

In The Supreme Court of Ohio

State of Ohio, :
Appellee, : Case No. **11-0857**
-vs- : Appeal taken from Cuyahoga County
Court of Common Pleas
Denny Obermiller, : Case No. CR-10-542119-A
Appellant. : **Capital Case**

APPELLANT OBERMILLER'S MOTION FOR DELAYED APPEAL

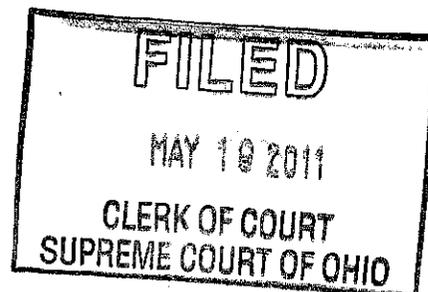
Office of the Ohio Public Defender

Jennifer A. Prillo - 0073744
Assistant State Public Defender

Linda E. Prucha - 0040689
Supervisor, Death Penalty Division

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Counsel For Appellant



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APPELLANT OBERMILLER'S MOTION FOR DELAYED APPEAL

Appellant Denny Obermiller, respectfully moves this Court for leave to file a delayed appeal under S.Ct.Prac.R 19(A)(3). This is a death penalty case, and more than forty-five days have passed since the trial court filed its sentencing entry. Affidavits and a memorandum in support are attached to this motion

Respectfully submitted,

Office of the
Ohio Public Defender

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Counsel For Appellant

MEMORANDUM

Denny Obermiller was convicted by a three judge panel of four counts of aggravated murder with death penalty specifications. On March 10, 2011, the panel filed a sentencing entry and opinion sentencing Obermiller to death on two aggravated murder counts¹. In the sentencing entry, the panel also appointed the Ohio Public Defender (OPD) to represent Obermiller on appeal. (Exhibit A). Pursuant to Sup.Ct.R.19.2(A)(1), Obermiller's notice of appeal was due in the Ohio Supreme Court on April 25, 2011. His appeal is an appeal of right under Ohio law. R.C. § 2929.05(A). However, Obermiller's appeal was not timely filed. Despite the fact that the sentencing entry appointing OPD was filed by the trial court, the court never notified the OPD of their appointment to Obermiller's case and no attorney from the office was assigned to pursue his appeal.

Pam Prude-Smithers, Chief Counsel of the Death Penalty Division of the Ohio Public Defender's Office first learned that OPD was appointed to the Obermiller case on May 13, 2011, after she checked to see when the record was due to be filed for purposes of the office's representation of Obermiller on post-conviction appeal.² (Exhibit B). After realizing that a notice of appeal had not been filed for the case, Ms. Prude-Smithers contacted the Rule 20 office to determine the names of appellate counsel appointed for appeal. Lei Moore, Administrative Assistant for the Attorney Services Division of the Supreme Court of Ohio e-mailed a copy of the disposition form and sentencing entry to Ms. Prude-Smithers. Those documents indicated that OPD was appointed to the case. (Exhibit C). Ms. Prude-Smithers has never been contacted by the court about assigning attorneys from the office to represent Obermiller on appeal. During

¹ The aggravated murder counts were merged for purposes of sentencing.

² The Ohio Public Defender's Office regularly represents capital defendants on post-conviction without appointment.

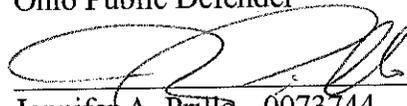
her tenure as Chief Counsel, Ms. Prude-Smithers has never been appointed to a death penalty appeal without discussing the appointment with someone from the trial court.

The disposition form attached to this motion as Exhibit C supports the fact that no one from OPD was notified of the appointment to represent Obermiller. The form does not list the names of the Rule 20 attorneys, and it does not bear a signature indicating acceptance of the appointment. It is the normal practice of Ms. Prude-Smithers to provide this information to the trial court and to have the attorneys from her office sign the form to accept the Rule 20 appointment.

Obermiller was convicted of aggravated murder and sentenced to death by the State of Ohio. He is entitled to an appeal as of right under R.C. §2929.05(A). Obermiller wishes to proceed with his appeal of right. No appeal has been filed on his behalf because no attorney was ever notified of the appointment to his case. For the foregoing reasons, Obermiller requests this Court grant his motion for delayed appeal.

