

IN THE SUPREME COURT OF OHIO

STATE OF OHIO, :
 :
 Plaintiff-Appellee, : Case Numbers 08-0711 and 08-1005
 :
 v. : On Appeal from the Allen County Court of
 : Appeals, Third Appellate District, Case
 RICHARD E. JOSEPH, : Number 1-07-50
 :
 Defendant-Appellant. :

**RICHARD E. JOSEPH'S MOTION TO VACATE THE
TRIAL COURT'S JULY 29, 2008 ORDER, AND TO SET A DUE DATE OF
SEPTEMBER 29, 2008 IN WHICH TO FILE THE RECORD**

OFFICE OF THE OHIO PUBLIC DEFENDER

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(COUNSEL OF RECORD)

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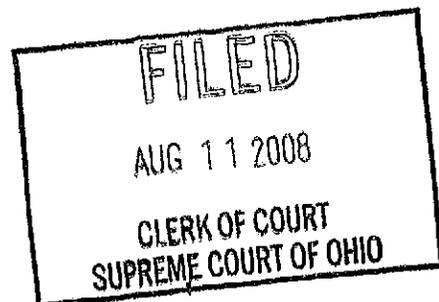
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COUNSEL FOR RICHARD E. JOSEPH



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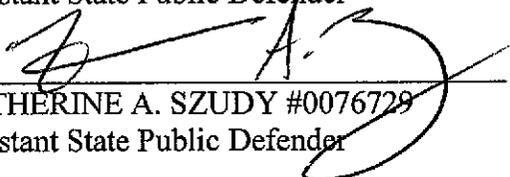
**RICHARD E. JOSEPH'S MOTION TO VACATE THE
TRIAL COURT'S JULY 29, 2008 ORDER, AND TO SET A DUE DATE OF
SEPTEMBER 29, 2008 IN WHICH TO FILE THE RECORD**

Richard E. Joseph requests that this Court vacate the July 29, 2008 order of the Allen County Court of Common Pleas, which was entered after this Court accepted jurisdiction to hear this case. Mr. Joseph further requests that this Court permit the Allen County Clerk of Courts to transmit Mr. Joseph's record on or before September 29, 2008. A memorandum in support of this Motion is attached.

Respectfully submitted,

OFFICE OF THE OHIO PUBLIC DEFENDER

RANDALL L. PORTER #0005835
Assistant State Public Defender

BY: 
KATHERINE A. SZUDY #0076729
Assistant State Public Defender

8 East Long Street - 11th Floor
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COUNSEL FOR RICHARD E. JOSEPH

MEMORANDUM IN SUPPORT

On July 9, 2008, this Court accepted review of Mr. Joseph's case, both as a certified conflict and a discretionary appeal. *State v. Joseph*, 118 Ohio St.3d 1505, 2008-Ohio-3369. On July 9, 2008, this Court ordered that the Clerk of the Allen County Court of Appeals transmit the record by July 29, 2008. (July 9, 2008 Order to Certify Record).

Due to the fact that Mr. Joseph's record is voluminous, the Allen County Clerk of Courts was unable to comply with the order of this Court. (See Exhibit B, Peggy L. Caskey's Affidavit, attached). However, personnel at the Allen County Clerk's Office mistakenly went to the visiting trial judge assigned to the case and obtained an extension of time to comply with this Court's order. (See Exhibit A, Allen County Court of Common Pleas Order, attached).

While the rules of this Court are silent as to whether extensions may be obtained to file the record in cases not involving the death penalty, only this Court may grant extensions to file the record in capital cases. See S. Ct. Prac. R. XIX, Section 4(C). As such, if extensions may be obtained, only this Court has the authority to modify one of its prior orders to transfer the record. Once this Court either grants a motion for leave to appeal or to certify the record, a lower court is precluded from exercising jurisdiction. See *State v. Murphy* (1990), 49 Ohio St.3d 293, 295 (citing Section 2(B), Article IV of the Ohio Constitution). In this case, this Court had done both, as it granted Mr. Joseph's motions to appeal and certify the record. Consequently, the trial court lacked the authority to overrule the July 9, 2008 order of this Court, regarding the date as to when the record was to be filed.

