

ORIGINAL

IN THE SUPREME COURT OF OHIO

STATE OF OHIO,	)	CASE NO.: 12-0852
	)	
Plaintiff-Appellee,	)	On Appeal from the Court of Appeals of
vs.	)	Ohio, Eighth Appellate District,
	)	Cuyahoga County
	)	
ROMELL BROOM,	)	
	)	Court of Appeals Case No. 96747
Defendant-Appellant.	)	
	)	

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**REPLY BRIEF OF APPELLANT ROMELL BROOM  
IN COMPLIANCE WITH THIS COURT'S ORDER OF OCTOBER 23, 2013**

**(This is a Death Penalty Case - No Execution Date Is Set)**

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## ARGUMENT

Appellee, the State of Ohio filed its response brief on December 11, 2013. Appellant Romell Broom hereby timely files his reply.

### QUESTION ONE

#### **Does Broom's petition satisfy any of the statutory exceptions for successive postconviction petitions enumerated in R.C. 2953.23(A)?**

Appellant State of Ohio seemingly admits that Broom meets the requirement of Ohio Rev. Code §2953.23(A)(1)(a) by acknowledging that he was “unaware of the facts to support his claim” but argues that the facts that Broom presents to show that his death sentence is unconstitutional “are not those contemplated by the postconviction statute.” State’s Brief p. 2. The State urges that Ohio’s postconviction statute is designed to address only “errors that occurred during trial or sentencing.” *Id.* A capital sentence can only be imposed in a capital sentencing proceeding in a trial court. Ohio Rev. Code §2929.03. A sentence to an unconstitutional punishment is thus an error that occurred during sentencing. Even if the unconstitutional nature of the punishment was not apparent at the time, the trial court was prohibited from issuing a sentencing order that would be implemented in a cruel and unusual fashion and/or in violation of the prohibition against double jeopardy. If this were not the case, every trial court could order unconstitutional punishments while leaving the one sentenced with no recourse.

The State next argues that the possibility of multiple execution attempts (“method of execution”) “is not a mitigating factor that a factfinder would consider.” *Id.* at 2-3. But, under Ohio law, any factor “relevant to the issue of whether the offender should be sentenced to death” is a mitigating factor. Ohio Rev. Code §2929.04(B)(7) (1981) and see, *Lockett v. Ohio*, 438 U.S. 586 (1978) (constitution requires that any mitigating factor be considered by sentencer). Thus, if

a factfinder found that execution, as carried out or as it might be carried out by the State of Ohio, was cruel and unusual or violated contemporary standards of decency (Fifth and Eighth Amendments to the United States Constitution and/or under Art. I, Sec. 9 and 10 of the Ohio Constitution), the cruelty/unconstitutional nature of the sentence could be considered as a factor relevant to whether the offender should be sentenced to death. Every capital factfinder must consider the nature of the punishments available in order to determine which punishment is appropriate. And the trial judge is the final factfinder whenever death is imposed. Ohio Rev. Code §2929.03(D)(3).

But whether or not the nature of the punishment is viewed as mitigating, imposition of an unconstitutional punishment is still an error that occurred at trial and postconviction review is the appropriate mechanism for providing relief once the facts demonstrating the basis for the constitutional challenge become known. Moreover, even if the information showing that Ohio would engage in cruel and unusual execution methods, including multiple execution attempts on the same condemned prisoner, was not available at the time of trial, this does not insulate the unconstitutional sentence from review under Ohio's postconviction law. The law is designed to address the effect of facts that were not available at the time of trial. Ohio Rev. Code §2953.23(A)(1)(a).

## QUESTION TWO

**If no R.C. 2953.23(A) statutory exception applies, did the trial court have subject matter jurisdiction to consider Broom's petition?**

Appellee the State of Ohio next argues that Broom's request for declaratory relief was improper because "A declaratory judgment action cannot be used as a substitute for appeal or as a collateral attack upon a conviction." State's Brief, p. 4. By this statement, the State appears to admit that Broom has a remedy under Ohio's postconviction law.

