

BEFORE THE SUPREME COURT OF OHIO

STATE OF OHIO

PLAINTIFF-APPELLEE

-vs-

SIDNEY CORNWELL

DEFENDANT-APPELLANT

CASE NO.: 1997-1390

DEATH PENALTY CASE

ORIGINAL

MOTION TO SET DATE FOR EXECUTION

ROBERT K. LOWE
ASSISTANT STATE PUBLIC DEFENDER

LINDA E. PRUCHA
ASSISTANT STATE PUBLIC DEFENDER

OFFICE OF THE OHIO PUBLIC
DEFENDER
250 E. BROAD ST., SUITE 1400
COLUMBUS, OH 43215
PH: (614) 466-5394
FX: (614) 644-0708

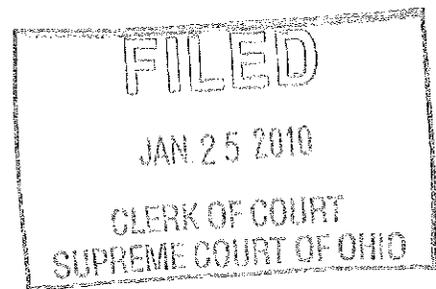
COUNSEL FOR DEFENDANT-
APPELLANT

PAUL J. GAINS, 0020323
MAHONING COUNTY PROSECUTOR

RALPH M. RIVERA, 0082063
ASSISTANT PROSECUTOR,
APPELLATE DIVISION
Counsel of Record

OFFICE OF THE MAHONING COUNTY
PROSECUTOR
21 W. BOARDMAN ST., 6TH FL.
YOUNGSTOWN, OH 44503
PH: (330) 740-2330
FX: (330) 740-2008

COUNSEL FOR PLAINTIFF-APPELLEE



BEFORE THE SUPREME COURT OF OHIO

STATE OF OHIO

PLAINTIFF-APPELLEE

-vs-

SIDNEY CORNWELL

DEFENDANT-APPELLANT

CASE NO.: 1997-1390

DEATH PENALTY CASE

MOTION TO SET DATE FOR EXECUTION

I. Introduction

Defendant-Appellant Sidney Cornwell is an Ohio Death Row inmate who was convicted and sentenced to death for the June 11, 1996, aggravated murder of three-year-old Jessica Lynn Ballew in Youngstown, Mahoning County, Ohio. Appellant has exhausted all state and federal remedies. The State of Ohio respectfully requests that this Honorable Court issue an order and Death Warrant setting an execution date for Defendant-Appellant Sidney Cornwell.

II. Procedural History

A. Indictment

On July 26, 1996, the Mahoning County Grand Jury indicted Defendant Appellant on one count of Aggravated Murder, in violation of R.C. §2903.01(A)(C); and three counts of Attempted Aggravated Murder, in violation of R.C. §2923.02(A)(E) and R.C. §2903.01(A)(C). Each count also carried a firearm specification, in violation of R.C. §2941.141. In addition, a death-penalty specification alleged that Cornwell had

committed the aggravated murder as part of a course of conduct involving the purposeful killing of, or attempt to kill, two or more persons, in violation of R.C. §2929.04(A)(5).¹ The case was assigned number 1996 CR 525 in the Mahoning County Common Pleas Court.

B. Trial

On May 5, 1997, the case proceeded to trial by jury, and on May 15, 1997, Defendant was convicted as charged.² Defendant was convicted of Aggravated Murder (with prior calculation and design), and three counts of Attempted Aggravated Murder. The jury also convicted him on each firearm specification. Further, the jury found Defendant guilty of the death-penalty specification, which alleged that Defendant committed the aggravated murder as part of a course of conduct involving the purposeful killing of, or attempt to kill, two or more persons, in violation of R.C. §2929.04(A)(5).³

Defendant then presented nine witnesses at the mitigation hearing. They included his mother, three siblings, and other relatives. Psychologist James Eisenberg also testified on behalf of Defendant, and concluded that he grew up in a violent and chaotic family, which caused him serious problems of identity and dependency.⁴ After the mitigation hearing concluded, the jury recommended death, and the trial court followed the jury's recommendation and imposed the death sentence on Defendant. The court then sentenced Defendant to prison for his other convictions.

