

ORIGINAL

No. 1997-0268

IN THE SUPREME COURT OF OHIO

STATE OF OHIO

Plaintiff-Appellee

-vs.-

HARRY D. MITTS, JR.

Defendant-Appellant

MOTION TO SET DATE FOR EXECUTION

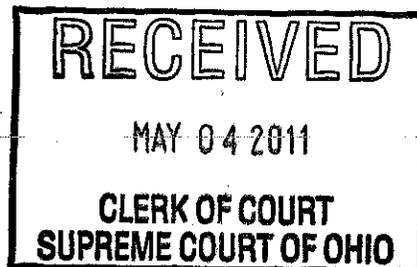
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IN THE SUPREME COURT OF OHIO

STATE OF OHIO

Plaintiff-Appellee,

v.

HARRY D. MITTS, JR.

Defendant-Appellant.

Case No. 1997-0268

On Appeal From The Cuyahoga
County Court Of Appeals, Eighth
Appellate District Court of Appeals
No. 68612

DEATH PENALTY CASE

STATE'S MOTION TO SET DATE FOR EXECUTION

The State of Ohio respectfully moves the Honorable Court to set an execution date for Defendant-Appellant Harry D. Mitts, Jr. ("Mitts"). Mitts has exhausted his state and federal appeals, and his case is now ripe for execution of sentence.

Mitts' death sentence resulted from the aggravated murders of Garfield Heights Police Sergeant Dennis Glivar and civilian John Bryant on August 14, 1994. While speaking racial epithets, Mitts shot and killed Mr. Bryant, an African American. During the six-hour armed standoff with police that followed, Mitts also shot and killed Sergeant Glivar. Mitts further wounded Lieutenant Thomas Kaiser and Officer John Mackey as they attempted to negotiate Mitts' surrender. The trial court adopted the jury's recommendation that Mitts receive the death penalty for the aggravated murders. The trial court also sentenced Mitts to terms of imprisonment for the attempted murders.

On direct appeal, the Eighth District Court of Appeals affirmed Mitts' convictions and sentence. *State v. Mitts* (Dec. 19, 1996), Cuyahoga App. No. 68612,

1996 Ohio App. LEXIS 5790. This Court also affirmed. *State v. Mitts* (1998), 81 Ohio St.3d 233, 1998 Ohio 635, 690 N.E.2d 522.

The trial court subsequently denied Mitts' post-conviction petition, and the Eighth District Court of Appeals affirmed. *State v. Mitts* (Sept. 28, 2000), Cuyahoga App. No. 76962, 2000 Ohio App. LEXIS 4525. This Court declined review. *State v. Mitts* (2001), 91 Ohio St.3d 1445, 742 N.E.2d 144.

The Eighth District Court of Appeals further denied Mitts' application to reopen his direct appeal. *State v. Mitts* (2002), Cuyahoga App. No. 68612, 2002 Ohio 7457, 2001 WL 1335629, 2002 Ohio 7457. This Court affirmed. *State v. Mitts* (2003), 98 Ohio St. 3d 325, 784 N.E.2d 698.

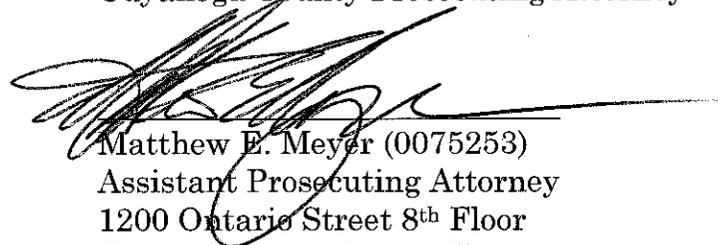
The U.S. District Court for the Northern District of Ohio denied Mitts' petition for writ of habeas corpus in federal court. *Mitts v. Bagley* (Sept. 29, 2005), Case No. 1:03-cv-1131, 2005 U.S. Dist. LEXIS 44018. The Sixth Circuit Court of Appeals reversed, granting habeas relief on a jury instruction issue. *Mitts v. Bagley* (2010), Case No. 05-4420, 620 F.3d 650, 2010 U.S. App. LEXIS 18736. However, the U.S. Supreme Court unanimously reversed the Sixth Circuit, concluding Mitts was not entitled to habeas relief. *Mitts v. Bagley*, Case No. 10-1000, 563 U.S. ___, 2011 U.S. LEXIS 3368 (May 2, 2011) (per curiam).

The state and federal reviews are now complete. Mitts' convictions and sentence of death have been found lawful. Therefore, the State respectfully moves the Court to set an execution date in this case.

With this procedural history, it is clear that Mitts has exhausted all of his state and federal court reviews of his conviction and death sentence. In *State v. Steffen* (1994), 79 Ohio St. 3d 398, 412, this Court held that once a capital defendant has exhausted his direct appeal, postconviction review and delayed reconsideration review, any further filings are likely to be interposed for purposes of delay, and that a capital defendant would have to petition this Court for a stay to allow such further litigation. Accordingly, that State of Ohio respectfully moves this Court for an order setting an execution date.

Respectfully submitted,

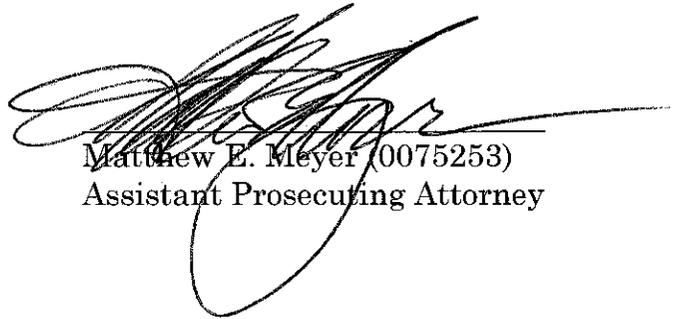
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CERTIFICATE OF SERVICE

The undersigned certifies that a copy of the foregoing Motion to Set Execution Date was sent by regular U.S. Mail this 4th day of May, 2011, to counsel for defendant appellant Mitts, Jeffrey F. Kelleher, Esq., 526 Superior Ave., Ste. 1540 Cleveland, OH 44114, and Robert A. Dixon, Esq., 4403 St. Clair Ave., Cleveland, OH 44103.



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