

MEMORANDUM IN SUPPORT

INTRODUCTION

In February 1995, the Lucas County Court of Common Pleas convicted and sentenced Defendant Johnnie Baston ("Baston") to death for the aggravated murder of Chong Mah. Since his sentence and conviction, Baston's attorneys have pursued all available avenues of appeal afforded under both Ohio and federal law. Every court that has examined Baston's claims has upheld his murder conviction and death sentence. Baston has now completed all state and federal litigation. The State of Ohio hereby requests this Court set an execution date for Baston.

STATE COURT PROCEEDINGS

The Sixth District Court of Appeals affirmed Baston's conviction and sentence on direct appeal. *State v. Baston* (Sept. 12, 1997), 6th Dist. No. L-95-087. This Court affirmed the appellate court's decision on May 12, 1999. *State v. Baston* (1999), 85 Ohio St.3d 418. On December 6, 1999, the United States Supreme Court denied Baston's petition for writ of certiorari. *Baston v. Ohio* (1999), 528 U.S. 1049.

On July 10, 1998, the Common Pleas Court denied Baston's post-conviction relief petition. The Sixth District Court of Appeals affirmed that decision. *State v. Baston* (Nov. 17, 2000), 6th Dist. No. L-98-1264. On March 21, 2001, this Court denied jurisdiction to hear Baston's appeal. *State v. Baston* (2001), 91 Ohio St.3d 1471.

FEDERAL COURT PROCEEDINGS

On September 12, 2003, the United States District Court for the Northern District of Ohio denied Baston's petition for a writ of habeas corpus. *Baston v. Bagley* (N.D. Ohio 2003), 282 F. Supp.2d 655. The Sixth Circuit Court of Appeals denied Baston's appeal on August 25, 2005.

Baston v. Bagley, 420 F.3d 632 (6th Cir. 2005), *cert. denied*, *Baston v. Bagley* (2006), 547 U. S. 1151.

LETHAL INJECTION LITIGATION

On May 26, 2006, Baston moved to intervene into the *Cooley* lethal injection lawsuit in Federal District Court. *Cooley, et. al. v. Strickland, et. al.*, Case No. 2:04-cv-1156. On June 16, 2006, the District Court granted Baston's motion to intervene. (Doc. 54.) On July 10, 2008, the Warden filed a motion to dismiss Baston's complaint. (Doc. 280.) On September 25, 2008, the District Court dismissed Baston's complaint. (Doc. 404.) On October 24, 2008, Baston filed a notice of appeal. (Doc. 420.)

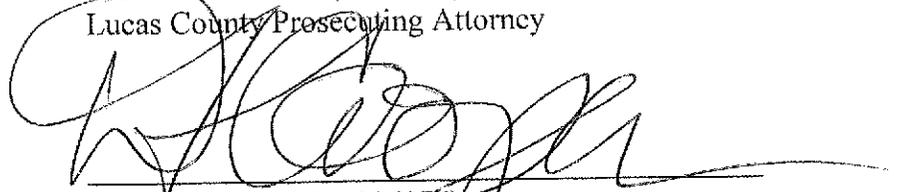
On March 2, 2007, the United States Court of Appeals for the Sixth Circuit dismissed Richard Cooley's original lethal injection lawsuit as time-barred. *Cooley v. Strickland*, 479 F.3d 412 (6th Cir. 2007). On April 21, 2008, the Supreme Court of the United States denied Cooley's petition for a writ of certiorari. *Cooley v. Strickland*, 128 S. Ct. 2047. The Supreme Court of the United States denied the petition for rehearing and the Sixth Circuit has issued its mandate and it is final. Furthermore, Baston's intervener lawsuit challenged the old three-drug protocol, which has been replaced with a one-drug protocol. Hence, Baston's appeal is moot. *Biros v. Strickland*, 589 F.3d 210 (6th Cir. 2009).

CONCLUSION

Now that Baston has fully exhausted all available legal challenges to his conviction and death sentence, the State of Ohio respectfully requests this Court to set a date for Johnnie Baston's execution.

Respectfully submitted,

JULIA R. BATES (0013426)
Lucas County Prosecuting Attorney

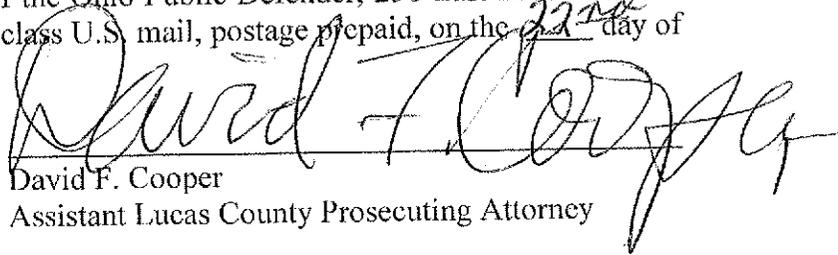


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COUNSEL OF RECORD

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing *Motion to Set an Execution Date* was served upon Timothy Young, Ohio Public Defender, and Kyle Timken and Pamela Prude-Smithers, Assistant State Public Defender, at Office of the Ohio Public Defender, 250 East Broad Street - Suite 1400, Columbus, Ohio 43215, by first class U.S. mail, postage prepaid, on the 22nd day of February, 2010.



David F. Cooper
Assistant Lucas County Prosecuting Attorney