

ORIGINAL

IN THE SUPREME COURT OF OHIO

STATE OF OHIO,

Appellee,

vs.

CALVIN NEYLAND, JR.,

Appellant.

* Supreme Court No.:2008-2370
*
* On Appeal from the
* Wood County Court of
* Common Pleas
*
*
* Common Pleas
* Case No. 2007-CR-0359

DEATH PENALTY CASE

MOTION OF APPELLANT CALVIN NEYLAND, JR.
TO UNSEAL RECORDS

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RECEIVED
MAY 07 2009
CLERK OF COURT
SUPREME COURT OF OHIO

FILED
MAY 07 2009
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SUPREME COURT OF OHIO

Motion of Appellant Calvin Neyland, Jr.
To Unseal Record

Appellant, CALVIN NEYLAND, JR., moves this court for an order to unseal those portions of the record ordered sealed by the trial court, for counsel's review. The reasons in support of the motion are set forth in the following memorandum in support.

MEMORANDUM IN SUPPORT

Mr. Neyland was convicted of two counts of aggravated murder and sentenced to death. He is currently before this Court on appeal as a matter of right. The Clerk of the Wood County Common Pleas Court has submitted to this Court the record from the trial. Among the record are documents ordered sealed by the trial court.

Mr. Neyland has a right to a complete and unabridged record for his capital appeal. State ex rel. Spirko v. Court of Appeals, Third Appellate District (1986), 27 Ohio St.3d 13, 16, 501 N.E.2d 625, 627; State v. D'Ambrosio (1993), 67 Ohio St.3d 185, 200, 616 N.E.2d 909, 921.

Sup. R. Prac. XIX (3) (A) provides as follows:

The record on appeal shall consist of the original papers filed in the trial court and exhibits to those papers; the transcript of proceedings, including all documentary and photographic exhibits; photographs of exhibits entered into evidence in accordance with Crim.R. 26; an electronic version of the transcript, if available; and a certified copy of the docket and journal entries prepared by the clerk of the trial court.

The trial court's direction that these documents should be sealed as part of the record in Mr. Neyland's aggravated murder

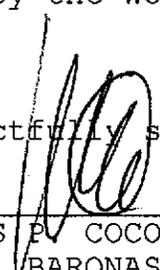
case demonstrates the trial court's expressed belief that these proceedings were directly relevant to his capital case. Under Sup. R. Prac. XIX (3)(A) and (D), these documents may be relevant to Mr. Neyland's appeal.

These portions of the record may present issues for Mr. Neyland's Merit Brief and for oral argument. A thorough review of the entire record is necessary to provide Mr. Neyland a full and fair opportunity to litigate his appeal as a matter of right. Without a complete record for review, counsel cannot provide effective representation to Mr. Neyland on this appeal as of right. State v. Buell (1994), 70 Ohio St.3d 1211, 639 N.E.2d 110; Evitts v. Lucey (1985), 469 U.S. 387.

Mr. Neyland states that this request is necessary to protect his due process rights guaranteed by the Fifth, Sixth, and Fourteenth Amendments to the United States Constitution and Article I, Section 10 of the Ohio Constitution.

WHEREFORE, Mr. Neyland requests that this Court unseal all portions of the record filed under seal by the Wood County Common Pleas Clerk's office.

Respectfully submitted,

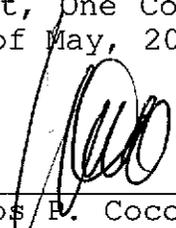


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ANN M. BARONAS

COUNSEL FOR APPELLANT,
CALVIN NEYLAND, JR.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was delivered by regular U.S. Mail to the office of the Wood County Prosecuting Attorney, Wood County Common Pleas Court, One Courthouse Square, Bowling Green, OH 43402 the 5th day of May, 2009.



Spiros P. Cocoves
COUNSEL FOR APPELLANT,
CALVIN NEYLAND, JR.