

ORIGINAL

BEFORE THE SUPREME COURT OF OHIO

STATE OF OHIO

PLAINTIFF-APPELLEE

-vs-

JOHN J. ELEY

DEFENDANT-APPELLANT

CASE NO.: 1996-0285

DEATH PENALTY CASE

MOTION TO SET DATE FOR EXECUTION

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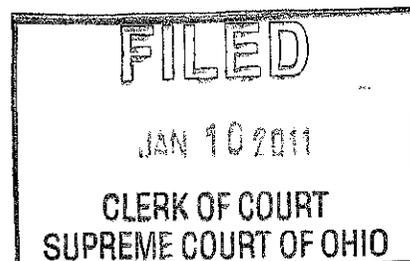
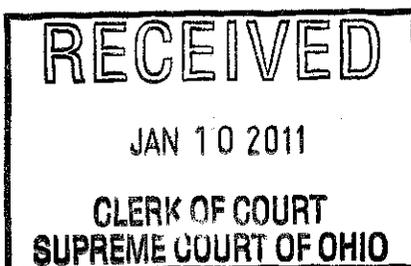
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I. Introduction

Defendant-Appellant John J. Eley is an Ohio Death Row inmate who was convicted and sentenced to death for the August 26, 1986, aggravated murder of Ihsan Aydah in Youngstown, Mahoning County, Ohio. Appellant has exhausted all state and federal remedies. The State of Ohio respectfully requests that this Honorable Court issue an order and Death Warrant setting an execution date for Defendant-Appellant John J. Eley.

II. Procedural History

A. Indictment

On September 26, 1986, the Mahoning County Grand Jury indicted Defendant-Appellant on one count of Aggravated Murder, with an Aggravated Robbery Specification, in violation of R.C. §2929.04(A)(7); and a Firearm Specification, in

violation of R.C. §2929.71.¹ In addition, Defendant-Appellant was indicted on one count of Aggravated Robbery, in violation of R.C. §2911.01(A)(1) & (2), with a Firearm Specification; and one count of Conspiracy, in violation of R.C. §2923.01(A), with a Firearm Specification.² The case was assigned number 1986 CR 484 in the Mahoning County Common Pleas Court.

B. Trial

In May 1987, Defendant-Appellant waived his right to a jury trial and opted instead to be tried to a three-judge panel.³ Thereafter, Defendant-Appellant entered into a plea of not guilty, thereby withdrawing his previous plea of not guilty by reason of insanity. On May 11-12, 1987, the three-judge panel heard the State's evidence, while defense counsel chose not to present any.⁴ At the conclusion, the three-judge panel found Defendant-Appellant guilty of Aggravated Murder, Aggravated Robbery, the Felony-Murder Capital Specification, and two of the three Firearm Specifications. The three-judge panel, however, found Defendant-Appellant not guilty of Conspiracy.⁵

During the mitigation hearing, several family members testified on his behalf, which included his mother and sister.⁶ Dr. Douglas Darnall, a clinical psychologist, ranked Defendant-Appellant in the twelfth percentile on the Wechsler Adult Intelligence

¹ *State v. Eley* (1996), 77 Ohio St.3d 174, 176.

² *Id.*

³ *Id.*

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

Test (WAIT).⁷ Dr. Darnall testified that Defendant-Appellant had a history of chronic alcohol and polysubstance abuse, but exhibited “no evidence of psychosis or major defective disorder.”⁸ Dr. Darnall found Defendant-Appellant to be remorseful. Further, two police officers who witnessed Defendant-Appellant’s confession testified to the same. Defendant-Appellant made several biblical quotations in his unsworn statement during the mitigation phase.⁹

After the mitigation hearing concluded, the three-judge panel unanimously found that the aggravating circumstance outweighed the mitigating factors beyond a reasonable doubt. The three-judge panel then sentenced Defendant-Appellant to death.¹⁰

C. Direct Appeal

Defendant filed his direct appeal of right with the Seventh District Court of Appeals. On December 20, 1995, the Seventh District affirmed Defendant-Appellant’s convictions and sentence of death.¹¹ Thereafter, this Court also affirmed Defendant-Appellant’s convictions and sentence of death.¹² The United States Supreme Court denied *certiorari* on June 27, 1997.¹³

⁷ *Id.* at 177.