The State next argues incorrectly that Broom's request for declaratory relief was presented as a motion and thus was "procedurally incorrect." *Id.* Broom did not file a motion but instead filed a document captioned "PETITION TO VACATE OR SET ASIDE JUDGMENT AND/OR SENTENCE, IN PART, OR GRANT OTHER APPROPRIATE RELIEF, PURSUANT TO OHIO REVISED CODE §2953.23 OR, IN THE ALTERNATIVE, FOR DECLARATORY RELIEF UNDER OHIO REVISED CODE §2721.01 ET SEQ. AND CIV. R. 57." This document is pleaded in the form of a complaint, not a motion. Exhibit A.

Furthermore, the declaratory judgment act does not require a particular form of pleading. It allows declaratory relief to be sought by way of "an action or proceeding." Ohio Rev. Code §2721.06. The provisions of the Declaratory Judgment Act are to be "liberally construed and administered." Ohio Rev. Code §2721.13. Liberal construction of the statute's phrase "action or proceeding" should include the pleading filed by Broom.

Even if the caption of the document should have been different, Ohio courts frequently, in the interest of justice, treat mislabeled documents as what the filer intended. Mislabeled a document does not deprive a court of subject-matter jurisdiction. Broom's action for declaratory relief was properly filed and the trial court had subject matter jurisdiction of Broom's request for declaratory relief.

## **CONCLUSION**

Romell Broom has a constitutional right not to be subjected to more than one execution attempt under the circumstances present in this case including the fact that significant psychological and physical pain have already been inflicted on him in a first attempt. **WHEREFORE**, for all of the reasons set out herein, in his initial brief, and in the interest of justice, Appellant Romell Broom respectfully requests that this Court exercise jurisdiction and

reverse. This case involves substantial constitutional questions. The lower courts' decisions dismissing Broom's postconviction petition and denying him declaratory relief were error. Broom is entitled to an order that the State may not seek to execute him again by any means or methods or in the alternative to a remand for further factfinding and an evidentiary hearing.

Respectfully Submitted,



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### **CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing Brief was served by regular U.S. Mail, first-class postage pre-paid on Timothy J. McGinty, Cuyahoga County Prosecutor, and T. Allan Regas and Katherine Mullin, Assistant Prosecuting Attorneys, 1200 Ontario Street, 8<sup>th</sup> Floor, Cleveland, OH 44113, this 31st day of December, 2013.



Counsel for Romell Broom



the court determines that relief is not available to Broom under Ohio's post-conviction statute, Broom, in the unique circumstances of this case, is entitled to a declaratory judgment under ORC §2721.01 et seq. and Ohio R. Civ. P. 57, as requested herein.

Broom's affidavit (Exhibit A) is submitted in support of this Petition. Moreover, Broom will promptly supplement the record for these proceedings with relevant evidence and documents, including depositions, concerning Broom's attempted execution on September 15, 2009, as have been compiled by the parties in litigation that is pending in the U.S. District Court for the Southern District of Ohio, to wit Cooey v. Strickland, Case No. 04-1156, and Broom v. Strickland, Case No. 09-823. Additional documents and evidence concerning the judgment and death sentence at issue here were submitted by Broom in his post-conviction petition filed with this Court on August 16, 2007, and such documents are incorporated herein by reference.

### **I. INTRODUCTION**

1. The State of Ohio, on September 15, 2009, attempted to execute Petitioner Romell Broom, but it failed. Broom survived the execution and brings this action under ORC §§2953.21, 2953.23, §2721.01 et seq., and Ohio R. Civ. P. 57 seeking to bar the State of Ohio from ever again trying to execute Broom by any means or methods for the same crime and conviction at issue and/or to invalidate in part Broom's 1985 criminal judgment, insofar as it pertains to his death sentence, as being violative of the Ohio and U.S. Constitutions to the extent said judgment is attempted to be used by the State of Ohio after September 15, 2009, as purported authority for imposing a sentence of death upon Romell Broom.

2. The pain, suffering, and distress to which Broom was subjected on September 15, 2009, exceeded that which is tolerated by the United States and Ohio Constitutions in imposing criminal punishments. Eighth Amendment to the U.S. Const.; Art. I, Sec. 9, Ohio Const. It

instead constituted both physical and psychological torture: physical in that Broom was subjected to nearly two hours of repeated, painful, and ineffectual needle jabs and psychological because it exposed Broom to the well founded fear of suffering the slow, lingering, and painful death other Ohio inmates have suffered when the State has been unable to competently establish intravenous lines during an execution.

