

IN THE SUPREME COURT OF OHIO

STATE OF OHIO, :  
 Plaintiff-Appellee, :  
 -vs- : Case No. **11-2005**  
 JASON DEAN, : Clark County CP No. 05 CR 0348  
 Defendant-Appellant. : **DEATH PENALTY CASE**

NOTICE OF APPEARANCE

**RECEIVED**  
 NOV 30 2011  
 CLERK OF COURT  
 SUPREME COURT OF OHIO

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Counsel for Defendant-Appellant

**FILED**  
 NOV 30 2011  
 CLERK OF COURT  
 SUPREME COURT OF OHIO

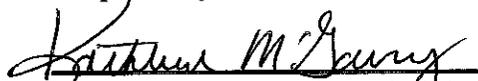
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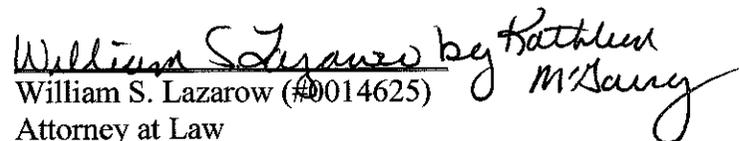
Now comes Kathleen McGarry, Ohio Attorney Registration Number 0038707 and William S. Lazarow, Ohio Attorney Registration Number 0014625 and enter their appearance as counsel for Jason Dean, the Defendant Appellant in the above cited cases. Undersigned counsel is also certified as appellate counsel in death penalty cases under Rule 20 of the Rules of Superintendence for the Courts of Ohio. The entry appointing counsel in the common pleas court and the entry regarding appellate counsel fees is attached.

Respectfully submitted,



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and

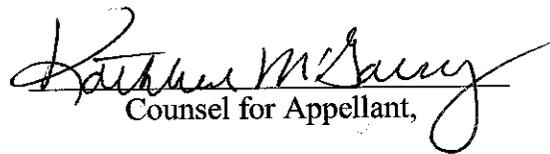


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**CERTIFICATE OF SERVICE**

I hereby certify that a true copy of the foregoing Notice of Appearance was forwarded by regular U.S. Mail to D. Andrew Wilson, Prosecuting Attorney, P.O. Box 1608, Springfield, Ohio 45501, this 28th day of November, 2011.

  
Counsel for Appellant,

IN THE COURT OF COMMON PLEAS  
CLARK COUNTY, OHIO

STATE OF OHIO,

Plaintiff,

- vs. -

JASON DEAN,

Defendant.

Case No. 05-CR-348

ENTRY

ANGELI, CLERK  
COMMON PLEAS COURT  
CLARK COUNTY, OHIO

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The Defendant was found guilty by a jury of the following counts: Count One attempted murder with a firearm specification; Count Two, attempted murder with a firearm specification, Count Three, aggravated robbery with a firearm specification; Count Five, improperly discharging a firearm into a habitation with a firearm specification; Count Six, improperly discharging a firearm in to a habitation with a firearm specification; Count Seven, attempted murder with a firearm specification; Count Eight attempted murder with a firearm specification; Count Nine, attempted murder with a firearm specification; Count Ten, attempted murder with a firearm specification; Count Twelve, aggravated murder with a firearm specification, a specification, that the aggravated murder of Titus Arnold was as part of a course of conduct involving the purposeful killing of, or attempt to kill, two or more people, and a specification that the murder of Titus Arnold was committed while the Defendant was committing, or attempting to commit, aggravated robbery, and that the aggravated murder was committed with prior calculation and design; Count Thirteen, aggravated murder with a firearm specification, a specification, that the aggravated murder of Titus Arnold was as part of a course of conduct involving the purposeful killing of, or attempt to kill, two or more people, and a specification that the murder of Titus Arnold was committed while the Defendant was committing, or attempting to commit, aggravated robbery, and that the aggravated murder was committed with prior calculation and design; and Count Fourteen, aggravated robbery with a firearm specification. Each count set forth under the Ohio Revised Code Sections as contained in the indictment.