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

¹¹ *State v. Eley* (Dec. 20, 1995), 7th Dist. No. 87 CA 122, unreported, 1995 WL 758808.

¹² *Eley*, 77 Ohio St.3d at 190.

¹³ *Eley v. Ohio* (1997), 521 U.S. 1124.

On January 29, 1997, this Court denied Defendant-Appellant's Motion for Reconsideration.¹⁴

D. Postconviction Proceedings

On September 20, 1996, Defendant-Appellant filed a petition for postconviction relief pursuant to R.C. §2953.21 in the Mahoning County Common Pleas Court.¹⁵ Thereafter, Defendant-Appellant filed a motion with the trial court to have his competency evaluated to ensure that he was competent to participate in postconviction proceedings. The trial court denied the motion after an evidentiary hearing, and later granted the State's motion for summary judgment.¹⁶

The Seventh District affirmed the trial court's denial of Defendant-Appellant's petition for postconviction relief, and its denial of the competency evaluation on November 6, 2001.¹⁷ This Court then declined jurisdiction on March 20, 2002.¹⁸ Defendant-Appellant did not appeal the denial to the United States Supreme Court.

On June 9, 2003, Defendant-Appellant filed a successive petition to vacate his death sentence pursuant to *Atkins v. Virginia* in the Mahoning County Court of Common Pleas. On September 24, 2003, the State filed its response. Defendant-Appellant then filed a motion on December 20, 2004, for dismissal of his *Atkins* petition. The trial court granted the motion on January 5, 2005.

¹⁴ *State v. Eley* (1997), 77 Ohio St.3d 1549.

¹⁵ *State v. Eley* (Nov. 6, 2001), 7th Dist. No. 99 CA 109, 2001 Ohio 3447, *1.

¹⁶ *Id.*

¹⁷ *Id.* at *17.

¹⁸ *State v. Eley* (2002), 94 Ohio St.3d 1506.

E. Federal Habeas Corpus Proceedings

On March 19, 2003, after the completion of his state appeals, Defendant-Appellant filed his Petition for a Writ of Habeas Corpus pursuant to 28 U.S.C. §2254 in the United States District Court for the Northern District of Ohio in which he raised eight claims for relief.¹⁹

That same day, Defendant-Appellant filed a motion for a competency evaluation to determine whether he was competent to waive federal habeas review of his conviction and death sentence. The Warden filed her response in opposition to Defendant-Appellant's motion on March 27, 2003. Defendant-Appellant replied on March 28, 2003. On April 23, 2003, the District Court issued an order denying Defendant-Appellant's motion for a competency evaluation without prejudice.

On June 2, 2005, Defendant-Appellant filed an Amended Petition in which he raised fourteen claims for relief. On August 1, 2005, the Warden filed her Return of Writ, along with thirteen volumes of appendix and three volumes of transcripts. On October 10, 2005, Defendant-Appellant filed his Traverse. The Warden filed a Sur-reply on November 1, 2005. On October 18, 2006, the District Court dismissed Defendant-Appellant's Petition for Writ of Habeas Corpus and issued a certificate of appealability as to his Second and Eighth Claims for Relief.²⁰

¹⁹ *Eley v. Bagley* (Oct. 18, 2006), N.D. Ohio No. 4:02CV1994, unreported, 2006 WL 2990520.

²⁰ *Id.*

On November 13, 2006, Defendant-Appellant filed a notice of appeal to the United States Sixth Circuit Court of Appeals.²¹ On December 28, 2006, Defendant-Appellant filed a motion to expand the certificate of appealability to include his First Claim for Relief raised below. The Warden opposed Defendant-Appellant's motion on January 9, 2007. On April 8, 2008, the Sixth Circuit denied Defendant-Appellant's motion and declined to expand the certificate of appealability to include his First Claim for Relief.