3. In the circumstances of this case, the pain, suffering, and distress were deliberately and intentionally inflicted upon Broom, and the fact that he would suffer such pain, suffering, and distress was foreseeable to the State, as opposed to being the result of an "accident," or an "innocent misadventure," or an "isolated mishap." Broom suffered unnecessary pain, suffering, and distress that exceeded that which is entailed in properly administered execution and that constituted cruel and unusual punishment.

4. Every death sentence includes and legally permits not only the infliction of death but also the legally prescribed process by which death is inflicted. An inmate not sentenced to death could not legally or constitutionally be told he was about to be killed, strapped to a table, surrounded by prison personnel, and subjected to the bodily intrusion of needle insertions. These actions on the part of the State are legally permitted only as part of a legal sentence of death. Broom has already been subjected to this part of his death sentence and more because he was subjected not only to the process anticipated in a properly performed execution but also to the extended and torturing efforts of the State to kill him after it was apparent that the process and protocol had failed.

5. Any further attempts by the State to execute Broom, by lethal injection or any other means, would deny Broom due process of law and violate the prohibitions against cruel and unusual punishment and being twice placed in jeopardy. Fifth, Eighth, and Fourteenth

Amendments to the United States Constitution; Art. I, sec. 9, 10, and 16 of the Ohio Constitution. Any further attempts would also violate Broom's right to substantive due process as guaranteed by the Fourteenth Amendment to the United States Constitution and Art. I, sec. 16 of the Ohio Constitution as well as Ohio's statutory guarantee of a quick and painless execution. O.R.C. §2949.22(A).

6. Broom is entitled to an order vacating or setting aside the judgment or sentence, in part, or to other appropriate relief, ORC §2953.21(A)(1)(a), barring the State of Ohio from ever again trying to execute Broom by any means or methods for the same crime and conviction at issue and/or to invalidate in part Broom's 1985 criminal judgment, insofar as it pertains to his death sentence, as being violative of the Ohio and U.S. Constitutions to the extent said judgment is attempted to be used by the State of Ohio after September 15, 2009, as purported authority for imposing a sentence of death upon Romell Broom. In addition and/or alternatively, Broom is entitled to declaratory relief to that same effect under ORC §2721.01 et seq. and Ohio R. Civ. P. 57. Although Broom was sentenced to death at the conclusion of his trial, it would now be unlawful and in violation of his constitutional rights for the State to seek again to carry out a death sentence on Romell Broom. Any further attempts by the State to execute Broom, by lethal injection or any other means, would deny Broom due process of law and violate the prohibitions against cruel and unusual punishment and being twice placed in jeopardy. Any further attempts would also violate Broom's right to substantive due process as guaranteed by the Fourteenth Amendment to the United States Constitution.

## II. PROCEDURAL HISTORY

### **A. The Indictment**

7. On January 8, 1985, the Cuyahoga County Grand Jury returned an indictment against Romell Broom, arising from the September 21, 1984, death of Tryna Middleton and abductions involving Bonita Callier and Tammy Sims.

8. Count One charged Broom with aggravated murder in the death of Tryna Middleton, in violation of Ohio Revised Code § 2903.01. This count included two felony murder specifications under Ohio Revised Code § 2929.04(A)(7) -- that the murder was committed during the course of kidnapping and as part of a rape -- thus making Broom eligible for the death penalty. Count Two charged Broom with rape of Tryna Middleton, in violation of Ohio Revised Code § 2907.01. Count Three charged Broom with kidnapping Tryna Middleton, in violation of Ohio Revised Code § 2905.01. Counts Four and Five charged Broom with the kidnapping of, respectively, Tammy Sims and Bonita Callier, in violation of Ohio Revised Code § 2905.01.

9. Broom pleaded not guilty to all charges at his arraignment on January 15, 1985.

### **B. Trial and Sentencing**

10. Broom's capital murder trial began on September 16, 1985, with Judge Paul R. Matia presiding. The jury returned a verdict on October 3, 1985, finding Broom guilty on all five counts (although the verdict as to the Callier and Sims kidnappings was for the lesser-included offense of "attempted kidnapping"), and guilty on the two death specifications.

11. The penalty phase commenced on October 9, 1985. The jury returned a recommendation of a death sentence on October 10, 1985. The trial court accepted the jury's recommendation and, on October 16, 1985, Judge Matia sentenced Broom to death. The judge subsequently filed an opinion pursuant to the requirements of O.R.C. § 2929.04(F).

