

In The Supreme Court Of Ohio

ORIGINAL

State Of Ohio, :
 Appellee, :
 -Vs- : Case No.: 2006-1502
 Clarence Fry, :
 Appellant. : **This Is A Capital Case.**

Motion For Stay Of Execution Pending Disposition of Available Remedies

Execution scheduled June 22, 2010

Sherri Bevan Walsh
Summit County Prosecutor

Office of the
Ohio Public Defender

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FILED
 MAY 21 2010
 CLERK OF COURT
 SUPREME COURT OF OHIO

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-Vs- : Case No.: 2006-1502
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Appellant. : **This Is A Capital Case.**

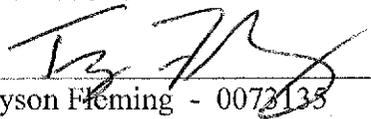
Motion For Stay Of Execution Pending Disposition of Available Remedies

Execution scheduled June 22, 2010

Clarence Fry moves this Court to stay his **execution set for June 22, 2010** , pending disposition of his available remedies. The reasons for this motion are more fully set forth in the attached memorandum.

Respectfully submitted,

Office of the
Ohio Public Defender



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Counsel of Record

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Counsel For Appellant

Memorandum In Support Of Motion To Stay Execution
Pending Disposition Of Appeal

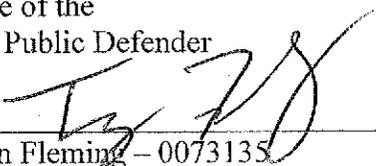
Clarence Fry now moves this Court for an order continuing his stay of execution pending the exhaustion of available postconviction remedies, including all appeals. Under State v. Steffen, 70 Ohio St. 3d 399, 639 N.E.2d 67 (1994), Fry is entitled to a stay of execution until he has “exhausted ... one round of postconviction relief, and one motion for delayed reconsideration ... in the court of appeals” 70 Ohio St.3d at 412, 639 N.E.2d at 77. See also State v. Glenn, 33 Ohio St. 3d 601, 514 N.E.2d 869 (1987).

On March 11, 2007 Fry filed his Petition to Vacate or Set Aside Sentence Pursuant to Ohio Revised Code Section 2953.21 (Exhibit B). The petition and related motions are pending in the trial court. Thus, a stay is needed to ensure that the issues raised in his postconviction petition are fully resolved. This Court has granted similar motions. See, e.g., State v. Raglin, 85 Ohio St. 3d 1429, 707 N.E.2d 945 (1999).

WHEREFORE, Clarence Fry respectfully requests that this Honorable Court grant a stay of execution pending the exhaustion of available state remedies, and more specifically, his postconviction proceedings, in accordance with State v. Steffen, 70 Ohio St. 3d 399, 639 N.E.2d 67.

Respectfully submitted,

Office of the
Ohio Public Defender

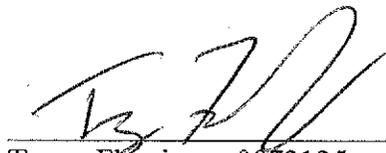
By: 

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Counsel of Record

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Counsel For Appellant

Certificate Of Service

I hereby certify that a true copy of the foregoing **Motion For Stay Of Execution** was forwarded by regular U.S. mail to Sherri Bevan Walsh, Summit County Prosecutor, 53 University Avenue, Akron, Ohio 44308-1680 on the 21st day of May, 2010.



Tyson Fleming - 0073135
Counsel for Appellant

FILED

MAR 23 2010

The Supreme Court of Ohio

CLERK OF COURT
SUPREME COURT OF OHIO

State of Ohio

Case No. 2006-1502

v.

JUDGMENT ENTRY

Clarence Fry, Jr.

APPEAL FROM THE
COURT OF COMMON PLEAS

This cause, here on appeal from the Court of Common Pleas for Summit County, was considered in a manner prescribed by law. On consideration thereof, the judgment of the court of common pleas is affirmed and remanded to the trial court to impose the appropriate term of postrelease control pursuant to R.C. 2929.191, consistent with the opinion rendered herein.

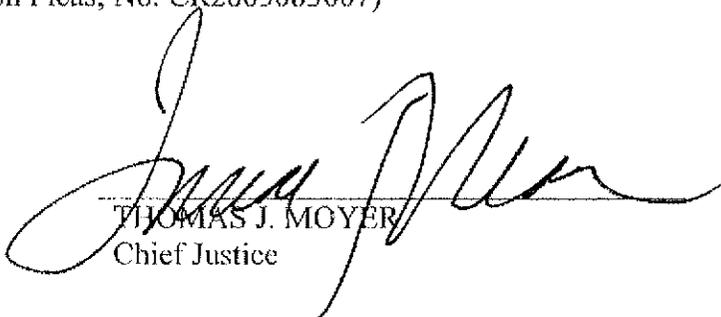
Furthermore, it appearing to the Court that the date heretofore fixed for the execution of judgment and sentence of the court of common pleas has passed,

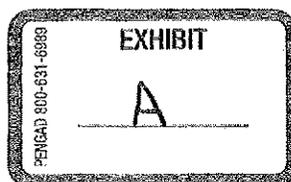
It is hereby ordered by the Court that said sentence be carried into execution by the Warden of the Southern Ohio Correctional Facility, or in his absence, by the Deputy Warden on Tuesday, the 22nd day of June, 2010, in accordance with the statutes so provided.

It is further ordered that a certified copy of this entry and a warrant under the seal of this Court be duly certified to the Warden of the Southern Ohio Correctional Facility and that said Warden shall make due return thereof to the Clerk of the Court of Common Pleas of Summit County.

It is further ordered that a mandate be sent to the Court of Common Pleas for Summit County to carry this judgment into execution; and that a copy of this entry be certified to the Clerk of the Court of Common Pleas for Summit County for entry.

(Summit County Court of Common Pleas; No. CR2005083007)


THOMAS J. MOYER
Chief Justice



ADC
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IN THE COURT OF COMMON PLEAS
SUMMIT COUNTY, OHIO

SUMMIT COUNTY
CLERK OF COURTS

2007 MAY 11 AM 11:34

DANIEL M. HERRIGAN

STATE OF OHIO, :
Respondent, : Case No. CR 05 08 3007
-vs- : **EVIDENTIARY HEARING**
CLARENCE FRY, JR. : **REQUESTED ON ALL**
Petitioner. : **GROUNDS FOR RELIEF**

**O.R.C. § 2953.21 POST-CONVICTION PETITION
OF CLARENCE FRY, JR**

Petitioner, Clarence Fry Jr, ("Petitioner"), by and through counsel, petitions this Court for post-conviction relief pursuant to Ohio Rev. Code Ann. § 2953.21 as follows:

I. JURISDICTIONAL FACTS

A. TRIAL PROCEEDING

II. CASE HISTORY

TRIAL:

Charge (include specifications)

Disposition

Count 1 Aggravated Murder 2903.01(B)

Guilty;
Death

Specifications to Count 1

- (1) Offense was committed during an aggravated burglary 2929.04(A)(7)
- (2) Victim of the aggravated murder was a witness to an offense who was purposefully killed to prevent her testimony in a criminal proceeding 2929.04(A)(8)

Guilty
Guilty

Count 2 Aggravated Murder 2903.01(A)

Guilty;
Sentence Merged w/ Count 1

Count 3 Murder 2903.02(A)(B)

Guilty;