The Defendant was also convicted by the Court of four counts of having weapons while under disability as set forth under the Ohio Revised Code and contained in the Counts Four, Eleven, Fifteen, and Sixteen of the indictment. The Defendant was found guilty of Counts Four, Eleven, Fifteen, and Sixteen after having knowingly, voluntarily, and intelligently waived his right to a jury trial both in writing and in open court.

On September 30, 2011, a sentencing hearing was held with respect to all of the charges set forth above. The Defendant was present in court with his attorneys, Gregory Meyers, Jerry McHenry, and Robert Barnhart. Present for the State were Clark County Prosecutor, D. Andrew Wilson, and Special Assistant Prosecuting Attorneys, Stephen Schumaker, and Darnell Carter.

WTL

27 Oct 2011

The Defendant was offered an opportunity to make statement. During his allocation, the Defendant thanked the Court for being fair, and also thanked his attorneys for their work on his behalf. Arguments were made for the Defendant by Mr. Meyers and on for the State by Mr. Wilson. Although the victim's representative was offered an opportunity to speak, the State offered no victim impact statement.

The Court considered all of the information presented at the hearing, the record, and the factors pertaining to the seriousness of the offense. The Court further considered the likelihood of recidivism, and the factors contained in Ohio Revised Code Sections 2929.12, and 2929.13. The Court being fully informed of the circumstances surrounding the charges found no cause which would preclude it from pronouncing the sentence. Therefore, under the law and judgment of the Court, and the State of Ohio, the Defendant is sentenced to a basic prison term of 10 years imprisonment on Count One, 10 years imprisonment on Count 2, 10 years imprisonment on Count Three, 5 years imprisonment on Count Four, 8 years on Count Five, 8 years imprisonment on Count Six, 10 years imprisonment on Count Seven, 10 years imprisonment on Count Eight, 10 years imprisonment on Count Nine, 10 years imprisonment on Count Ten, 5 years imprisonment on Count Eleven, 10 years imprisonment on Count Fourteen, 5 years imprisonment on Count Fifteen, and 5 years imprisonment on Count Sixteen. The Defendant is further sentenced to an additional term of three years imprison as a mandatory and consecutive term pursuant to Revised Code Section 2929.14(D)(1) on each of the firearm specifications, being one additional term for the merged Counts One, Two, and Three; One additional term for the merged Counts Five, Six, Seven, Eight, Nine, and Ten; one additional sentence for the merged Counts Twelve, Thirteen, and Fourteen. These prison terms shall be served in the custody of the Director of the Department of Rehabilitation and Corrections. The Court will grant credit for 2,354 days towards that sentence as the record shows that the Defendant has spent this amount of time incarcerated while awaiting disposition of these charges.

As to the penalty on Count Twelve of the indictment, and the related specifications, the Court having found by separate opinion, that after weighing all of the appropriate evidence, all of the mitigating factors, the arguments of counsel, and the applicable law, that the aggravating circumstances set forth in Specification One of Count Twelve outweighs the mitigating factors beyond a reasonable doubt. Furthermore, the Court accepts the recommendation of the jury and hereby sentences Jason Dean to death for the aggravated murder of Titus Arnold as charged in Count Twelve of the indictment. The Court orders that an execution date shall be set for the 23<sup>rd</sup> day of March, 2012, to be carried out by the appropriate authorities of the State of Ohio. This execution date is subject to further order by the Supreme Court of Ohio.

The Court further orders that all of these sentences be served consecutively to one and other for a total sentence of Death plus one hundred twenty-five years of imprisonment in the Ohio State Penitentiary. The consecutive sentences are necessary to protect the public from future crime, and consecutive sentences are not disproportionate to the seriousness of the offender's conduct and to the danger that the offender poses to the public. The Court further finds that all of these offenses were committed as part of a course of conduct, and the harm caused by the offenses was so great or so unusual that no single prison term for any one of the offenses adequately reflects the seriousness of the offender's conduct. The Court also finds that the

27 Oct 2011

...of criminal conduct demonstrates that consecutive sentences are necessary to protect the public from future crime by the offender.