### **C. Direct Appeal**

12. The Ohio Court of Appeals affirmed Broom's convictions and the death sentence in State v. Broom, Case No. 51237, 1987 WL 14401 (Cuyahoga Cty. App. July 23, 1987), unreported. The Ohio Supreme Court, on December 30, 1988, affirmed the convictions and death sentence in State v. Broom, 40 Ohio St. 3d 277, 533 N.E.2d 682 (1988). Broom's application to the United States Supreme Court for a writ of certiorari was denied on May 15, 1989, in Broom v. Ohio, 490 U.S. 1075 (1989).

### **D. Post-Conviction Relief Petition**

13. Broom thereafter, on February 9, 1990, filed a Petition for Post-Conviction Relief ("PCR Petition") in the Cuyahoga County, Ohio Court of Common Pleas (Case No. 196643). Broom amended the PCR Petition three times in order to attach additional exhibits. Broom requested an evidentiary hearing on his post-conviction claims.

14. The State of Ohio filed a motion to dismiss the PCR Petition in April 1990. Petitioner opposed the motion and, at the same time, asked the court to stay resolution of the PCR Petition pending the receipt of documents sought by his public records and Freedom of Information Act (FOIA) requests for information relating to the law enforcement investigation of his case.

15. On October 31, 1996, the Cuyahoga County Court of Common Pleas, Judge Judith Kilbane Koch, issued a decision dismissing Broom's PCR Petition.

16. Broom appealed the trial court's decision to the Eighth District Court of Appeals. The appellate court affirmed the trial court's decision in an opinion dated May 7, 1998. State v. Broom, Case No. 72581, 1998 WL 230425 (Cuyahoga Cty. Ohio App. May 7, 1998), unreported. The Ohio Supreme Court declined jurisdiction on September 23, 1998. State v. Broom, No. 98-1252, 83 Ohio St. 3d 1430 (1998).

#### **E. The Public Records and FOIA Requests**

17. While he was litigating his PCR Petition, Broom sought to use the Ohio public records laws and the Freedom of Information Act ("FOIA") to obtain records regarding the investigation and prosecution of his case. He made records requests to the City of Cleveland and the FBI, among others.

18. Broom eventually obtained some of the records he sought from both the City and the FBI, but many of the records were heavily redacted. Moreover, some of the records were not made available to Broom's counsel until after Broom's PCR Petition had been filed and, in some cases, until the PCR proceedings were over. For these reasons, among others, Broom's post-conviction counsel did not present a claim under Brady v. Maryland to the state courts.

#### **F. Federal District Court**

19. On January 7, 1999, Broom filed a notice of intent to file a petition for a writ of habeas corpus in the United States District Court for the Northern District of Ohio and, at his request, the undersigned counsel were appointed on his behalf. Said habeas case is Case No. 99-0030, Broom v. Mitchell, N.D. Ohio. Broom filed that habeas petition on June 21, 1999. The petition alleged thirty (30) separate grounds, including in his Sixth Ground a claim under Brady v. Maryland ("Brady claim") arising from the information that had, to that point, been provided to Broom as a result of his public records and FOIA requests.

20. Broom also filed motions to expand the record and a motion to conduct discovery. The district court permitted Broom limited discovery on some of the issues, including on his Brady claim. As a result of the discovery that was eventually provided by the Warden, or as a result of the district court's orders permitting the record to be expanded under Habeas Rule 7, numerous records of the law enforcement authorities involved in Broom's case were filed with the district court.

#### **G. Federal Court: Evidentiary Hearing and Final Decision**

21. In order to more fully develop these and other issues, Broom filed a motion for an evidentiary hearing, which the district court granted in part and denied in part. The evidentiary hearing was conducted on January 15 and 22, 2002. On August 28, 2002, the district court issued its opinion denying Broom's petition in its entirety. (R. 113, Memo. and Order.) Broom filed a Rule 59(e) motion to alter or amend the judgment (R. 115, Motion), which was denied. (R. 117, Memo. and Order).

