

ORIGINAL

In The Supreme Court of Ohio

State Of Ohio, :
 Appellee, :
 -Vs- : Case No.: 05-2364
 Kerry Perez, :
 Appellant. : **This Is A Capital Case.**

On Appeal From the Court of
 Common Pleas of Clark County
 Case No. 03-CR-1010

Appellant's Motion for Stay of Execution

Stephen A. Schumaker
 Clark County Prosecutor

Office of the
 Ohio Public Defender

Pamela J. Prude-Smithers – 0062206
 Chief Counsel, Death Penalty Division
 Counsel of Record

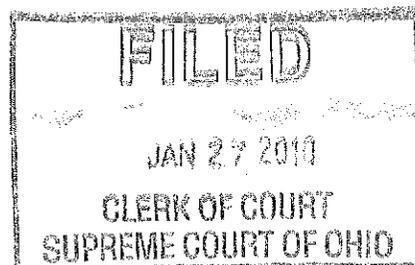
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In The Supreme Court of Ohio

State Of Ohio, :
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-Vs- : Case No.: 05-2364
Kerry Perez, :
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Appellant's Motion For Stay Of Execution

EXECUTION DATE: March 2, 2010

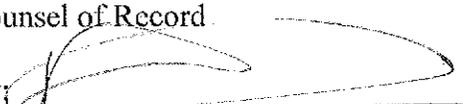
Appellant Kerry Perez, moves this Court to stay his **execution set for March 2, 2010** pending filing and disposition of his petition for writ of certiorari in the Supreme Court of the United States and to pursue his state post-conviction remedies. The reasons for this motion are more fully set forth in the attached memorandum.

Respectfully submitted,

Office of the
Ohio Public Defender

By: 

Pamela J. Prude-Smithers-0062206
Chief Counsel, Death Penalty Division
Counsel of Record

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**MEMORANDUM IN SUPPORT OF MOTION TO STAY EXECUTION PENDING
FILING AND DISPOSITION OF PETITION FOR WRIT OF CERTIORARI
AND POST-CONVICTION REMEDIES**

Appellant Kerry Perez was found guilty of Aggravated Murder and sentenced to death by the trial court. This Court affirmed Perez's convictions and sentences on December 2, 2009. Perez is currently sentenced to be executed on March 2, 2010. However, Perez has not completed his direct review.

The process of direct review in capital cases includes the right to petition the United States Supreme Court for review. "[I]f a federal question is involved, the process of direct review includes the right to petition the [Supreme] Court [of the United States] for a writ of certiorari." McDonald v. Missouri, 464 U.S. 1306, 1306-07 (Blackmun, Circuit Justice 1984) (internal quotations omitted) (citing Williams v. Missouri, 463 U.S. 1301 (Blackmun, Circuit Justice 1983) quoting Barefoot v. Estelle, 463 U.S. 880, 887 (1983)). See also Autry v. Estelle, 464 U.S. 1, 4 (1983) (per curiam). Capital defendants are "entitled to have that review before paying the ultimate penalty. The right of review is otherwise rendered utterly meaningless." McDonald v. Missouri, 464 U.S. 1306-07 (1984) (Blackmun, J., Circuit Justice) ("It makes no sense to have the execution set on a date within the time specified for that review...and before the review is completed.").

Until the review is completed, a state supreme court should issue a stay of any execution date falling before the orderly disposition of the case by the United States Supreme Court. Id. Accordingly, a stay is warranted to allow Perez adequate time to file his petition for writ of certiorari and for the Supreme Court of the United States to consider said petition.

This Court affirmed Perez's convictions and sentence on December 2, 2009. This Court denied Perez's motion to reconsider on January 27, 2010. Without a stay of his March 2, 2010

execution date, Perez will not be able to seek review in the Supreme Court. Perez's petition for writ of certiorari is due to be filed in the United States Supreme Court on April 27, 2010. Sup. Ct. R. 13. This Stay of Execution is being sought to allow a thorough and considered review of Perez's petition for writ of certiorari.

Perez is also entitled to a stay because his post-conviction petition is still pending. Perez filed a petition for post-conviction relief, pursuant to O.R.C. § 2953.21, in the Clark County Court of Common Pleas. Case No. 03CR1010. That petition is still pending before the Clark County Court of Common Pleas. Pursuant to previous decisions of this court, a capital defendant is entitled to a stay of execution until he has completed as least one round of post-conviction review. State v. Steffen, 70 Ohio St. 3d 399, 412 (1994); State v. Glenn, 33 Ohio St. 3d 601 (1987). Perez has not completed his first post-conviction review of his conviction and sentence. His post-conviction petition is still pending review in the Clark County Court of Common Pleas. After a decision from that Court, Perez has an available appeal to the Second District Court of Appeal; to this Court, and to the United States Supreme Court.

Therefore, Perez respectfully requests this Court stay his execution, pending disposition of his petition for writ of certiorari on direct appeal and so that he may exhaust his state post-conviction remedies.

Respectfully submitted,

Office of the
Ohio Public Defender

By: 

Pamela J. Prude-Smithers-0062206
Chief Counsel, Death Penalty Division
Counsel of Record

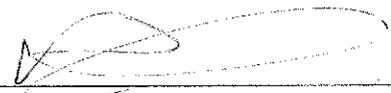
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Counsel For Appellant

Certificate Of Service

I hereby certify that a true copy of the foregoing Appellant's Motion For Stay of Execution was delivered by regular U.S. Mail to: Stephen A. Schumaker, Clark County Prosecutor, 50 E. Columbia Street, Springfield, Ohio 45502, this 27th day of January, 2010.


Robert K. Lowe – 0072264
Assistant State Public Defender

Counsel For Appellant