Respectfully submitted,

Office of the
Ohio Public Defender



Jennifer A. Prillo - 0073744
Assistant State Public Defender



Linda E. Prucha – 0040689
Supervisor, Death Penalty Division

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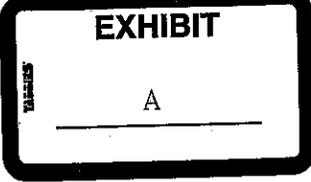
CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing APPELLANT OBERMILLER'S MOTION FOR DELAYED APPEAL was forwarded by regular U.S. Mail to Bill Mason, Cuyahoga County Prosecutor, Cuyahoga County Prosecutor's Office, Justice Center Bld., 9th Floor, 1200 Ontario Street, Cleveland, OH 44113 on this 19th day of May 2011.



Jennifer A. Prillo - 0073744
Assistant State Public Defender

Counsel For Appellant



IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO

FILED

STATE OF OHIO,

Plaintiff,

vs.

DENNY OBERMILLER,

Defendant.

2011 MAR 10 P 3:32

GERALD E. FUERST
CLERK OF COURTS
CUYAHOGA COUNTY

JUDGE SHIRLEY STRICKLAND SAFFOLD
JUDGE TIMOTHY J. MCGINTY
JUDGE JOHN D. SUTULA

CASE NO. CR 542119

SENTENCING OPINION AND
JOURNAL ENTRY

SHIRLEY STRICKLAND SAFFOLD, JUDGE:

I. SENTENCING PHASE

On February 23, 2011, prior to the commencement of the trial for the second phase of this matter, the State moved to merge the counts in this matter as follows:

Count 1—Aggravated Murder with prior calculation and design in violation of R.C. 2903.01(A) (Donald Schneider);
Course of Conduct in violation of R.C. 2929.04(A)(5);
Retaliation for Testimony in violation of R.C. 2929.04(A)(8);
(Counts 2 and 3 merge with Count 1)

Count 4—Aggravated Murder with prior calculation and design in violation of R.C. 2903.01(A) (Candace Schneider);
Course of Conduct in violation of R.C. 2929.04(A)(5);
Retaliation for Testimony in violation of R.C. 2929.04(A)(8);
(Counts 5 and 6 merge with Count 4)

Count 12—Rape in violation of R.C. 2907.02(A)(2), a first degree felony (Candace);

Count 13—Aggravated Burglary in violation of R.C. 2911.11(A)(1), a first degree felony (Donald and Candace Schneider);
(Counts 8, 9, 10 and 11 all merge with Count 13)

Count 15—Theft in violation of R.C. 2913.02(A)(1), a fifth degree felony (date range 8/10/11-8/14/11)

Count 16—Theft of a motor vehicle, in violation of R.C. 2913.02(A)(1), felony of the fourth degree (date 8/11/10)



Count 17—Attempted Aggravated Arson, in violation of R.C. 2923.02/2009.02(A)(2), a third degree felony

(Count 14 merges with Count 17)

Count 18—Burglary in violation of R.C. 2911.12(A)(3), a third degree felony (date range 8/5/10-8/9/10) (Donald and Candace Schneider);

(Count 19 merges with Count 18)

After merger of the counts, this Court proceeded to the second phase of this trial. Defendant pled guilty to the indictment and was convicted of three aggravating circumstances that were alleged as part of Counts 1 and 4, namely:

1. That the aggravated murder was part of a course of conduct involving the purposeful killing of or attempt to kill two or more persons, namely, Donald and Candace Schneider. R.C. 2929.04(A)(5).
2. That the Defendant committed the Aggravated Murders while he was committing, attempting to commit, or fleeing immediately after committing or attempting to commit the rape of Candace Schneider. R.C. 2929.04(A)(7).
3. That the victims of the Aggravated Murder were witnesses to an offense who were purposely killed to prevent the victim's testimony in any criminal proceeding. R.C. 2929.04(A)(8).

At the start of the mitigation hearing, the State, without objection, resubmitted all of its exhibits and evidence from the first phase as proof of the aggravating circumstances.

The Defendant was provided with the opportunity to present mitigation evidence as set forth in the Revised Code. Defendant subsequently waived his right to present such evidence. Defendant, after being referred to the Court Psychiatric Clinic, was found by that Clinic and this Court to be competent to waive presentation of mitigation. Both the State and the Defendant stipulated to the accuracy of the report of the Court Psychiatric Clinic. The Court accepted the stipulation from both parties and after further examination through questioning of the Defendant, is

satisfied that the Defendant knowingly, intelligently, and voluntarily waived said right to present mitigation evidence.

