented by new attorneys, Hill appealed his convictions and sentence to the Ohio Court of Appeals for the First Appellate District, presenting eight assignments of error. Among other things, Hill claimed that his trial counsel were ineffective in not requesting a jury instruction on intoxication. On December 22, 1993, the Ohio Court of Appeals rejected the assigned errors and

affirmed the judgment of the trial court. Hill subsequently appealed to this Court,¹ presenting fifteen claims of error, stated as propositions of law. Hill alleged, among other things, that trial counsel were ineffective in failing to object to improper arguments by the prosecution and to improper verdict forms, and in failing to request an instruction on intoxication. On August 30, 1995, this Court affirmed the judgment of the Court of Appeals; on October 18, 1995, this Court denied Hill's motion for reconsideration.²

On September 21, 1996, Hill filed with the trial court a petition for post-conviction relief, setting forth eight claims in support of relief. Hill alleged, among other things, that he was deprived of his constitutional right to the effective assistance of counsel "because counsel did not establish the essential attorney relationship;" "because he [Hill] was compelled to go to trial in his jail garb;" "because Counsel failed to obtain appropriate psychiatric help during [the] period of defendant's forced medication;" "because counsel failed to investigate the facts for [the] mitigation phase of the trial by not obtaining the services of Dr. Fridman in time for a proper evaluation;" "because counsel failed to investigate the facts for [the] mitigation phase of the trial by not interviewing fact witnesses for the mitigation phase;" "because counsel did not counsel with and prepare Mr. Hill to testify as opposed to making an unsworn statement;" "for failure to raise as a mitigating circumstance Mr. Hill's adjustment to jail and to prison life;" and "because counsel did not propose understandable jury instructions that would have guided the jury in its deliberations on imposing the death penalty."

¹ Hill was represented before this Court by one of the attorneys who previously represented him before the Ohio Court of Appeals, and the newly appointed attorney.

² On January 16, 1996, the Supreme Court of the United States denied Hill's petition for a writ of certiorari. Hill v. Ohio, 516 U.S. 1079 (1996).

On July 8, 1997, following recusal by the original trial judge, the trial court issued findings of fact and conclusions of law denying Hill's post-conviction petition. The trial court found that Hill was represented by new counsel on direct appeal; that Hill's claims of ineffective counsel therefore were barred under Ohio's doctrine of res judicata, due to Hill's failure to present the claims on direct appeal; and that the documentary evidence presented by Hill in support of his claims was insufficient to show that he was prejudiced by any of counsel's alleged failures.

Hill subsequently appealed. On June 19, 1998, the Ohio Court of Appeals for the First Appellate District affirmed the decision of the trial court. The Ohio Court of Appeals held that the evidence outside the record presented by Hill did not show that counsel's alleged failure to establish a "relationship" deprived Hill of a fundamentally fair trial; that Hill's evidence de hors the record did not substantiate his claim that counsel were ineffective in failing to present mitigation testimony by relatives and friends, or that counsel prejudicially neglected to present evidence of Hill's amenability to incarceration; and that Hill could and should have raised on direct appeal his claims that counsel erred in permitting him to attend trial in jail garb, in failing to obtain a psychiatrist and a pharmacologist, in waiting until one day before trial to contact Dr. Fridman, and in not preparing him for his testimony.

Hill subsequently sought discretionary review by this Court. On October 21, 1998 the Supreme Court of Ohio declined jurisdiction and dismissed the appeal as not involving any substantial constitutional question. State v. Hill, 83 Ohio St.3d 1460 (1998).

Meanwhile, on November 8, 1996, Hill filed with the First District Court of Appeals an application to reopen his appeal. Hill alleged that his previous appellate counsel were ineffective for failing to raise fourteen designated assignments of error. On September 10, 1996 the Court of

Appeals denied Hill's application, holding that it was barred under Ohio's res judicata doctrine. The Court of Appeals held specifically that Hill was represented by new counsel in his direct appeal before the Supreme Court of Ohio; that Hill in fact alleged before the Supreme Court of Ohio that his counsel before the Court of Appeals had rendered constitutionally ineffective assistance; that many of the issues which Hill sought to present in a reopened appeal had previously been addressed by the Supreme Court of Ohio; and that, accordingly, the Court of Appeals found "no injustice in applying the doctrine of res judicata." On April 16, 1997, upon Hill's appeal, this Court affirmed the judgment of the Ohio Court of Appeals. State v. Hill, 78 Ohio St.3d 174 (1997).

FEDERAL COURT PROCEEDINGS

On May 21, 1992, Hill filed with the United States District Court for the Southern District of Ohio a petition for a writ of habeas corpus in which he challenged his conviction and death sentence on constitutional grounds. The Warden opposed Hill's petition. On January 17, 2001, the District Court granted in part the Warden's motion to dismiss procedurally defaulted claims. On May 17, 2001, the District Court denied Hill's motion for an evidentiary hearing and granted Hill's motion to supplement the record. On July 24, 2003, after briefing by the parties on the merits of Hill's remaining claims, the District Court denied Hill's petition and dismissed the case.

On August 20, 2003, Hill filed a notice of appeal to the Sixth Circuit Court of Appeals. On November 14, 2003, the District Court granted in part Hill's motion for a certificate of appealability. Ultimately, the Sixth Circuit Court of Appeals affirmed the denial of Hill's habeas petition on March 8, 2005.

On January 9, 2006, the United States District Court for the Southern District of Ohio granted Hill's motion to intervene in Cooey v. Taft, No. 2:04cv1156, in which a death-row prisoner in Ohio

has brought suit claiming that Ohio's method of execution is in violation of the Eighth Amendment. On April 28, 2006, the district court granted Hill's motion to stay his execution. In the meantime, the State filed an interlocutory appeal in the Cooley suit, arguing that Cooley's claim was barred by the applicable two-year statute of limitations. On March 2, 2007, the United States Court of Appeals for the Sixth Circuit granted the State's appeal and ordered the dismissal of Cooley's suit as time-barred. Cooley v. Strickland, 479 F.3d 412 (6th Cir. 2007). On April 21, 2008, the Supreme Court of the United States denied Cooley's petition for a writ of certiorari. Cooley v. Strickland, 2008 U.S. LEXIS 3626. The Supreme Court of the United States denied the petition for rehearing and the Sixth Circuit has issued its mandate and it is final.

CONCLUSION

Since Hill has fully litigated to completion one round of federal habeas review and he currently lacks a federal stay or entitlement to additional federal review, there is then no impediment to prevent this Court from setting an execution date.

Respectfully submitted,

Joseph T. Deters, 0012084P
Prosecuting Attorney



Philip R. Cummings, 0041497P
Assistant Prosecuting Attorney
230 East Ninth Street, Suite 4000
Cincinnati, Ohio 45202
Phone: (513) 946-3012

Attorneys for Plaintiff-Appellee

CERTIFICATE OF SERVICE

I hereby certify that I have sent a copy of the foregoing MOTION TO SET EXECUTION DATE, by United States mail, addressed to Gary Wayne Crim, Attorney at Law, 943 Manhattan Ave., Dayton, Ohio 45406-5141, counsel of record, this 4 day of June, 2008.



Philip R. Cummings, 0041497P
Assistant Prosecuting Attorney