

IN THE SUPREME COURT OF OHIO

ORIGINAL

STATE OF OHIO, :

Plaintiff-Appellee, : Case No. 97-2204

vs. :

JOHNNIE BASTON, :

Defendant-Appellant. : **This is a death penalty case.**

APPELLANT'S RESPONSE TO STATE'S MOTION TO SET EXECUTION DATE

OFFICE OF THE
OHIO PUBLIC DEFENDER

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COUNSEL FOR APPELLEE

COUNSEL FOR APPELLANT

FILED
FEB 26 2010
CLERK OF COURT
SUPREME COURT OF OHIO

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 Appellee, : Case No. 97-2204
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 -vs- :
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 JOHNNIE BASTON, : **Death Penalty Case**
 :
 Appellant. :

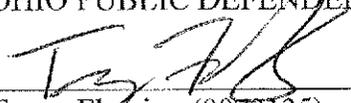
APPELLANT'S RESPONSE TO STATE'S MOTION TO SET EXECUTION DATE

Appellant Johnnie Baston hereby responds to the state's motion to set an execution date, which the Lucas County Prosecuting Attorney filed with this Court on February 23, 2010. Mr. Baston does still have pending litigation. Baston still has a pending case in the Sixth Circuit Court of Appeals ancillary to the Richard Cooley Lawsuit - case No. 08-4387. Baston also moved to intervene in case 2:10-cv-00027 in the Southern United District Court challenging the new lethal injection protocol on February 12, 2010. The state moved to set an execution date on February 23, 2010. Baston's motion to intervene was granted on February 25, 2010.

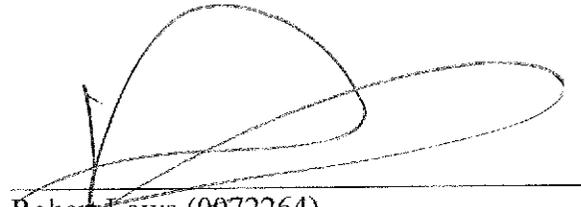
Thus, this Court should not set an execution date as Baston has not fully exhausted all of his legal challenges to his conviction and death sentence.

Respectfully submitted,

OFFICE OF THE
OHIO PUBLIC DEFENDER



Tyson Fleming (0073135)
Assistant State Public Defender
Counsel of Record

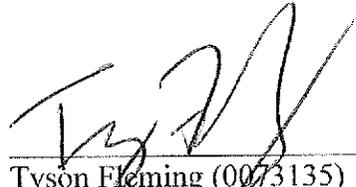


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CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing was forwarded by regular U.S. mail to the office of David F. Cooper, Assistant Prosecuting Attorney, Lucas County Prosecutor's Office, 711 Adams Street, 2nd Floor, Toledo, Ohio 43624-1680, on this 26th day of February, 2010.



Tyson Fleming (0073135)
Counsel for Appellant