The Court carefully examined any and all mitigating factors that were supported by the evidence in both phases of this case, and finds that these factors are outweighed by the aggravating circumstances by proof beyond a reasonable doubt. After said review, the Court found nothing anywhere in the record of either phase of the trial that would even come remotely close to equaling or outweighing the aggravating circumstances for which he was convicted. Evidence considered in mitigation is discussed below.

First, the Defendant admitted his guilt in committing all these crimes and expressed remorse for the crimes upon his grandmother. He expressed shame and disgust for his conduct.

The Court took into consideration the Defendant's background and family history. Defendant was born February 11, 1982. Both his parents were relatively young at the time, and never married. When he was only two years old, the Defendant's mother was murdered. Defendant's father was incapable of caring for him, and shortly after the death of his mother, was incarcerated. Defendant was then largely raised by his maternal grandparents, Donald and Candace Schneider, the victims in this case. His father played little role in raising him. Defendant was treated by a psychologist between the ages of six to nine years old.

Defendant began to get involved in trouble that brought him to the attention of the Juvenile Court system and Family Services at a young age. He was close to his grandmother, but there appears to have been tension between the defendant and the grandfather/victim. After the defendant was released from prison in 2009 and the two moved into the victim's home, the defendant told his girlfriend that his grandfather, Donald Schneider, had punished him cruelly as a child.

Custody of the Defendant changed a number of times between his grandparents and his father and stepmother (who is also his deceased mother's first cousin). Eventually, both the father and stepmother were incarcerated, leaving custody of the Defendant to his stepmother's parents (his great aunt and great uncle).

Defendant had charges as a juvenile, including an aggravated robbery of a gas station. At age 15, he was sentenced to a juvenile correctional institution. While there, he was convicted of felonious assault upon a guard and attempted escape. Defendant was convicted as an adult and sentenced to state prison for nine years. He was released in August 2009 at age 27, having served 12 consecutive years in both the juvenile and adult institutions.

While Defendant was incarcerated, his father never visited him but did communicate with him two to three times per year. Victim Candace Schneider sent him "care" packages. While incarcerated the Defendant married a woman who was a guard at one of the previous institutions where he was held. Defendant was approximately 21 years old when they married. His wife shortly thereafter committed suicide.

After completion of his sentence in 2009, Defendant came back to the Cleveland area and resided at first with the victims, over the objections of Donald Schneider, then lived in his own apartment with his then girlfriend. Defendant's father helped him obtain a job with him as a roofer. By all accounts, Defendant was a good worker.

The Court also took note of his educational history. The Defendant obtained a GED and took some courses in business administration through Ashland College while he was incarcerated.

The Defendant Motion for Mitigation Expert was granted and a report was being prepared, but the Defendant instructed his appointed attorneys not to present any of the information gathered in their investigation.

II CONCLUSION

The Court therefore finds the aggravating circumstances the Defendant was found guilty of committing outweigh the factors in mitigation of the imposition of the sentence of death beyond a reasonable doubt. The mitigation pales in comparison to the brutal and callous aggravating circumstances. As such, the sentence of the Court is as follows:

As to Count 1, Aggravated Murder with prior calculation and design in violation of R.C. 2903.01(A) (Donald Schneider), Course of Conduct in violation of R.C. 2929.04(A)(5) and Retaliation for Testimony in violation of R.C. 2929.04(A)(8), as well as Count 4 Aggravated Murder with prior calculation and design in violation of R.C. 2903.01(A) (Candace Schneider), Course of Conduct in violation of R.C. 2929.04(A)(5) and Retaliation for Testimony in violation of R.C. 2929.04(A)(8), Defendant has plead guilty to each count and specification and the State has produced evidence that has independently convinced the Court of Defendant's guilt. Furthermore, the Court has found that the aggravating circumstances have been established beyond a reasonable doubt and that they far outweigh any mitigating factors for Counts 1 and 4. Thus, the sentence of the Court is the mandatory sentence of death, to be imposed one year from sentencing on February 25, 2012.

As to Count 12, Rape in violation of R.C. 2907.02(A)(2) a first-degree felony, the sentence of the Court is ten years incarceration.

As to Count 13, Aggravated Burglary in violation of R.C. 2911.11(A)(1), a first-degree felony, the sentence of the Court is ten years incarceration.