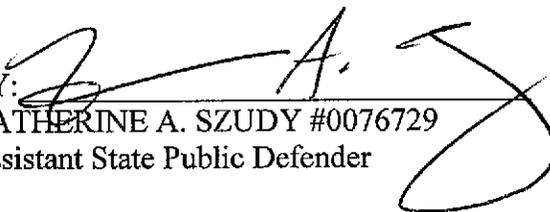
Accordingly, Mr. Joseph requests that this Court vacate the July 29, 2008 order of the trial court. Mr. Joseph further requests that this Court permit the Allen County Clerk of Courts

to transmit Mr. Joseph's record on or before September 29, 2008. (See Exhibit B, Peggy L. Caskey's Affidavit, attached).

Respectfully submitted,

OFFICE OF THE OHIO PUBLIC DEFENDER

RANDALL L. PORTER #0005835
Assistant State Public Defender

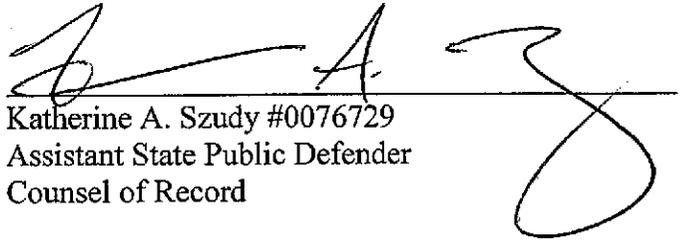
BY: 
KATHERINE A. SZUDY #0076729
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COUNSEL FOR RICHARD E. JOSEPH

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing **Richard E. Joseph's Motion To Vacate The Trial Court's July 29, 2008 Order, and to Set a Due Date of September 29, 2008 in which to File the Record** was forwarded by first-class, postage prepaid U.S. Mail to Assistant Allen County Prosecuting Attorney Jana E. Emerick, Court of Appeals Building, 204 N. Main Street, P.O. Box 1243, Lima, Ohio 45802-1243; and by facsimile to Peggy L. Caskey, (419) 222-8427, at the Allen County Courthouse, 301 N. Main Street, Lima, Ohio 45802, on this 11th day of August, 2008.



Katherine A. Szudy #0076729
Assistant State Public Defender
Counsel of Record

COUNSEL FOR RICHARD E. JOSEPH

#283596

*Copyed 5000
7/29/08
222-
8427*

COMMON PLEAS COURT
FILED

2008 JUL 29 PM 1:13

GINA C. STALEY-BURLEY
CLERK OF COURT
ALLEN COUNTY, OHIO

IN THE COMMON PLEAS COURT OF ALLEN COUNTY, OHIO

STATE OF OHIO

CASE NO. CR90 07 325

Plaintiff

VS.

JUDGMENT ENTRY

RICHARD E. JOSEPH

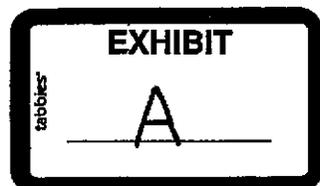
Defendant

For good cause shown, the Clerk is granted an extension of thirty (30) days to file transcripts of the within case.

IT IS SO ORDERED.

Randall Basinger

JUDGE RANDALL BASINGER



IN THE SUPREME COURT OF OHIO

STATE OF OHIO,

Plaintiff-Appellee,

v.

RICHARD E. JOSEPH,

Defendant-Appellant.

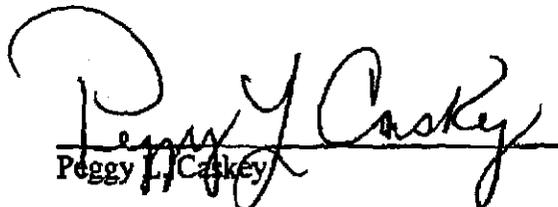
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: Appeals, Third Appellate District, Case
: Number 1-07-50
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County of Allen)
) ss:
State of Ohio)

I, Peggy L. Caskey, swear that the following is true to the best of my personal knowledge:

1. I am responsible for transmitting the record in *State of Ohio v. Richard E. Joseph*, Ohio Supreme Court Case Numbers 08-0711 and 08-1005.
2. Mr. Joseph's record was due to be transmitted by July 29, 2008.
3. However, Mr. Joseph's record is voluminous.
4. Along with the fact that Mr. Joseph's record is contained within approximately nine binders in the Allen County Courthouse, my job responsibilities have made the filing of Mr. Joseph's record especially arduous.
5. As such, I would request that I be permitted to transmit Mr. Joseph's record by September 29, 2008.

Further Affiant sayeth naught.


Peggy L. Caskey

Signed and sworn before me this 11th day of August, 2008.

#283673


Notary Public



JUDITH A. KRAMER
Notary Public, State of Ohio
My Commission Expires
October 29, 2010

