

ORIGINAL

IN THE SUPREME COURT OF OHIO

STATE OF OHIO,
Plaintiff-Appellee

Supreme Court No. ~~08-684~~ - 0552

vs.

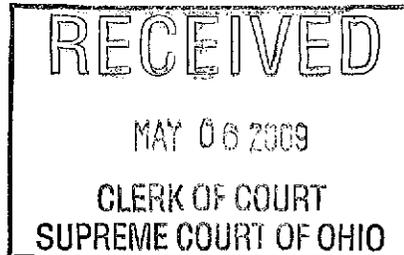
On Appeal From The Lucas
County Court Of Appeals
Sixth Appellate District
Court of Appeals No. L-99-1310

VERNON SMITH n.k.a.
Abdullah Sharif Kaazim Mahdi,
Defendant-Appellant

Death Penalty Case

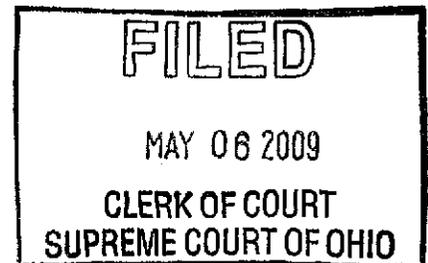
STATE'S MOTION TO SET DATE FOR EXECUTION

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IN THE SUPREME COURT OF OHIO

**STATE OF OHIO,
Plaintiff-Appellee**

Supreme Court No. 01-0061

vs.

**On Appeal From The Lucas
County Court Of Appeals
Sixth Appellate District
Court of Appeals No. L-99-1310**

**VERNON SMITH n.k.a.
Abdullah Sharif Kaazim Mahdi,
Defendant-Appellant**

Death Penalty Case

STATE'S MOTION TO SET DATE FOR EXECUTION

I. Introduction

Defendant-Appellant Vernon Smith, n.k.a. Abdullah Sharif Kaazim Mahdi ("Mahdi"), is an Ohio Death Row inmate who was convicted and sentenced to death for the May 26, 1993, aggravated murder of Sohail Darwish, the proprietor of a business in Toledo, Lucas County, Ohio. Mahdi 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 June 21, 1993, the Lucas County Grand Jury, in *State of Ohio v. Vernon L. Smith*, CR93-6197, indicted Mahdi on the following charges:

Count 1

Aggravated Murder, R. C. 2903.01(B)
Capital Murder Specification, R. C. 2929.04(A)(7) and R. C. 2941.14
Firearms Specification, R. C. 2929.71 and R. C. 2941.141

Count 3

Aggravated Robbery R. C. 2911.01(A)(1)
Firearms Specification, R. C. 2929.71 and R. C. 2941.141

Count 4

Aggravated Robbery R. C. 2911.01(A)(1)
Firearms Specification, R. C. 2929.71 and R. C. 2941.141

Count 5

Aggravated Robbery R. C. 2911.01(A)(1)
Firearms Specification, R. C. 2929.71 and R. C. 2941.141

B. Trial

The Aggravated Robbery and Aggravated Murder charges against Mahdi were tried to a jury commencing on March 10, 1994. Mahdi was convicted of all counts on March 15, 1994, and the jury recommended a death sentence. The trial judge followed that recommendation and on March 22, 1994 Mahdi was sentenced to death for the Aggravated Murder conviction and to a total of 18 to 53 years of incarceration for the Aggravated Robbery and Firearms Specifications convictions.

C. Direct Appeal

Mahdi appealed to the Sixth District Court of Appeals and the convictions and death sentence were upheld. *State v. Smith* (February 6, 1998), 6th Dist. No. L-94-093, 1998 Ohio App. Lexis 409. Mahdi then appealed to this Court, where the convictions and death sentence were upheld. *State v. Smith*, 89 Ohio St.3d 323, 2000 Ohio 166, 731 N.E.2d 645.

Certiorari was denied by the United States Supreme Court. *Smith v. Ohio* (2001), 531 U.S. 1167, 121 S. Ct. 1131, 148 L. Ed.2d 997.

