

MEMORANDUM IN SUPPORT

INTRODUCTION

In 1993, the Hamilton County Court of Common Pleas convicted and sentenced Defendant Jeffrey Wogenstahl to death for the aggravated murder of ten year old Amber Garrett. In the nearly two decades since his sentence and conviction, Wogenstahl has pursued all available avenues of appeal afforded under both Ohio and federal law. Every court that has examined Wogenstahl's claims has upheld his murder conviction and death sentence. Wogenstahl has completed all state and federal litigation. The State of Ohio accordingly requests this Court to set an execution date for Jeffrey Wogenstahl.

STATE COURT PROCEEDINGS

In a twisted act of revenge, Wogenstahl kidnapped Amber Garret (age 10) from her home, took her to a secluded area, and stabbed her to death. On September 1, 1992, the grand jury of Hamilton County, Ohio, indicted Wogenstahl with death-eligible offenses and specifications. In 1993, Wogenstahl was convicted of aggravated murder and sentenced to death.

Wogenstahl appealed his convictions and sentence to the Ohio Court of Appeals for the First Appellate District. The Ohio Court of Appeals affirmed the judgment of the trial court. *State v. Wogenstahl*, 1994 Ohio App. LEXIS 5321 (Hamilton Ct. App. Nov. 30, 1994). The Ohio Supreme Court affirmed. *State v. Wogenstahl*, 75 Ohio St.3d 344 (1996) The United States Supreme Court declined further review. *Wogenstahl v. Ohio*, 519 U.S. 895 (1996).

In 1996, Wogenstahl filed a petition for post-conviction relief, which was denied by the trial court and affirmed on appeal. *State v. Wogenstahl*, 1998 Ohio App. LEXIS 2567 (1st Dist.

Ct. App. 1998), This Court declined further review. *State v. Wogenstahl*, 83 Ohio St. 3d 1449 (1998).

On January 26, 1998, Wogenstahl filed a motion for leave to file a motion for a new trial, which the trial court denied in a decision affirmed on appeal. *State v. Wogenstahl*, 1999 Ohio App. LEXIS 546. This Court declined further review. *State v. Wogenstahl*, 85 Ohio St. 3d 1497 (1999).

Also in 1998, Wogenstahl filed in the Ohio Court of Appeals a *pro se* motion for leave to file a delayed application for Rule 26(B) reopening in the Court of Appeals. The Court of Appeals denied relief. *State v. Wogenstahl*, No. C-930222, May 19, 1998. The Ohio Supreme Court affirmed. *State v. Wogenstahl*, 83 Ohio St. 3d 516 (1998).

FEDERAL COURT PROCEEDINGS

In 1999, Wogenstahl filed a petition for writ of habeas corpus with the United States District Court for the Southern District of Ohio. In 2007, the District Court denied his petition. *Wogenstahl v. Mitchell*, 2007 U.S. Dist. LEXIS 67388 (S.D. Ohio 2007). In 2010, the Sixth Circuit Court of Appeals affirmed. *Wogenstahl v. Mitchell*, 668 F.3d 307 (6th Cir. 2012). On October 1, 2012, the United States Supreme Court declined further review. *Wogenstahl v. Robinson*, __ S. Ct. __ (2012).

OTHER LITIGATION

Wogenstahl is a plaintiff in the *Ohio Execution Protocol Litigation*, US District Court Southern District Of Ohio Civil Docket 2:11-cv-01016 GLF-MRA but has not received a stay of execution based on this litigation.

CONCLUSION

Wogenstahl has fully exhausted all available legal challenges to his convictions and death sentence. In *State v. Steffen*, 79 Ohio St. 3d 399, 412 (1994), this Court held that once a capital defendant has exhausted his direct appeal, post-conviction 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 further litigation. Wogenstahl does not have any pending petition for stay before this Court.

Since Wogenstahl has exhausted his state and federal review, there is no further impediment to prevent this Court from setting an execution date. Accordingly, the State of Ohio respectfully requests this Court to set a date for Jeffrey Wogenstahl's execution.

Respectfully submitted,

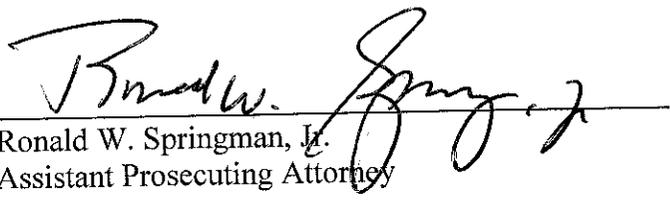
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STATE OF OHIO

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing *Motion to Set an Execution Date* was served upon Gregory W. Meyers at 250 E. Broad St. Suite 1400, Columbus, OH 43215 and to Andrew P. Avellano, at 4181 E. Main St., Columbus, OH 43213, by first class U.S. mail, postage prepaid, on the 3rd day of October, 2012.


Ronald W. Springman, Jr.
Assistant Prosecuting Attorney