#### **H. The Sixth Circuit Affirmed and the Supreme Court Denied Certiorari**

22. The Sixth Circuit affirmed on March 17, 2006. Broom v. Mitchell, 441 F.3d 392 (6<sup>th</sup> Cir. 2006).

23. The U.S. Supreme Court denied certiorari on February 26, 2007. Broom v. Mitchell, 549 U.S. 1255 (2007). Rehearing was denied on April 16, 2007. Broom v. Mitchell, 549 U.S. 1363 (2007).

#### **I. Broom Went Back to the State Courts: The Second PCR Petition**

24. His habeas proceedings thus completed, and the federal courts having declined to address the merits of his Brady claim because of a perceived failure to give the Ohio state courts the first chance to adjudicate that federal constitutional claim in circumstances where those

federal courts had presumed a state remedy existed, Broom next did what the federal courts had faulted him for not doing in the first place: he went back to the state courts with his Brady claim.

25. He did so on August 16, 2007, by filing a successor petition for post-conviction relief in this state trial court under R.C. § 2953.21(A)(1). The successor PCR petition set forth the same Brady claim that Broom had presented to the federal courts in his habeas petition.

26. The State sought dismissal of the successor PCR petition on grounds that it had not been timely filed, arguing that Broom could have raised the Brady claim in his first PCR petition when it was pending back in the 1990's. As he had in the federal courts, Broom maintained that he was unavoidably prevented from using the public records to support his first PCR petition by virtue of the sixth paragraph of the syllabus in State ex rel. Steckman v. Jackson, 70 Ohio St. 3d 420 (1994). Id. (syllabus ¶6) (“A defendant in a criminal case who has exhausted the direct appeals of her or his conviction may not avail herself or himself of R.C. 149.43 to support a petition for postconviction relief.”).

27. In a journal entry issued on March 17, 2008, this court rejected Broom's argument and dismissed the petition as not being timely filed.

28. On April 22, 2009, the Ohio Supreme Court set Broom's execution for September 15, 2009.

29. On July 30, 2009, the Eighth Appellate District reversed the trial court's decision dismissing the successor PCR. State v. Broom, 2009 Ohio 3731 (Ohio App. July 30, 2009).

30. The State sought reconsideration, which was denied on August 25, 2009.

31. The State then sought discretionary review in the Ohio Supreme Court. The court accepted jurisdiction on September 2, 2009, and scheduled expedited briefing, with all briefing to be completed by September 9, 2009. Broom's requests for oral argument and for a normal

briefing schedule were denied. Broom's motion for a stay of his September 15, 2009, execution date was denied on September 11, 2009.

32. In an opinion dated September 11, 2009, the Ohio Supreme Court reversed the Eighth District and dismissed Broom's second PCR petition. State v. Broom, Case No. 2009-1567.

33. A motion for reconsideration was denied by the Ohio Supreme Court on September 21, 2009.

#### **J. Broom's Litigation in Federal Court Under Rule 60(b)(6)**

34. On September 10, 2009, Broom filed a motion in the U.S. District Court under Fed. R. Civ. P. 60(b)(6) seeking relief from the federal court's earlier judgment dismissing Broom's habeas petition so that the court could reopen the habeas case and address the merits of the Brady claim. (Docket No. 133, Broom's 60(b) Motion; Docket No. 138, Broom's Supp. Motion.) Broom also filed a motion for a stay of his September 15, 2009, execution date. (Docket No. 132, Motion for Stay.)

35. The court denied the Rule 60(b)(6) motion on September 14, 2009. (Docket No. 141, Memo. & Order.) That same day, the court denied Broom's motion for a stay of execution. The district court subsequently issued a certificate of appealability.

36. Broom immediately appealed to the U.S. Court of Appeals for the Sixth Circuit. A panel of that court affirmed on September 14, 2009. Broom v. Mitchell, Case No. 09-4125, Order (6<sup>th</sup> Cir. Sept. 14, 2009.)

37. Broom sought en banc review, which was denied by the Sixth Circuit on September 15, 2009. Broom v. Mitchell, Case No. 09-4125, Order (6<sup>th</sup> Cir. Sept. 15, 2009.)

**K. The State's Failed Attempt to Execute Romell Broom on September 15,**

**2009**

38. On September 15, 2009, all legal challenges having been completed, the State went forward with the execution of Romell Broom at the Southern Ohio Correctional Facility ("SOCF").

