

IN THE SUPREME COURT OF OHIO  
2012

STATE OF OHIO,

Plaintiff-Appellee

-vs-

WARREN K. HENNESS,

Defendant-Appellant

Case No. 96-536

On Appeal from the  
Franklin County Court  
of Appeals, Tenth  
Appellate District

Court of Appeals  
Case No. 94AP-2240

DEATH PENALTY CASE

**MOTION OF PLAINTIFF-APPELLEE STATE OF OHIO  
TO SET EXECUTION DATE**

**MOTION OF PLAINTIFF-APPELLEE STATE OF OHIO  
FOR EXPEDITED CONSIDERATION**

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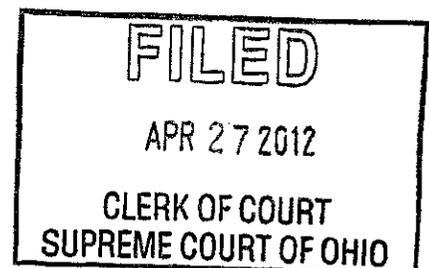
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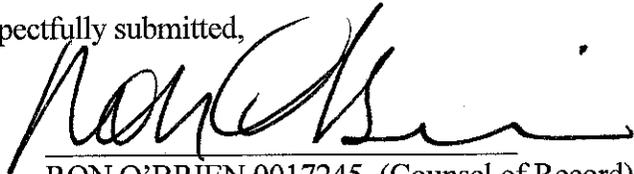
For the reasons stated in the attached memorandum in support, plaintiff-appellee State of Ohio respectfully requests that this Court set an execution date for defendant Henness.

In light of R.C. 2929.05(B), which requires that this Court give priority to the review of death-sentence cases "over all other cases," the State also respectfully requests expedited consideration of the motion to set execution date.

Messrs. Stebbins and Thompson are being served with these motions because they were appointed by the United States Court of Appeals for the Sixth Circuit in defendant's federal habeas appeal on September 22, 2011. Mr. Stebbins also filed a petition for writ of certiorari in the United States Supreme Court, which was recently denied by that Court.

Mr. Graeff is also being served because he is listed as counsel of record in the current appeal that resulted in the affirmance of defendant's convictions and sentence in June 1997.

Respectfully submitted,



RON O'BRIEN 0017245 (Counsel of Record)  
Franklin County Prosecuting Attorney  
STEVEN L. TAYLOR 0043876  
Chief Counsel, Appellate Division

Counsel for State of Ohio

## MEMORANDUM IN SUPPORT

In recently affirming the denial of federal habeas relief, the Sixth Circuit provided the following summary of the procedural history.

Heness was indicted in Ohio on three counts of aggravated murder: (1) murder with prior calculation and design; (2) aggravated robbery-murder; and (3) kidnap-murder. He was also charged with aggravated robbery, kidnapping, forgery, and having a weapon while under disability. He pleaded guilty to the forgery counts and elected to try the weapon charge before the trial court, which found him guilty. A jury convicted him of the remaining counts and recommended a death sentence. The trial court adopted the jury's recommendation and sentenced Henness to death. On direct appeal, the Ohio Court of Appeals affirmed Henness's convictions and sentence of death. *State v. Henness*, No. 94APA02-240, 1996 Ohio App. LEXIS 408, 1996 WL 52890 (Ohio App. Feb. 6, 1996) (unpublished). The Ohio Supreme Court also affirmed. [*State v.*] *Heness*, [79 Ohio St.3d 53, 679 N.E.2d 686,] at 700 [(1997)].

In 1996, Henness filed a state post-conviction petition, which the trial court denied. The Ohio Court of Appeals affirmed the trial court's denial of his petition. *State v. Henness*, No. 97APA04-465, 1999 Ohio App. LEXIS 4374, 1999 WL 739588 (Ohio App. Sept. 23, 1999) (unpublished). The Ohio Supreme Court denied Henness permission to further appeal this decision.