¹ *State v. Cornwell* (1999), 86 Ohio St.3d 560, 562.

² *Id.*

³ *Id.*

⁴ *Id.*

C. Direct Appeal

Defendant filed his direct appeal of right with this Court.⁵ And on September 22, 1999, this Court unanimously affirmed Defendant's convictions and sentence of death.⁶ The United States Supreme Court denied *certiorari* on February 22, 2000.⁷

D. Postconviction Proceedings

Appellant filed a petition for postconviction relief pursuant to R.C. §2953.21 in the Mahoning County Common Pleas Court on May 21, 1999.⁸

Defendant asserted thirty grounds for relief. On June 1, 1999, Defendant filed his first amendment to his postconviction petition in which he asserted seven additional grounds for relief and added eight additional exhibits to his petition. On June 14, 1999, Defendant filed his second amendment to his postconviction petition in which he added three additional exhibits to his petition. On June 22, 1999, Defendant filed his third amendment to his postconviction petition in which he amended his First Ground for Relief and asserted six additional grounds for relief.

After a hearing on Defendant's petition, the trial court granted the State's motion for summary judgment on October 6, 2000.⁹

The Seventh District affirmed the trial court's denial of Defendant's petition for postconviction relief on September 24, 2002.¹⁰ This Court declined jurisdiction on

⁵ *Id.*

⁶ *Id.* at 575.

⁷ *Cornwell v. Ohio* (2000), 528 U.S. 1172.

⁸ *State v. Cornwell* (Sept. 24, 2002), 7th Dist. No. 00 CA 217, 2002 Ohio 5177, ¶ 18.

⁹ *Id.*

January 15, 2003.¹¹ Defendant did not appeal the denial to the United States Supreme Court.

E. Murnahan Appeal

On December 21, 1999, Defendant Appellant filed an application pursuant to S.Ct.Prac.R. XI(6) to reopen his direct appeal in this Court, setting forth five propositions of law. On February 2, 2000, this Court denied Defendant's application to reopen his direct appeal.¹² Defendant did not appeal the denial to the United States Supreme Court.

F. Federal Habeas Corpus Proceeding

On December 30, 2003, Defendant filed his Petition for a Writ of Habeas Corpus pursuant to 28 U.S.C. § 2254 et. seq. in the United States District Court, and raised fifteen (15) grounds for relief. On March 1, 2004, Respondent filed a Return of Writ On July 15, 2004, Cornwell filed his Traverse. On July 15, 2004, Defendant filed a Motion for Evidentiary Hearing. On July 30, 2004, Respondent filed its Sur-reply to Defendant's Traverse. And on January 14, 2005, the District Court denied Defendant's Motion for Evidentiary Hearing.

On January 21, 2005, Defendant filed an Amended Petition. Respondent filed an Amended Return of Writ on February 22, 2005. On, March 1, 2005, Defendant filed an Amended Traverse. On August 31, 2006, the District Court dismissed Defendant's Petition for Writ of Habeas Corpus and issued a certificate of appealability as to

¹⁰ *Id.* at ¶ 90.

¹¹ *State v. Cornwell* (2003), 98 Ohio St.3d 1413.

¹² *State v. Cornwell* (2000), 88 Ohio St.3d 1413.