As to Count 15, Theft in violation of R.C. 2913.02(A)(1), a fifth-degree felony, the sentence of the Court is twelve months incarceration.

As to Count 16, Theft of a Motor Vehicle in violation of R.C. 2913.02(A)(1), a fourth-degree felony, the sentence of the Court is eighteen months incarceration.

As to Count 17, Attempted Aggravated Arson in violation of R.C. 2923.02/2009.02(A)(2), a third-degree felony, the sentence of the Court is five years incarceration.

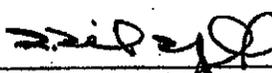
Finally, as to Count 18, Burglary in violation of R.C. 2911.12(A)(3), a third-degree felony, the sentence of the Court is five years incarceration.

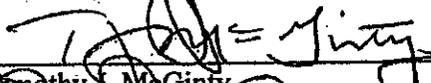
These sentences are to run consecutively for a total of 32.5 years incarceration. After handing down the preceding sentence the Court advised the Defendant of the five year mandatory post release control and his appellate rights. The State Public Defender was appointed to represent him.

Defendant was also advised that due to his conviction of Rape in Count 12 of the indictment that he is now found to be a Tier III violator and was advised of all "Adam Walsh Act" warnings and duties to register as a sex offender under R.C. 2950.032. At the conclusion of his sentencing, the "Defendant signed the Explanation of Duties as a Sex Offender" form and added an obscene remark directed to the court that typified his attitude towards this proceeding and the justice system.

IT IS SO ORDERED.

Date 3/10/11
Date 3-10-11
Date 3-10-11


Judge Shirley Strickland Saffold


Judge Timothy J. McGinty


Judge John D. Sumita

THE STATE OF OHIO }
Cuyahoga County } SS. I. GERALD E. FUERST, CLERK OF
THE COURT OF COMMON PLEAS
WITHIN AND FOR SAID COUNTY.
HEREBY CERTIFY THAT THE ABOVE AND FOREGOING IS TRULY
TAKEN AND COPIED FROM THE ORIGINAL Journal
entry CR 542149
NOW ON FILE IN MY OFFICE.
WITNESS MY HAND AND SEAL OF SAID COURT THIS 25
DAY OF 3 A.D. 2011
GERALD E. FUERST, Clerk
By Carol Haynes Deputy



67619496

**IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO**

THE STATE OF OHIO
Plaintiff

DENNY OBERMILLER
Defendant

Case No: CR-10-542119-A

Judge: SHIRLEY STRICKLAND SAFFOLD

INDICT: 2903.01 AGGRAVATED MURDER /CCS /MEAC
/RTS /FMS
2903.01 AGGRAVATED MURDER /CCS /MEAC
/RTS /FMS
2903.01 AGGRAVATED MURDER /CCS /MEAC
/RTS /FMS
ADDITIONAL COUNTS...

JOURNAL ENTRY

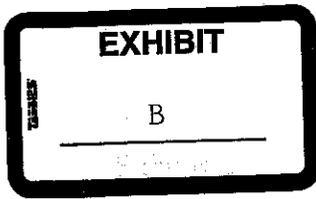
SENTENCING OPINION AND JOURNAL ENTRY SIGNED BY 3-JUDGE PANEL AND ORDERED FILED. OSJ.

03/10/2011
CPEDB 03/10/2011 15:22:11

Judge Signature

Date

HEAR
03/10/2011



In The Supreme Court of Ohio

State of Ohio, :
Appellee, : Case No.
-vs- : Appeal taken from Cuyahoga County
Court of Common Pleas
Denny Obermiller, : Case No. CR-10-542119-A
Appellant. : **Capital Case**

STATE OF OHIO)
) SS:
COUNTY OF FRANKLIN)

AFFIDAVIT OF ATTORNEY PAMELA J. PRUDE-SMITHERS

I, Pamela J. Prude-Smithers, being duly sworn according to law, state the following:

1. I am an attorney, duly licensed to practice law in the State of Ohio, and I am currently employed as Chief Counsel of the Death Penalty Division of the Ohio Public Defender's Office (OPD).
2. On the evening of May 12, 2011, I checked the Ohio Supreme Court web site to see when the record was due to be filed in Denny Obermiller's case. Our office represents most of Ohio's death-sentenced defendants for post-conviction appeal. The time for filing the post-conviction appeal runs from the time the record is filed in the Ohio Supreme Court. Upon reviewing the Ohio Supreme Court online docket to determine the date his post-conviction petition would be due, I discovered that a notice of appeal had not been filed on behalf of Mr. Obermiller.
3. After discovering that an appeal had not been filed on Mr. Obermiller's behalf, I checked the Cuyahoga County Court of Common Pleas docket to see who was appointed to the direct appeal. I could not determine, based on what was filed in the trial court, who was appointed to the appeal.
4. On the morning of May 13, 2011, I spoke with court personnel from Presiding Judge Shirley Strickland Saffold's chambers and with the Attorney Service Division of the Ohio Supreme Court in an attempt to determine who was appointed as appellate counsel for appeal. Lei Moore, the administrative assistant for the Attorney Services Division e-

mailed me a copy of the Rule 20 disposition form. Attached to the form was a copy of Obermiller's sentencing opinion.

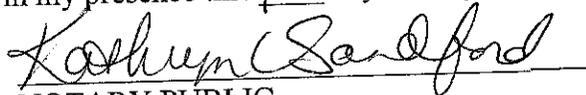
5. Both the disposition form and sentencing opinion appointed the Office of the Ohio Public Defender to Obermiller's appeal. The appointment form was not signed by an OPD attorney and did not list the names of two Rule 20 attorneys.
6. Although OPD represents most clients on post-conviction appeal, the office is not appointed to all direct appeals and is not regularly appointed as direct appeal counsel in Cuyahoga County. Typically when a trial court appoints OPD to a direct appeal, the court contacts the office and ask for the names of the two Rule 20 attorneys to put on the disposition form. I am the person responsible for assigning attorneys to death penalty appeals.
7. May 13, 2011, was the first time I had ever been informed that OPD was appointed to Obermiller's direct appeal. No one from Judge Saffold's chambers ever contacted the office to discuss the appointment.
8. I subsequently prepared this affidavit for purposes of pursuing a delayed appeal.

Further affiant sayeth naught.



Pamela J. Prude-Smithers
Chief Counsel, Death Penalty Division

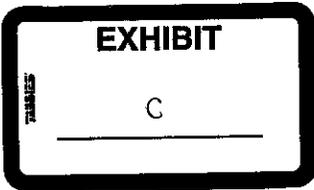
Sworn to me and subscribed in my presence this 19th day of May, 2011.



NOTARY PUBLIC



KATHRYN L. SANDFORD
ATTORNEY AT LAW
NOTARY PUBLIC, STATE OF OHIO
My commission has no expiration date.
Section 147.03 R.C.



THE SUPREME COURT OF OHIO

In the Common Pleas Court of Cuyahoga



Disposition of a Capital Case by the Trial Court

This form is used pursuant to Rule 20 of the Rules of Superintendence for the Courts of Ohio to report the disposition of a capital case. Complete and submit this form within two weeks of disposition to: Tammy White, Supreme Court of Ohio, 65 S. Front Street, 5th Floor, Columbus, OH 43215-3431.

STATE OF OHIO v. Denny Obermiller Case No. CL 54101-54219

Lead Trial Counsel: Kevin Speltz Trial Co-Counsel James McDonnell

Outcome of the Proceedings in this Court:

- Found not guilty
Plead guilty
Plead guilty to lesser offense:
Found guilty of aggravated murder & specification by jury
Found guilty of lesser offense by jury:
Found guilty of aggravated murder & specification by three judge panel
Found guilty of lesser offense by three judge panel:
Other:

Was this defendant sentenced to Death? Yes (if yes, complete next section for appointment of counsel) No (if no, please indicate sentence below)

Sentenced to: Life Years Without parole With parole

Complete the following section ONLY if the defendant was sentenced to death. Attach a copy of the sentencing entry.

This court has appointed the following two Rule 20 certified appellate counsel to represent the defendant on appeal:

Name: OHIO PUBLIC DEFENDER Name:
Atty. Reg. No. Atty. Reg. No.
Address: Address:
Telephone: Telephone:

JUDGE SHIRLEY STRICKLAND SAFFOLD Judge: Date of Appointment: 2-25-11

ATTORNEY CERTIFICATION

We hereby accept appointment as appellate counsel in this case. We affirm that we are currently certified under Sup.R. 20 to accept appointment as appellate counsel, and certify that this appointment will not create a total workload so excessive that it interferes with or prevents the rendering of quality representation in accordance with constitutional and professional standards.

Appellate Counsel Date Appellate Counsel Date