In 2001, Henness's counsel filed a motion to reopen his direct appeal under Ohio App. R. 26(B) with the Ohio Court of Appeals. Henness also filed a pro se Rule 26(B) motion. The court denied both motions because Henness had not established good cause for his failure to timely file the motions. Although Henness attempted to appeal this decision to the Ohio Supreme Court, the court rejected his appeal as untimely.

In 2001, Henness also filed a § 2254 petition in federal court, alleging numerous violations of his constitutional rights. The district court subsequently dismissed his petition as meritless. *Heness v. Bagley*, No. 2:01-cv-043, 2007 U.S.

Dist. LEXIS 80647, 2007 WL 3284930 (S.D. Ohio Oct. 31, 2007).

*Hennes v. Bagley*, 644 F.3d 308 (6th Cir. 2011). After the Sixth Circuit affirmed the denial of habeas relief, see *id.*, defendant filed a petition for en banc rehearing, which was denied.

Defendant then filed a petition for writ of certiorari in the United States Supreme Court. On April 23, 2012, that Court denied the petition. See U.S. Sup. Ct. No. 11-8618.

With this procedural history, defendant has now exhausted his state and federal court reviews of his conviction and death sentence. It is now appropriate to set a date for the execution of the death sentence against defendant.

The State respectfully requests that the execution be set within the next six months or as soon as possible thereafter. R.C. 2929.05(B) provides that “the supreme court shall give priority over all other cases to the review of judgments in which the sentence of death is imposed \* \* \*.” The General Assembly plainly adopted this provision requiring expeditious review in order to ensure that there was no undue delay in carrying out the death sentence. This provision would go for naught if this Court could conduct that review but then delay the execution for reasons unnecessary to allow judicial review. This Court “shall appoint a day” for the execution, see R.C. 2953.07, and the need for a expeditious date for execution is fairly implied by the need to give such cases priority over other cases.

Moreover, any review by the parole board and/or the Governor for clemency can or should be able to occur within six months. The present death-sentence case and the other death-sentence cases that have exhausted judicial review should receive priority over all other cases that would be reviewed by these officials. These officials, just as much as this Court,

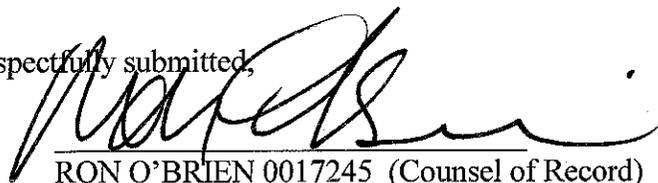
should give priority to such death-sentence cases. Setting the execution date in 2013, 2014 or thereafter would not be expeditious and would not reflect the high priority that this case should receive.

An execution date in 2012 in no way could be considered "premature" or "rushed." Defendant killed Richard Myers in March 1992, over twenty years ago. Federal habeas review alone took over eleven years starting when defendant filed his habeas petition in federal district court in January 2001. The time frames allowed for judicial review already have significantly delayed defendant's execution. It cannot be claimed that even more delay is needed to review a case that has already been reviewed for several years.

Richard Myers received no such dispensation of delay from defendant. Defendant killed Myers twenty years ago, no doubt depriving the 51-year-old Myers of several years of additional life. Giving defendant an additional year or years of life through a delayed execution date would be upside down, unnecessarily giving defendant a year or more of additional life that Richard Myers was deprived of. Twenty years since the killing is long enough. Eighteen years since the January 1994 judgment of conviction is long enough.

Accordingly, the State respectfully requests that this Court grant expedited consideration of the motion to set execution, and, upon such consideration, the State respectfully requests that this Court set an execution within the next six months or as soon as possible thereafter.

Respectfully submitted,



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STEVEN L. TAYLOR 0043876

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Counsel for State of Ohio

**CERTIFICATE OF SERVICE**

This is to certify that a copy of the foregoing was mailed by regular U.S. Mail on  
this 27th day of April, 2012, to the following:

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