

ORIGINAL

IN THE SUPREME COURT OF OHIO

STATE OF OHIO, :
 :
 Plaintiff-Appellee, :
 :
 -vs- : Case Nos. 2004-0041
 : 2007-0475
 PHILLIP L. ELMORE, :
 : **DEATH PENALTY CASE**
 Defendant-Appellant. :f

**APPELLANT PHILLIP L. ELMORE'S MOTION TO
CONSOLIDATE DIRECT APPEAL CASE NUMBERS**

On Appeal from Licking County Court of Common Pleas Case No. 02CR275

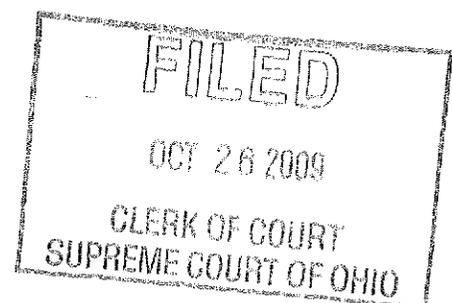
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Now comes Defendant-Appellant, Phillip L. Elmore, by and through counsel, and in the interest of judicial economy, hereby requests that this Court consolidate the two case numbers in his direct appeal. This Motion is supported by the attached Memorandum in Support.

Respectfully submitted,


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**MEMORANDUM IN SUPPORT OF APPELLANT PHILLIP L. ELMORE'S
MOTION TO CONSOLIDATE DIRECT APPEAL CASE NUMBERS**

Appellant Phillip Elmore was sentenced to death in Licking County, Ohio on November 19, 2003 (Case No. 02CR275). His conviction and death sentence were timely appealed to this Court in Case No. 2004-0041. Mr. Elmore was represented in his appeal to this Court by W. Joseph Edwards and Keith Yeazel. This Court issued its decision on December 13, 2006, reversing sentencing on the non-capital convictions and remanding the case to the trial court for resentencing in accordance with *State v. Foster*, 109 Ohio St.3d 1, 2006-Ohio-856.

Mssrs. Edwards and Yeazel remained on Elmore's case for purposes of resentencing, as well as for the appeal of the trial court's resentencing decision to this Court. On July 28, 2009 this Court issued its decision affirming the trial court's resentencing decision in Case No. 2007-0475.

As a death penalty case, undersigned counsel were appointed by the United States District Court for the Southern District of Ohio to represent Appellant Elmore in his federal habeas corpus proceedings. Pursuant to their representation of Elmore and based

upon their prior experience, undersigned counsel anticipate that they will need to file various pleadings and other documents in this Court.¹ Counsel were recently informed by the Clerk's Office that since Elmore has two separate case numbers, they will need to file all future documents in duplicate under each case number. In order to reduce the need to prepare and file duplicate pleadings, which documents and pleadings will also need to be addressed separately by this Court, Elmore respectfully requests that in the interest of judicial economy this Court consolidate his two direct appeal case numbers.

In addition, the case file(s) from this Court will need to be filed in the Federal District Court and therefore all the files should be consolidated so as not to lose or misplace any of the filings in the case. It will be more efficient for all further filings to have all pleadings and filings under one case number, the original case number.

CONCLUSION

For the foregoing reasons, Appellant's Motion to Consolidate his Direct Appeal Case Numbers should be granted.

Respectfully submitted,


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¹ The Supreme Court recently held in *Harbison v. Bell*, 129 S.Ct. 1481, 173 L.Ed.2d 347, 2009 LEXIS 2496, that 18 U.S.C. §3599 authorizes federally appointed counsel to represent their clients in state clemency proceedings and entitles them to compensation for that representation.

and

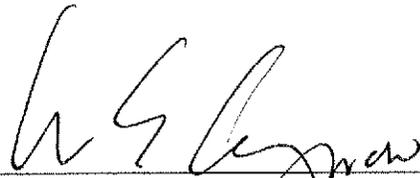


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CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing Appellant Phillip L. Elmore's Motion To Consolidate Direct Appeal Case Numbers and the Memorandum in Support were forwarded by regular U.S. mail to Kenneth W. Oswalt, Licking County Prosecuting Attorney, 20 S. Second Street, Suite 201, Newark, Ohio 43055, on the 26th. day of October, 2009.



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