39. At approximately 2:00 p.m. on September 15, 2009, all witnesses were in place and the execution commenced. The SOCF Warden read Broom the death warrant. Then the medical team went into Broom's holding cell to insert the intravenous ("IV") catheters into Broom's body so that the lethal drugs could then be administered to Broom through those IV's.

40. As discussed more fully in other parts of this Petition, the execution team attempted for more than two hours to carry out the execution of Romell Broom. They were unable to carry out their task.

41. Broom's execution failed and was ultimately halted at approximately 4:24 p.m. EST on September 15, 2009. The governor issued a reprieve for one week until September 22, 2009.

42. Broom was moved to another part of SOCF to be detained until another execution attempt could be made on September 22, 2009.

**L. Broom's State Court and Other Litigation to Prevent Any Further Execution Attempts on Broom By Any Means or Methods As Violative of the Federal and Ohio Constitutions**

43. With the State planning to attempt to execute Broom again on September 22, 2009, Broom on September 18, 2009, commenced proceedings in both state and federal court to try to stop that from happening.

44. On September 18, 2009, Broom filed a petition for a writ of habeas corpus with the Ohio Supreme Court based on the same facts and allegations set forth herein. In the Matter of Romell Broom, Case No. 09-1686 (hereinafter "State Habeas Action"). Also on September 18, 2009, Broom filed an action under 42 U.S.C. §1983, among other claims, in the United States District Court for the Southern District of Ohio. Broom v. Strickland, Case No. 2:09-cv-823 (Fed. Dist. Ct. Southern District, Ohio) (hereinafter "Section 1983 Action").

45. On September 18, 2009, the federal court in the Section 1983 Action issued a temporary restraining order (TRO) barring the State from seeking to execute Broom.

46. On October 6, 2009, the Ohio Supreme Court in the State Habeas Action allowed the writ. This means the court ordered the State to file a return. The State filed its return on October 26, 2009. In its return the State argued that a state habeas action was not a proper remedy because Broom "still may pursue adequate alternative legal remedy (sic), which he currently pursues in United States District Court, [as such] his claims here are not cognizable, and, therefore, he is not entitled to a writ of habeas corpus." Return at 11-12.

47. On October 20, 2009, the federal court in the Section 1983 Action issued an order extending the TRO barring Broom's execution until December 9, 2009.

48. On November 4, 2009, and having received the State's return urging the Ohio Supreme Court to dismiss Broom's state habeas petition because the Section 1983 Action is an available alternative remedy, Broom filed an application in the Ohio Supreme Court to dismiss without prejudice his state habeas petition under Rule 41(A) of the Ohio Rules of Civil Procedure. In his Application for Voluntary Dismissal Without Prejudice, Broom stated as follows:

6. In his Return of Writ filed in this Court on October 26, 2006, Warden Kerns has informed this Court that Broom is currently

pursuing his federal action and he further represents to this Court that Broom's pursuit of the federal action constitutes "an adequate alternative legal remedy." See, e.g., Warden's Return of Writ at 12 ("Because Broom still may pursue adequate alternative legal remedy [sic], which he currently pursues in United States District Court, his claims here are not cognizable, and, therefore, he is not entitled to a writ of habeas corpus.").

7. It is not in the interest of judicial economy or efficiency for Broom to continue to pursue both actions at the same time, in different court systems, particularly when he no longer has an active execution date and when the Warden has represented to this Court that the federal action is an adequate alternative remedy.

8. Accordingly, Broom hereby gives notice, pursuant to Rule 41(A)(1)(a) of the Ohio Rules of Civil Procedure, of his voluntary dismissal without prejudice of this original action. See, e.g., Gaskins v. Shiplevy, 74 Ohio St. 3d 149, 150 (1995) ("The Civil Rules may apply to habeas cases where not 'clearly inapplicable' by their nature."); State ex rel. Sautter v. Grey, 117 Ohio St. 3d 465, 467-68 (2008) ("The Rules of Civil Procedure are generally applicable in original actions for extraordinary writs.") (citing cases including habeas case); State ex rel. Ahmed v. Costine, 99 Ohio St. 3d 212, n.1 ("Civ.R. 41(A)(1)(a) is not clearly inapplicable to Ahmed's prohibition and mandamus claims.").