The Court hereby imposes the mandatory period of five years post-release control. If the Defendant violates the terms of post-release control, then the Parole Authority will impose a prison term of up to one half of the state prison term originally imposed and may also impose additional post-release control for a period of up to eight years. If the post-release control violation results from a conviction for another felony offense, the Court sentencing the Defendant may impose a prison term on the post-release control violation up to the remaining period of post-release control or one year, whichever is greater, to be served prior to and consecutive with the sentence on the new felony offense.

The Defendant was advised that he may never again possess a firearm, and if he is found to be in possession of a firearm, he is subject to prosecution and imprisonment by both the State of Ohio and the federal authorities. The Defendant is ordered to provide a DNA sample to the State of Ohio, and the Defendant is ordered to pay the costs of this action.

The Court hereby appoints Kathleen McGarry and William Lazarow as death penalty certified appellate counsel to represent the Defendant on appeal, and hereby orders that said counsel file a notice of appeal on behalf of the Defendant at no cost to the Defendant.

The Defendant is hereby remanded to the custody of the Director of the Department of Rehabilitation and Corrections forthwith, to be held on death row pending his execution.

IT IS SO ORDERED:

*Sumner Walters*  
SUMNER WALTERS, JUDGE

JOURNALIZED  
OCT 20 2011  
RON VINCENT  
CLERK OF COURTS

VINCENT, CLERK  
CLERK OF COURTS  
MARK COUNTY, OHIO  
2011 OCT 18 AM 10:44

FILED

IN THE COURT OF COMMON PLEAS, CLARK COUNTY, OHIO

State of Ohio,  
Plaintiff,

v.

Jason Dean,  
Defendant.

Case No. 05-CR-0348  
JUDGMENT ENTRY  
APPELLATE COUNSEL FEES

CLERK OF COURT  
CLARK COUNTY, OHIO

2011 SEP 30 PM 2:05

This matter comes on sua sponte for consideration of the matter of the Clark County Assigned Counsel Fee Schedule.

Included therein, the Board of County Commissioners of Clark County has established a cap on appellate counsel fees at a total of \$10,000, for two attorneys, for the appeal of a capital murder, death penalty conviction. The Supreme Court of Ohio, per Sup.R. 65, requires the appointment of two capital certified appellate counsel to represent a defendant in a death penalty appeal.

The court has attempted to secure counsel to represent the defendant in the appeal of the death penalty imposed herein. The State of Ohio Public Defender's Office is disqualified from appointment because they provided trial counsel herein. And there are no certified appellate counsel in Clark County. The court has been unable to secure appellate counsel that the court deems competent, who are willing to accept appointment under the fee limitations imposed by the Clark County Assigned Counsel Fee Schedule. A deprivation of competent counsel because of a fee cap imposed by the Board of County Commissioners would constitute a violation of the defendant's right to counsel secured by the Sixth and Fourteenth Amendments to the U. S. Constitution. See *State v. Sells*, 2006-Ohio-5134, ¶ 17 (Miami Co. App.).

The Clark County Assigned Counsel Fee Schedule may also violate Ohio Adm.Code 120-1-15(A), which provides that "[i]n establishing a fee schedule to be paid appointed counsel in indigent cases eligible for reimbursement pursuant to section 120.33 of the Revised Code, the county commissioners and county bar association shall establish a schedule that is comparable to the fees paid to retained counsel in the same type of cases." While a violation of the Ohio Administrative Code would not constitute a deprivation of a defendant's constitutional rights, it is instructive as to what constitutes a reasonable fee for indigent defense.

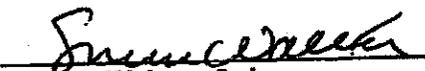
The court has considered the fee caps applicable in other Ohio counties. The Ohio Office of Public Defender, which is responsible for the reimbursement of fees to the counties, has established a maximum fee of \$25,000 for two attorneys. The court finds

that to be a reasonable fee cap, which will enable the court to appoint competent counsel to represent the defendant herein.

Therefore, it is the ORDER of this court that the fees for assigned counsel in this matter will be subject to the following limitation:

The maximum fee permitted in this matter will be limited to \$25,000.

Dated: September 30, 2011

  
Sumner Walters, Judge

