

IN THE SUPREME COURT OF OHIO

STATE OF OHIO)	
Plaintiff-Appellee,)	OHIO SUPREME COURT NO. 96-2346
)	
-vs-)	
)	
)	
JASON GETSY)	
Defendant-Appellant)	
)	
)	

MOTION TO SET DATE FOR EXECUTION

I. Introduction

Defendant-Appellant Jason Getsy (“Appellant”) is an Ohio Death Row inmate who was convicted of the July 7, 1995 aggravated murder of Ann R. Serafino and the attempted aggravated murder of her son, Charles Serafino, and sentenced to death. Both victims were residents of Hubbard Township, Trumbull County, Ohio. Appellant has exhausted all state and federal remedies, and the State of Ohio respectfully requests that this Court issue an order and Death Warrant setting an execution date.

II. Procedural History

A. Indictment

On July 17, 1995, Appellant was indicted by the Trumbull County Grand Jury on the following five counts: Counts One and Two, aggravated murder in violation of both R.C. 2903.01(A) & (B), each count including three death penalty specifications pursuant to R.C. 2929.04(A)(2) - (murder for hire), R.C. 2929.04(A)(5) - (purposeful killing or attempt to kill two or more persons), and R.C. 2929.04(A)(7) - (felony murder); Count Three, attempted aggravated murder in violation of R.C. 2903.01(A) and R.C. 2923.02 with a firearm specification pursuant to R.C. 2941.141; Count Four, conspiracy to commit aggravated murder in violation of R.C.

2923.01(A)(1) and/or (2); and, Count Five, aggravated burglary in violation of R.C.

2911.11(A)(1) and/or (2) and/or (3) with a firearm specification pursuant to R.C. 2941.141.

B. Trial

Appellant's trial began with jury selection on August 5, 1996. On September 4, 1996, the jury returned a verdict of guilty on all counts. After the trial, the State moved to dismiss the conspiracy count, which the court granted, and elected to go forward with an aggravated murder charge based on prior calculation and design. The jury recommended a sentence of death on September 11, 1996. The court followed the recommendation and entered a sentence of death on September 12, 1996.

C. Direct Appeal

Appellant appealed to this Court, which upheld Appellant's convictions and sentence of death. *State v. Getsy* (1998), 84 Ohio St.3d 180, 1998-Ohio-533. Appellant's request for reconsideration was also denied by this Court. *State v. Getsy* (1999), 84 Ohio St.3d 1488. Finally, Appellant appealed to the United States Supreme Court, but that Court denied certiorari. *Getsy v. Ohio* (1999), 527 U.S. 1042.

D. Postconviction Proceedings

On September 2, 1997, Appellant began the collateral attack of his death sentence by filing a timely petition for postconviction relief with the trial court pursuant to R.C. 2953.21. On November 10, 1997, Appellant filed an amended petition for postconviction relief pursuant to R.C. 2953.21. By judgment entry filed July 21, 1998, the trial court granted the State's motion to dismiss Appellant's postconviction relief petition without hearing. The Eleventh District Court of Appeals affirmed the decision of the trial court. *State v. Getsy* (Oct. 22, 1999), 11th Dist. No.

98-T-0140. Appellant appealed to this Court, and this Court declined jurisdiction. *State v. Getsy* (2000), 88 Ohio St.3d 1425.

E. Federal Habeas Corpus Proceedings

Appellant filed a petition pursuant to 28 U.S.C. § 2254 in February 2001 after exhausting his state remedies. Appellant raised twenty-one claims of error, two of which the district court dismissed as procedurally defaulted. The Federal District Court for the Northern District of Ohio determined that Appellant's remaining claims were without merit and dismissed the petition in case No. 1:01-CV-00380. Appellant then appealed to the Sixth Circuit Court of Appeals, which reversed as to the death sentence and remanded on Appellant's claim of judicial bias. *Getsy v. Mitchell* (6th Cir. 2006), 456 F.3d 575. Thereafter, the Court of Appeals granted the State's petition for en banc review and vacated the previous panel decision. *Getsy v. Mitchell* (6th Cir. 2007), 495 F.3d 295. In 2007, the Sixth Circuit Court affirmed the district court's denial of habeas corpus. *Getsy v. Mitchell* (6th Cir. 2007), 495 F.3d 295. Appellant appealed to the United States Supreme Court, but the high court denied certiorari. *Getsy v. Mitchell* (2008), 128 S.Ct. 1475. The time for requesting reconsideration has passed without Appellant filing such a request.