9. Broom reserves the right to re-file this action as may be appropriate or necessary at a later time.

49. The State did not oppose Broom's Application for Voluntary Dismissal Without Prejudice. On November 9, 2009, the Ohio Supreme Court granted Broom's Application for Voluntary Dismissal Without Prejudice.

50. Meanwhile, back in the Section 1983 Action, the federal court on December 9, 2009, granted a preliminary injunction barring Broom's execution until 30 days after that court ruled on the defendants' anticipated motion to dismiss Broom's amended complaint which the court ordered Broom to file in that action on or before January 8, 2010.

51. Broom timely filed his amended complaint in the Section 1983 Action. The amended complaint made several claims, including the claims now raised here that the State of

Ohio and its agents may not execute Broom again by any means or methods. The defendants on January 22, 2010, timely moved to dismiss the amended complaint on a number of bases, and Broom opposed that motion on February 16, 2010. The defendants filed a reply brief in support of their motion to dismiss on March 2, 2010.

52. On August 27, 2010, the federal court in the Section 1983 Action issued its order granting in part and denying in part the defendants' motion to dismiss Broom's Section 1983 Action. In its order District Court Judge Gregory Frost determined that "There is no doubt that the Eighth Amendment applies to Plaintiff's situation." However, the district court judge also determined that Broom's:

Fifth Amendment and Eighth Amendment no-multiple-attempts challenges are not properly before this Court. Defendants concede that habeas presents the proper vehicle to address the constitutional issues arising from the failed execution attempt and Ohio's intent to try again, and they are correct. The proper mechanism in which to assert both claims is a habeas corpus action and not under §1983.

Broom v. Strickland, Case No. 2:09-cv-823 (Fed. Dist. Ct. Southern District, Ohio) Decision, August 27, 2010, p. 7. The federal district court dismissed without prejudice the claims that Broom presents herein, whereas other claims remain pending in the Section 1983 Action.

53. On September 14, 2010, Broom again filed his state habeas action in the Ohio Supreme Court raising therein the same federal and state constitutional claims raised in his earlier action that had been voluntarily dismissed without prejudice by the Ohio Supreme Court on November 9, 2009.

54. On that same date, Broom also filed a federal habeas action under 28 U.S.C. § 2254, raising the same federal constitutional claims that he raised in the Ohio Supreme Court in the state habeas action and that he is raising here.

55. He now presents his claims to this court under ORC §§2953.21, 2953.23, §2721.01 et seq., and Ohio R. Civ. P. 57.

### **III. STATE AND FEDERAL CONSTITUTIONAL CLAIMS**

#### **FACTS IN SUPPORT OF ALL CLAIMS**

56. At the time of the Broom execution attempt on September 15, 2009, the State had adopted procedures, practices, and protocols for conducting executions by lethal injection. These procedures, practices, and protocols were written and unwritten, and they included the written protocol, Number 01-COM-11, effective as of May 14, 2009. The procedures, practices, and protocols, both written and unwritten, and including the written protocol adopted by the State effective May 14, 2009, are hereinafter called collectively “the Subject Execution Protocols.”

57. The Subject Execution Protocols were administered by an “execution team” that included approximately 15-16 members, all of whom were employees of Ohio’s prisons, with the majority being employed at SOCF. The execution team members were selected and approved by the State. The execution team included, broadly speaking, two categories of team members: (1) security, and (2) medical.

58. The “security” members comprised the majority of the team, and their principal functions were security and transport. The “medical” members were to be responsible for, among other things, obtaining and maintaining IV access in the inmate’s body, delivering the lethal drugs through the IV’s, and (along with the SOCF Warden and the “team leader”) monitoring the inmate once the drugs were started to determine if the drugs were being properly delivered and having their desired effect throughout the process until death. There were only 3-4 medical team members, and none of the medical team members were physicians. They were, instead, para-medical professionals such as phlebotomists and emergency medical technicians.

59. The execution team that was in place on September 15, 2009, and which attempted to carry out Broom's execution on that date, is hereinafter called "the Subject Execution Team."

