

ORIGINAL

IN THE SUPREME COURT OF OHIO

2011-1921

STATE OF OHIO

:

Plaintiff-Appellee

:

vs.

:

This is a Death Penalty Case

:

ANTHONY SOWELL

Defendant-Appellant

:

APPELLANT'S SOWELL'S MOTION TO SUPPLEMENT THE RECORD

COUNSEL FOR APPELLEE

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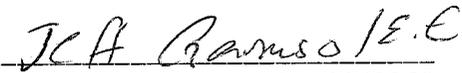
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|---------------------|---|------------------------------|
| STATE OF OHIO | : | |
| | : | |
| Plaintiff-Appellee | : | |
| | : | |
| vs. | : | |
| | : | |
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APPELLANT'S SOWELL'S MOTION TO SUPPLEMENT THE RECORD

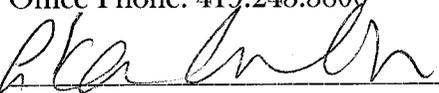
Pursuant to Ohio Sp. Ct. R. Prac. 19.4(D), Appellant Anthony Sowell moves this Court to order that the record be supplemented with exhibits which were not transferred to thi Court as part of the record.

Mr. Sowell was convicted of a capital crime and sentenced to death. Ohio Rev. Code Ann. § 2929.05 mandates appellate review of the entire record in his direct appeal. Supplementing the record is, therefore, necessary to comply with this statutory mandate. The reasons for this request are set forth in the attached memorandum.

Respectfully submitted,



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Memorandum

Anthony Sowell was convicted of aggravated murder and sentenced to death. He is currently before this Court on direct appeal. The record on appeal is incomplete. Upon review of the record, Mr. Sowell's counsel determined that several exhibits were missing. The undersigned received two of those exhibits from the Ohio Public Defender's Office, and has appended them to this motion as part of this Motion.

The transcript of proceedings reflects that Defendant's Exhibit LLL (a photograph of Mr. Sowell taken while he was in the marines) and Defendant' Exhibit JJJJ (Certificate of Completion for Adult Children of Alcoholics - dated 11/4/94) were both reviewed by defense mitigation specialist and witness Lori James-Townes before testifying at the trial's penalty phase. Both exhibits were offered into evidence. (Tr. 11199-200) The trial court admitted Ex. JJJJ (Tr. 11213-140) but excluded Ex. LLL as cumulative. (Tr. 11214)

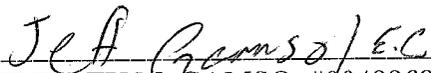
Ohio Sup. Ct. R. Prac. 19, § 4(D) authorizes this Court to direct supplementation of material items omitted from the record by error or accident. Ohio Sup. Ct. R. Prac. 19, § 4(A)(2) provides that "(t)he custodian of the record shall not transmit any physical exhibits unless directed to do so by the Clerk of the Supreme Court or as provided by S.Ct. Prac. R. 19.4(A)(3)." Ohio Sup. Ct. R. Prac. 19.4(A)(3) states that "The custodian shall transmit any audio exhibits, video exhibits, and documents such as papers, maps, or photographs." Further, O.R.C. § 2929.05 mandates that this Court review the entire record in a capital case.

Under § 16, Article I of the Ohio Constitution, Mr. Sowell is entitled to a "complete, full, and unabridged transcript of all proceedings against him so that he may prosecute an effective appeal." *State ex. rel. Spirko v. Court of Appeals, Third Appellate Dist.*, 27 Ohio St. 3d 13, 18, 501 N.E.2d 625, 629 (1986). In order for appellate counsel to completely present, and for this

Court to accurately determine error, these exhibits ought to be added to the record. Certainly, in the interest of completeness, this Court should consider this case on as complete a record as possible. In the absence of such a record for review, counsel may not be able to provide Mr. Sowell the effective representation to which he is constitutionally entitled. *Id.*; See also *Evitts v. Lucey*, 469 U.S. 387 (1985).

Wherefore, Appellant asks this Court to permit him to supplement the record with the attached Exhibits.

Respectfully submitted,

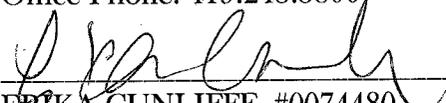

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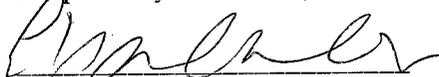
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CERTIFICATE OF SERVICE

A copy of the foregoing Motion to Supplement the Record on Appeal was hand delivered upon Timothy J. McGinty, Cuyahoga County Prosecutor, The Justice Center, 1200 Ontario Street, 9th Floor, Cleveland, Ohio 44113 on this 27th day of November 2012.

Respectfully Submitted,



Erika B. Cunliffe

Assistant Public Defender

APPENDIX



LL

DEFENDANT'S
EXHIBIT

Certificate of Answer
Adult Children
of Alcoholics
11/4/94

**DEFENDANT'S
EXHIBIT**
JJJJ



This Certificate is Awarded to

ANTHONY E. SOWELL

In recognition of successful completion of

ADULT CHILDREN OF ALCOHOLICS

In witness thereof, we have affirmed our hand and seal.

Awarded this 4TH day of NOVEMBER, 19 94.

A handwritten signature in cursive script, appearing to read "Dr. E. B. Anyadoh".

DR. E. B. Anyadoh, Program Coordinator