

ORIGINAL

In The Supreme Court of Ohio

State of Ohio, :

Appellee, : Case No. 10-0576

-vs- : Appeal taken from Stark County
Court of Common Pleas

James Mammone, III, : Case No. 2009-CR-0859

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

Motion to Supplement Record

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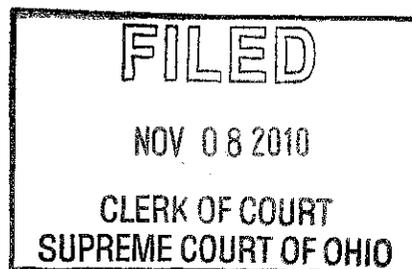
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Petitioner James Mammone, III, respectfully moves this Court, under S.Ct. Prac. R. 5.8 and 19.4, for an order directing the trial court to supplement the record with a transcript of the July 22, 2009 pretrial. The reasons in support of this motion are set forth in the accompanying Memorandum.

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MEMORANDUM IN SUPPORT

Appellant, James Mammone, III, moves this Court for an order directing the trial court to supplement the record with a transcript of the July 22, 2009 pretrial. No transcript of this pretrial was included in the record that was transmitted to the Ohio Supreme Court. Under S.Ct. Prac. R. 5.8 and 19.4(D), if any necessary part of the record has not been transmitted on appeal, this Court may direct the certification and transmission of a supplemental record.

Mammone has a right to a complete and unabridged record for his capital appeal. State ex rel. Spirko v. Court of Appeals, Third Appellate District, 27 Ohio St. 3d 13, 16, 501 N.E.2d 625, 627 (1986). See also State v. D'Ambrosio, 67 Ohio St. 3d 185, 200, 616 N.E.2d 909, 921 (1993). These materials may present issues for Mammone's Merit Brief and for his oral argument. A thorough review of the entire record is necessary to give Mammone a full and fair opportunity to litigate his appeal as of right in this Court. Without a complete record for review, counsel cannot provide effective representation to Mammone on this appeal as of right. See State v. Buell, 70 Ohio St. 3d 1211, 639 N.E.2d 110 (1994); Evitts v. Lucey, 469 U.S. 387 (1985).

Wherefore, Mammone requests that this Court order the trial court to supplement the record.

Respectfully submitted,

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Certificate of Service

I hereby certify that a true copy of the foregoing Motion to Supplement Record was forwarded by first-class, postage prepaid U.S. Mail to Kathleen Tatarsky and Renee Watson, Assistant Prosecuting Attorneys, Stark County, 110 Central Plaza South, Suite 510, Canton, Ohio 44702, on this 8th day of November, 2010.


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