F. Lethal Injection Challenge

On May 1, 2007, over eight years after his convictions and sentence were final on direct appeal, and more than five years after Ohio law mandated lethal injection as the State's sole method for execution, Appellant filed a motion to intervene in a federal lawsuit filed in the Federal District Court for the Southern District of Ohio. *Cooley v. Strickland*, 2:04-CV-01156. Richard Cooley, another capitally sentenced inmate, challenged the lethal injection as a method of execution. The State moved to dismiss, based on Appellant having surpassed the statute of

limitations, and the court agreed, dismissing the case on August 26, 2008. Appellant filed a notice of appeal on September 22, 2008 and the State moved to dismiss based on the lack of a final appealable order. Subsequent to the motion to dismiss, the district court certified the record for appeal to the Sixth Circuit Court of Appeals. This case is still pending before the Sixth Circuit Court as case number 08-4199.

For a number of reasons, this pending case should not prevent this Court from setting Appellant's execution date. First, the State submits that Appellant's appeal to the Sixth Circuit Court is frivolous. In Cooley's appeal to the Sixth Circuit Court, the court held that a "two-year statute of limitations applies" and the two-year term "began to accrue upon conclusion of direct review in the state courts and when the plaintiff knew or had reason to know about the act providing the basis of his or her injury." *Cooley v. Strickland*, (6th Cir. 2008), 544 F.3d 588, 590. The court concluded that this time could have started in "1993, when Ohio adopted lethal injection as a method of execution, or 2001, when Ohio made lethal injection the exclusive method of execution." *Id.* The court rejected Cooley's claim as being beyond the statute of limitations, and affirmed the lower court's dismissal. *Id.* The United States Supreme Court refused to grant certiorari for Cooley's claim. *Cooley v. Strickland* (2008), 129 S.Ct. 394. Appellant's claim mirrors Cooley's, and is similarly time barred by the statute of limitations. At this juncture, Appellant's appeal to the Sixth Circuit Court is frivolous, as the court has already decided this very issue. There is no indication that the court will decide Appellant's case contrary to the precedent of *Cooley*, supra.

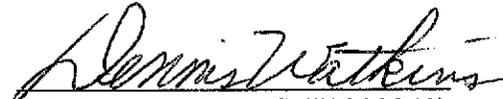
Moreover, a pending federal case should not prevent this Court from setting a date for Appellant's execution. In the unlikely event that the federal court system should find merit in Appellant's claim, it could order a stay even if this Court has set a date for execution. In fact,

this Court's setting an execution date would give Appellant motivation to efficiently litigate his pending federal claim. In fact, the State would submit that this most recent case is merely interposed for purposes of delay. Thus, this pending case should not be seen as an obstacle to this Court, and the State would respectfully request this Court set a date for Appellant's execution.

III. Conclusion

With this procedural history, it is clear that Appellant has exhausted all state court reviews of his convictions and death sentence, and has not sought a stay from this Court. Moreover, Appellant has exhausted all federal claims of arguable merit. This Court has held that once a capital defendant has exhausted his direct appeal, postconviction review, and delayed reconsideration review, any future filings are likely to be interposed for purposes of delay, and that a capital defendant would have to petition this Court for a stay to allow such future litigation. *State v. Steffen* (1994), 79 Ohio St.3d 398, 412. As of this writing, no such stay has been requested. Accordingly, the State of Ohio respectfully moves this Court for an order and Death Warrant setting an execution date.

Respectfully Submitted,

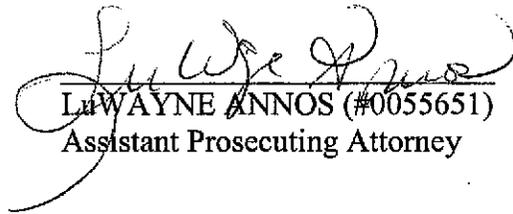

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PROOF OF SERVICE

I do hereby certify that a copy of the foregoing motion was sent by ordinary U.S. mail to Atty. David C. Stebbins (#0005839), 10 West Broad Street, Suite 1020, Columbus, Ohio 43215 and Atty. Michael J. Benza (#0061454), 17850 Geauga Lake Road, Chagrin Falls, Ohio 44023, counsel for Defendant Appellant Jason Getsy this 31st day of DECEMBER, 2008.


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