On July 21, 2008, however, Defendant-Appellant raised his First Claim for Relief in his Proof Brief even though a certificate of appealability was not granted for it. On October 6, 2008, Defendant-Appellant filed a petition for en banc rehearing, requesting that the certificate of appealability be expanded to include his First Claim for Relief. The Sixth Circuit granted Defendant-Appellant's petition the same day, expanding the certificate of appealability to include his First Claim for Relief, and allowing the Warden to file a supplemental brief regarding that claim. Defendant-Appellant filed his Proof Reply Brief on October 14, 2008.

On May 14, 2010, the Sixth Circuit affirmed the District Court's denial of Defendant-Appellant's Writ of Habeas Corpus.²² The Sixth Circuit then denied Defendant-Appellant's motion for rehearing and an *en banc* hearing on June 23, 2010.²³

The United States Supreme Court denied *certiorari* on December 13, 2010.²⁴

²¹ *Eley v. Bagley* (C.A.6, 2010), 604 F.3d 958.

²² *Id.*

²³ *Id.*

²⁴ *Eley v. Houk* (U.S. 2010), ___ S.Ct. ___, unreported, 2010 WL 3617888.

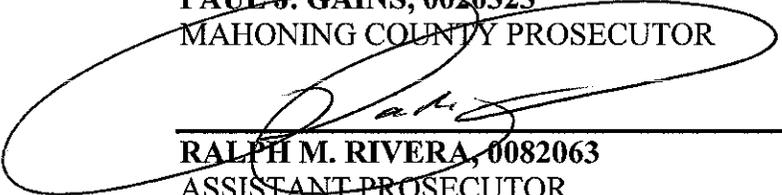
III. Conclusion

With this procedural history, it is clear that Defendant-Appellant John J. Eley has exhausted all of his state and federal court reviews of his convictions and death sentence. In *State v. Steffen*, this Court held that “[w]hen a criminal defendant has exhausted direct review, one round of postconviction relief, and one motion for delayed reconsideration under *State v. Murnahan* in the court of appeals and in the Supreme Court, any further action a defendant files in the state court system is likely to be interposed for purposes of delay and would constitute an abuse of the court system.”²⁵ Thus, Defendant-Appellant must petition this Court for a stay to allow further litigation.

The family of Ihsan Aydah and the citizens of Mahoning County await justice. Accordingly, the State of Ohio respectfully moves this Honorable Court for an Order and Death Warrant setting forth an execution date without further delay.

Respectfully Submitted,

PAUL J. GAINS, 0020323
MAHONING COUNTY PROSECUTOR



RALPH M. RIVERA, 0082063
ASSISTANT PROSECUTOR
Counsel of Record

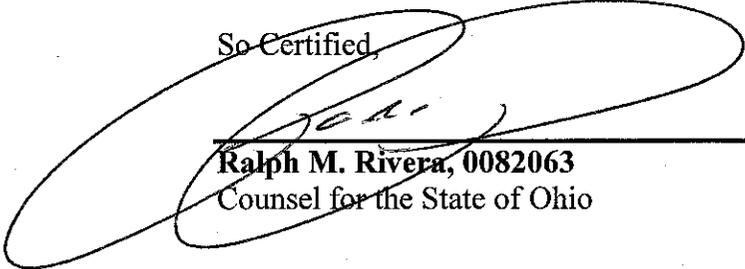
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²⁵ *State v. Steffen* (1994), 70 Ohio St.3d 399, 412.

Certificate of Service

I certify that a copy of the State of Ohio's Motion to Set Date for Execution was sent by ordinary U.S. mail to counsel for Defendant-Appellant, **David L. Doughten, Esq.**, and **Jeffrey J. Helmick, Esq.**, at their above addresses, on January 7, 2011.

So Certified,



Ralph M. Rivera, 0082063
Counsel for the State of Ohio