Defendant's Ninth Ground for Relief, his third sub-claim in his Thirteenth Ground for Relief, and his Sixteenth Ground for Relief.¹³

Appellant appealed the District Court's denial of his writ to the United States Sixth Circuit Court of Appeals. On March 11, 2009, the Sixth Circuit affirmed the District Court's denial of Defendant's Writ of Habeas Corpus, with Judge K. Moore dissenting.¹⁴ The Sixth Circuit denied Defendant's motion for rehearing and an *en banc* hearing on July 22, 2009. The United States Supreme Court denied *certiorari* on January 19, 2010.¹⁵

III. Conclusion

With this procedural history, it is clear that Defendant has exhausted all of his state and federal court reviews of his conviction and death sentence. In *State v. Steffen*, this Court held that "[w]hen a criminal defendant has exhausted direct review, one round of postconviction relief, and one motion for delayed reconsideration under *State v. Murnahan* in the court of appeals and in the Supreme Court, any further action a defendant files in the state court system is likely to be interposed for purposes of delay and would constitute an abuse of the court system."¹⁶ Thus, a capital defendant would have to petition this Court for a stay to allow further litigation. And of this writing, Defendant has not sought a stay from this Court.

¹³ *Cornwell v. Bradshaw* (C.A.6, 2009), 559 F.3d 398, 404.

¹⁴ *Id.* at 417.

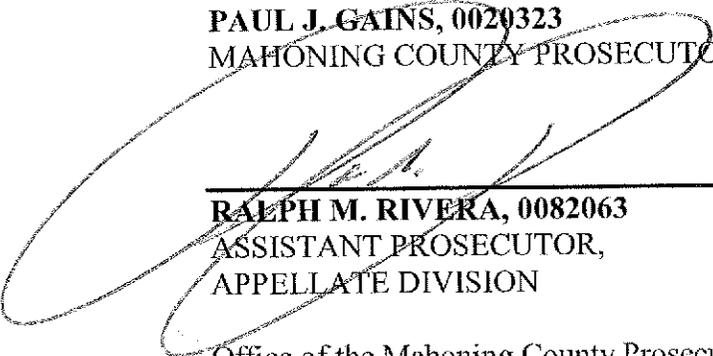
¹⁵ *Cornwell v. Bobby* (2010), ___ U.S. ___, 2010 WL 155092.

¹⁶ *State v. Steffen* (1994), 70 Ohio St.3d 399, 412.

The family of Jessica Lynn Ballew and the citizens of Mahoning County await justice. They are surely entitled to closure of this matter. Accordingly, the State of Ohio respectfully moves this Honorable Court for an order and Death Warrant setting an execution date without further delay.

Respectfully Submitted,

PAUL J. GAINS, 0020323
MAHONING COUNTY PROSECUTOR



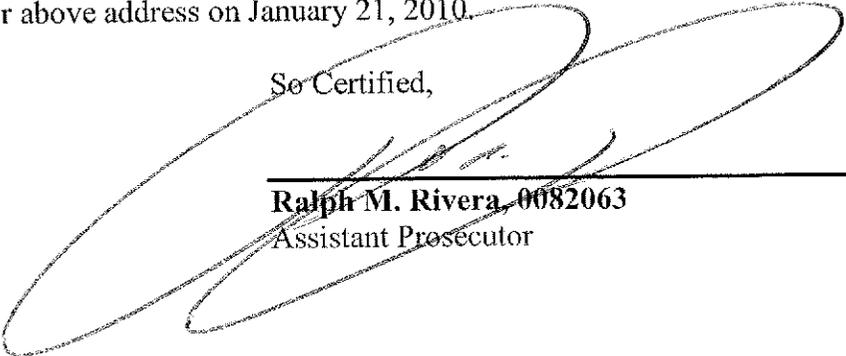
RALPH M. RIVERA, 0082063
ASSISTANT PROSECUTOR,
APPELLATE DIVISION

Office of the Mahoning County Prosecutor
21 W. Boardman St., 6th Fl.
Youngstown, OH 44503-1426
PH: (330) 740-2330
FX: (330) 740-2008
pgains@mahoningcountyoh.gov
rrivera@mahoningcountyoh.gov
Counsel for the State of Ohio

Certificate of Service

I certify that a copy of the State of Ohio's Motion to Set Date for Execution was sent by ordinary U.S. mail to counsel for Defendant, **Robert K. Lowe, Esq.**, and **Linda E. Prucha, Esq.**, at their above address on January 21, 2010.

So Certified,



Ralph M. Rivera, 0082063
Assistant Prosecutor