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IN THE  
SUPREME COURT OF OHIO

STATE OF OHIO

Case No. 1996-2301

Plaintiff-Appellee,

v

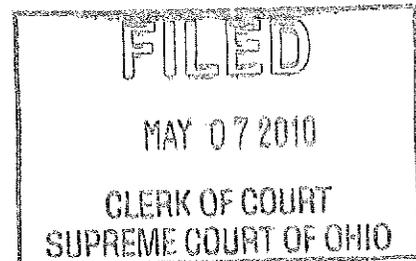
**DONALD L. PALMER, JR.,**

**Death Penalty Case**

Defendant-Appellant.

**MOTION TO SET EXECUTION DATE**

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**IN THE  
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**MOTION TO SET EXECUTION DATE**

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The State of Ohio respectfully moves this Court to set an execution date for Defendant-Appellant, Donald Palmer, Jr. The reasons in support of this motion are stated in the attached memorandum.

Respectfully submitted,



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## MEMORANDUM IN SUPPORT

This Court should set an execution date for Defendant-Appellant Donald Palmer, Jr . (“Palmer”), who has exhausted his state and federal appeals and has no pending stay of execution. Palmer received a capital sentence following his convictions for the aggravated murders of Charles Sponhaltz, Sr. and Steven Vargo in 1989.

### *(A) Indictment*

The Belmont County Grand Jury indicted Palmer for the aggravated murders of Messrs. Sponhaltz and Vargo, *State v Palmer* (1997), 80 Ohio St.3d 543. Regarding the Mr. Sponhaltz homicide, the Grand Jury indicted Palmer on two aggravated murder counts for committing the offense with prior calculation and design, R.C. 2903.01(A)(5) (the killing of two or more persons) and R.C. 2929.04(A)(7) (occurring in conjunction with an aggravated robbery). *Id.*

Regarding the Mr. Vargo homicide, the Grand Jury also indicted Palmer on two aggravated murder counts for committing the offense with prior calculation and design, R.C. 2929.04(A)(5) (the killing of two or more persons), and R.C. 2929.04(A)(7) (occurring in conjunction with an aggravated robbery). *Id.*

Additionally, the Grand Jury indicted Palmer on two separate counts of aggravated robbery and, for each count in the indictment, on a firearm specification. *Id.*

*(B) Conviction & Capital Sentence*

A jury convicted Palmer of all counts and specifications in the indictment except for one of the two escaping detection specifications, which inadvertently was omitted from the verdict forms:

The jury made no finding on the *R.C. 2929.04(A)(3)* death penalty specification in connection with Count Four of the indictment (committing the offense with prior calculation and design under *R.C. 2903.01(A)* regarding Vargo), apparently because the specification had been inadvertently omitted from the jury's verdict form. The jury, however, find appellant guilty of the *R.C. 2929.04 (A)(3)* specification in connection with Count Six of the indictment (felony murder under *R.C. 2903.01(B)* regarding Vargo).

*Id.* at 543, fn.3. (emphasis sic.) Following the mitigation presentations, the jury recommended that Palmer receive the death penalty. *Id.* at 543. The trial court adopted the jury's recommendation and imposed a sentence of death. *Id.*

Additionally, Palmer was also lawfully sentenced for the aggravated robberies and the associated firearm specifications. *Id.*

*(C) Direct Appeal*

The Ohio Court of Appeals affirmed the judgment and upheld Palmer's death sentence. *State v Palmer* (Aug. 29, 1996), Belmont App. No. 89-B-28. This Court affirmed. *Palmer*, 80 Ohio St.3d 543, certiorari denied (1998), 525 U. S. 837.

*(D) Post-conviction Review*

The Ohio Court of Appeals affirmed the trial court's denial of Palmer's petition for post-conviction relief. *State v Palmer* (Oct. 20, 1999), Belmont App. No. 96 BA 70. This Court declined jurisdiction. *State v Palmer* (2000), 88 Ohio St.3d 1424.

*(E) Murnahan Appeal*

The Ohio Court of Appeals dismissed Palmer's application to reopen his appeal, reasoning that "Palmer had failed to show good cause for filing his application more than ninety days after that court's judgment was journalized, as required by App.R. 26(B)(2)(b)." *State v Palmer* (2001), 92 Ohio St.3d 241, 242 citing *State v Palmer* (Oct. 25, 2000), Belmont App. No. 89-B-28. This Court found that "no genuine issue exists as to whether Palmer was denied the effective assistance of counsel in his initial 1996 appeal" and affirmed. *Id.*

*(F) Federal Habeas Corpus*

The U. S. District Court denied Palmer's petition for writ of habeas corpus. *Palmer v Bagley* (S.D. Ohio Apr. 17, 2006), 2006 U. S. Dist. LEXIS 32146. The U. S. Court of Appeals affirmed. *Palmer v Bagley* (6<sup>th</sup> Cir. 2009), 330 Fed. Appx. 92, certiorari denied (2010) \_\_\_\_ U.S. \_\_\_\_, 176 L.ED.2d 215.

*(G) Conclusion*

Palmer's convictions and sentence of death are lawful. The state and federal reviews are complete, and Palmer does not have any pending stay of execution. Therefore, the State respectfully moves this Court to set an execution date in this case.

  
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## CERTIFICATE OF SERVICE

I hereby certify that I have sent a copy of the foregoing Motion to Set Execution Date, by U. S. mail, this 3rd day of May, 2010, to:

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