D. Post-conviction Proceedings

Mahdi filed a petition for post-conviction relief on September 20, 1996. The trial court denied that petition on February 26, 1998. The denial of post-conviction relief was upheld by the Sixth District Court of Appeals. *State v. Smith* (February 23, 2001), 6th Dist. No. L-99-1310, 2001 Ohio App. Lexis 665. This Court declined to grant further review of that denial. *State v. Smith* (2001), 92 Ohio St. 3d 1428, 749 N. E.2d 756. Certiorari was then denied by the U. S. Supreme Court in *Smith v. Ohio* (2001), 534 U. S. 1047, 122 S. Ct. 629, 151 L. Ed.2d 550.

E. Federal Habeas Corpus Proceedings

On June 11, 2002, Mahdi filed a petition for writ of habeas corpus with the United States District Court, Northern District of Ohio, Case No. 02-CV-00978. On March 22, 2005, District Judge Paul Matia denied the petition issuing a certificate of appeal on one claim. *Mahdi v. Bagley*, Case No. 02-CV-00978 (Dist. Ct. Docs. 39 and 40). Mahdi appealed to the Sixth Circuit Court of Appeals, which issued certificates of appealability on two other claims. Thereafter, the Sixth Circuit Court of Appeals upheld the denial of relief. *Mahdi v. Bagley* (6th Cir. 2008), 522 F.3d 631 and *Mahdi v. Bagley* (6th Cir. 2008) 2008 U. S. App. Lexis 14260. Rehearing and rehearing en banc was denied in *Mahdi v. Bagley* (6th Cir. 2008) 2008 U.S. App. Lexis 22362. The United States Supreme Court denied certiorari review. *Mahdi v. Bobby*, 2009 U.S. Lexis 2071, 77 U.S.L.W. 3574 (April 20, 2009). The Sixth Circuit issued its mandate on April 27, 2009.

F. A Stay Is Not Appropriate

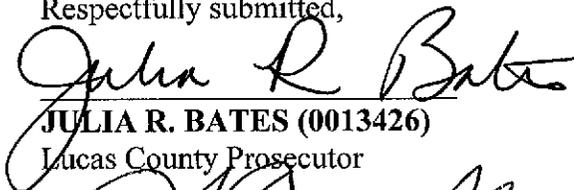
With this procedural history, it is clear that Mahdi has exhausted all of his state and federal

court reviews of his conviction and death sentence, and has not sought a stay from this Court. In *State v. Steffen*, 70 Ohio St.3d 399, 412, 1994 Ohio 111, 639 N. E.2d 67, this Court held that once a capital defendant has exhausted his direct appeal, post-conviction review and delayed reconsideration review, any further 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 further litigation. As of this writing, Mahdi has not sought a stay from this Court.

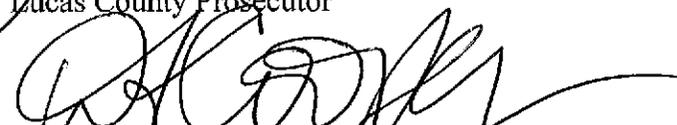
Conclusion

Based upon the foregoing, the State of Ohio respectfully moves this Court for an order and Death warrant setting an execution date.

Respectfully submitted,



JULIA R. BATES (0013426)
Lucas County Prosecutor

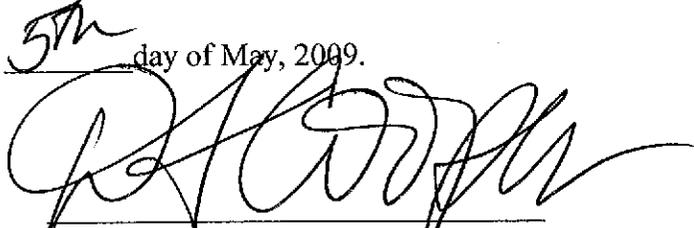


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COUNSEL FOR PLAINTIFF-APPELLEE STATE OF OHIO

PROOF OF SERVICE

The undersigned certifies that a copy of the foregoing motion was sent by ordinary U.S. Mail to Robert K. Lowe, Office of the Public Defender, The Midland Building, 250 East Broad Street, 14th Floor, Columbus, OH 43215, this 5th day of May, 2009.

A handwritten signature in black ink, appearing to read "D. F. Cooper", written over a horizontal line.

DAVID F. COOPER (0006176)
Assistant County Prosecutor