

ORIGINAL

IN THE
SUPREME COURT OF OHIO

STATE OF OHIO : NO. 98-20
Plaintiff-Appellee :
vs. : Death Penalty Case
RICHARD NIELDS :
Defendant-Appellant :

MOTION TO SET EXECUTION DATE

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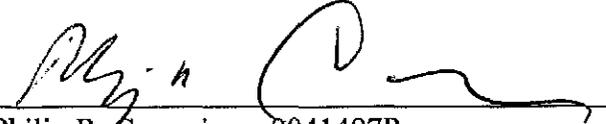
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RICHARD NIELDS :
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MOTION TO SET EXECUTION DATE

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

Respectfully submitted,

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MEMORANDUM IN SUPPORT

STATE COURT PROCEEDINGS

Nields is under a sentence of death for the murder of his companion of twelve years, Ms. Patricia Newsome.

On May 2, 1997, Richard Nields was indicted by the Hamilton County Grand Jury under B-9703305. The three count indictment charged Nields with two counts of Aggravated Murder, in violation of R.C. 2903.01(A) and (B) with death penalty specifications. Nields was also charged with Aggravated Robbery, in violation of R.C. 2911.01(A)(3). Nields plead not guilty.

Nields' motion to suppress was heard and overruled. Thereafter, Nields' jury trial commenced. At its conclusion, the jury found Nields guilty of all counts, as charged, plus the specifications. After the mitigation phase, the jury recommended the sentence of death.

On December 22, 1997, the trial court sentenced Nields to death on the Aggravated Murder charges, consecutive to ten years in the Ohio Department of Corrections for the Aggravated Robbery charge.

DIRECT APPEAL

Nields appealed to this Court, and this Court upheld the convictions and death sentence.¹ This Court then denied Nields' application for reconsideration.² The Supreme Court of the United States then denied Nields' petition for writ of certiorari.

¹ *State v. Nields*, 93 Ohio St.3d 6, 752 N.E.2d 859, 2001-Ohio-1291.

² *Nields*, 93 Ohio St.3d 1452, 756 N.E.2d 116.

Post-conviction Proceedings

Nields filed a petition for post-conviction relief on October 20, 1998. The trial court denied that petition. The denial of post-conviction relief was upheld by the First District Court of Appeals.³

This Court declined to grant further review of that denial.⁴

FEDERAL COURT PROCEEDINGS

Federal District Court

Nields filed his petition for writ of habeas corpus in the District Court for the Southern District of Ohio, Western Division on January 8, 2003, in which he raised thirty grounds for relief. Nields' claims included trial court errors; prosecutorial misconduct; ineffective assistance of trial counsel; insufficient evidence; unduly suggestive photo array; reviewing court errors; *Brady* violations; improper jury instructions; and prosecution tainted by racial bias.

On April 2, 2004, Chief Magistrate Judge Merz issued a Report and Recommendations concluding that all of Nields' thirty grounds for relief were without merit and recommended the denial of Nields' petition for a writ of habeas corpus with prejudice. The District Court (Judge Rose) adopted the Chief Magistrate Judge's Report and Recommendations and dismissed Nields' petition for a writ of habeas corpus on August 23, 2004.

Sixth Circuit

On August 19, 2005, Nields appealed the decision of the District Court to the United States Court of Appeals for the Sixth Circuit. During this appeal, the Sixth Circuit reviewed the following six issues raised by Nields: prosecutorial misconduct; ineffective assistance of trial counsel during

³ *State v. Nields* (11-17-00), First Dist. No. C-990474.

⁴ *State v. Nields* (2001), 93 Ohio St.3d 1445, 756 N.E.2d 111.

the mitigation phase when counsel failed to investigate and present mitigating evidence; ineffective assistance of trial counsel during the mitigation phase when counsel failed to obtain an expert witness to explain the effects of his alcohol consumption; ineffective assistance of counsel during his capital case when counsel failed to request to voir dire the jurors after some of the penalty-phase jurors saw him in shackles; ineffective assistance of counsel during his capital case when counsel failed to introduce evidence he was remorseful; and the Sixth Circuit improperly denied his certificate of appealability.

The Sixth Circuit concluded that Nields had not established a claim for habeas corpus relief and affirmed the decision of the District Court in its entirety on April 6, 2007.

On May 4, 2007, Nields filed a petition for an en banc rehearing. On August 2, 2007, the Sixth Circuit denied Nields' petition for an en banc rehearing.

On September 5, 2007, the Sixth Circuit issued the Mandate.

United States Supreme Court

On October 31, 2007, Nields appealed the decision of the Sixth Circuit by filing a petition for a writ of certiorari in the United States Supreme Court. The United States Supreme Court denied the petition on January 7, 2008.

Biros Lethal Injection Lawsuit

On December 19, 2007, Nields filed a motion to intervene in the *Biros* (formerly *Cooey*) lethal injection lawsuit in federal district court. On February 15, 2008, the District Court granted Nields' request to intervene in the lawsuit. On September 25, 2008, the District Court granted the State's Motion to Dismiss Nields' Intervener Complaint. Nields did not appeal this decision.

Otte Lethal Injection lawsuit

Nields is a party in the *Otte* lethal injection lawsuit that was filed September 18, 2008 in Franklin County Court of Common Pleas. Currently the case is awaiting assignment of a new judge since the previous judge had to recuse herself as she was appointed by Governor Strickland, a named party in the case. The State has a pending Motion for Judgement on the Pleadings based on a statute of limitations argument and the plaintiffs have a motion pending for discovery. This is a collateral matter and should not prevent this Court from setting an execution date.

Nields has not received a stay of execution based on this litigation.

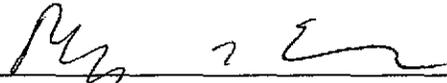
CONCLUSION

With this procedural history, it is clear that Nields 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* (1994), 79 Ohio St.3d 398, 412, 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.

Since Nields 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 no impediment to prevent this Court from setting an execution date.

Respectfully submitted,

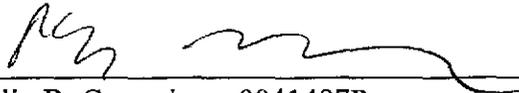
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Attorneys for Plaintiff-Appellee

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 David F. Hanson, Manley Deas Kochalski, LLC, P.O. Box 165028, Columbus, Ohio 43216-5028, Kyle Edward Timken, Ohio Public Defender's Office -- 2, 8 East Long Street, 11th Floor, Columbus, Ohio 43215-0587, and to Carol Ann Wright, Federal Public Defenders Office, 10 W. Broad Street, Suite 1020, Columbus, Ohio 43215, counsel of record, this 13 day of May, 2009.


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Assistant Prosecuting Attorney