

ORIGINAL

ADAMS, J.

09-1369

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

MICHAEL DEAN SCOTT,)	Case No. 4:07-CV-0753
)	
Petitioner,)	
)	JUDGE JOHN R. ADAMS
vs.)	
)	<u>MEMORANDUM OF OPINION</u>
MARK HOUK, Warden,)	<u>AND ORDER</u>
)	
Respondent.)	(Resolves Doc. 55)

On July 21, 2009, this Court granted Petitioner's motion to certify a question to the Supreme Court of Ohio. In so doing, the parties were provided electronic notice of the Court's order. However, the Court inadvertently failed to place copies of the Court's certification order in the mail to counsel to signal to them that the Supreme Court of Ohio would shortly be in receipt of the order. As a result, Petitioner now requests that the Court re-submit the question it previously certified to the Ohio Supreme Court regarding the correct forum in which to litigate a lethal injection claim in the Ohio courts. The motion is GRANTED. Furthermore, the Court respectfully requests that the Supreme Court of Ohio not hold its inadvertent error against Petitioner when considering the request for certification.

The Court hereby directs the District Court Clerk to re-issue the below certification order to the Ohio Supreme Court and place this order on the docket, including a certificate of service.

FILED
SEP 03 2009
CLERK OF COURT
SUPREME COURT OF OHIO

The Court hereby incorporates its legal analysis from the original order granting the motion for certification. The Court provides the following information pursuant to Supreme Court Practice Rule XVIII:

1. Question of Law to be Answered

Is there a post-conviction or other forum to litigate the issue of whether Ohio's lethal injection protocol is constitutional under *Baze v. Rees*, 533 U.S. —, 128 S.Ct. 1520 (2008), or under Ohio law?

2. Names of Parties and Counsel

Petitioner: Michael Dean Scott

Counsel for Petitioner: David L. Doughten
4403 St. Clair Avenue
Cleveland, Ohio 44103-1125
(216) 361-1112

Jeffrey J. Helmick
1119 Adams Street
Second Floor
Toledo, Ohio 43604
(419) 243-3800

Respondent: Mark Houk, Warden

Counsel for Respondent: Laurence R. Snyder
Assistant Attorney General
615 West Superior Avenue, 11th Floor
Cleveland, Ohio 44113
(216) 787-3030

3. Designation of Moving Party: Michael Dean Scott is designated as the moving party.

4. Directions to the Clerk: In accordance with Rule XVIII of the Rules of Practice of the Supreme Court of Ohio, the Clerk of the United States District Court for the Northern District of Ohio is hereby directed to serve copies of this certification order under the seal of this Court with the Supreme Court of Ohio, along with appropriate proof of service.

IT IS SO ORDERED.

September 1, 2009
Date

/s/ John R. Adams
John R. Adams
U.S. District Judge

CERTIFICATE OF SERVICE

I certify that a true and accurate copy of the foregoing **Order of Certification** was served by regular mail upon all counsel, on this 1st day of September, 2009 as follows:

Counsel for Petitioner:

David L. Doughten
4403 St. Clair Avenue
Cleveland, Ohio 44103-1125

Jeffrey J. Helmick
1119 Adams Street
Second Floor
Toledo, Ohio 43604

Counsel for Respondent:

Laurence R. Snyder
Assistant Attorney General
615 West Superior Avenue, 11th Floor
Cleveland, Ohio 44113

s/Christin M. Kestner
Courtroom Clerk to the
Honorable John R. Adams
(330) 252-6070

I hereby certify that this instrument is a true and correct copy of the original on file in my office.
Attest: Geri M. Smith, Clerk
U.S. District Court
Northern District of Ohio
By: Christin M. Kestner
Deputy Clerk