60. Broom has been under a sentence of death since 1985.

61. For many years, the State has known that it would one day be called upon to execute Broom by lethal injection. The State has also known that the Subject Execution Protocols required the State to obtain access to Broom's veins with intravenous ("IV") needles, install the accompanying IV sheathes into the accessed veins, attach receptacles to the IV's to keep the veins "open" so that the fatal drugs can be delivered to the body, and monitor and maintain that IV access throughout the process until death. The process of obtaining and maintaining proper "IV access" was a core and crucial part of any execution the State conducted under the Subject Execution Protocols. Pursuant to these procedures, the execution process began when the Warden read the death warrant and the designated execution team members entered Broom's holding cell, approximately 15 feet from the death chamber, in order to access Broom's veins and insert the IV's. The State knew that, if execution team members were not able to obtain and maintain proper IV access throughout the execution, Broom would be subjected to a substantial risk of serious harm, because, among many possible complications, it was likely that the anesthetic drug (the first of the three used under the Subject Execution Protocols) would not be delivered into the circulatory system in an adequate dose to ensure that the inmate was anesthetized throughout the process.

62. On April 22, 2009, the Ohio Supreme Court scheduled Broom's execution for September 15, 2009, at 10:00 a.m. The State thus knew approximately five months in advance

that its execution team needed to be prepared, trained, and ready to go forward on September 15, 2009.

63. Broom was transported by members of the execution team to SOCF on Monday morning, September 14, 2009.

64. Upon his arrival at SOCF, Broom was immediately taken to the holding cell in the death house, where he was to spend the rest of his time until his execution the next day. At all times, he was watched by members of the execution team, who were stationed immediately outside his small holding cell around the clock.

65. The night before the execution, an examination of Broom's veins was undertaken by prison staff and it was determined that his right arm was amenable to IV access, and that IV access on his left arm would likely be more difficult or impossible to obtain. The vein examination required by the protocol to take place on the morning of the scheduled execution was not done.

66. At approximately 2:00 p.m., the Warden of SOCF came to the front of Broom's cell and read the death warrant to Broom. Thereafter, two para-medical members of the execution team, along with four or more security members, entered Broom's cell to begin the execution.

67. The medical members of the team were unable to get access to Broom's veins. They tried numerous times and then took a break. They then tried numerous times again. They still could not gain access to a vein that would allow for IV insertion. During this process, Broom was subjected to extreme cruelty and suffered terrible and unnecessary pain. He was observed to be wincing, and, eventually, was crying because of the pain and trauma that were inflicted upon him. The execution team members made repeated and persistent attempts to get

access to Broom's veins by poking him with IV needles again and again, at least 14-18 times, and they continued to do so when it was or should have been obvious that their repeated efforts to obtain access were futile and were causing Broom excruciating pain and severe emotional distress.

68. The process was taking so long that Broom's counsel at the prison (Adele Shank) contacted counsel in Cleveland, Ohio (Tim Sweeney). They ultimately decided to prepare a request for relief, which was prepared and then emailed at approximately 4:00 p.m., to Ohio Supreme Court Chief Justice Thomas Moyer and Governor Ted Strickland asking them to stop the execution on the grounds that Broom was being subjected to cruel and unusual punishment.

69. The execution attempts on Broom had continued for approximately two hours, perhaps longer, and the process was only stopped when Gov. Strickland finally issued a reprieve at approximately 4:24 p.m. EST. The reprieve was granted for one week until September 22, 2009. However, as mentioned, the federal court in the Section 1983 Action on September 18, 2009, issued a temporary restraining order barring the execution.

70. The reprieve was granted to "allow the Department to recommend appropriate next steps" to the governor. Since that time the DRC has issued a new protocol that is not at issue in these proceedings except in that it should not be used on Broom.

71. During the time that the State was continuing to attempt to execute Broom, he was denied access to his attorney who was present at SOCF. When it became clear that the State could not obtain venous access despite repeated attempts, and Broom was in severe pain and emotional distress, Broom sought the aid of counsel and counsel sought access to him. The State denied all communication between client and counsel.

72. After the execution failed on September 15, 2009, the State ordered that Broom remain at SOCF until the next attempt on September 22, 2009. He was monitored by his would-be executioners at SOCF until he was finally returned to OSP upon issuance of the federal court's injunction, where he remains.

73. The State was not prepared on September 15, 2009, to carry out Broom's execution in a manner that complied with state and federal constitutional standards or with Ohio law.

74. Although the State knew or should have known that Broom's veins would present challenges for the IV access part of their execution process, the State failed to properly prepare and sufficiently train the execution team to access Broom's veins in a way that was not inhumane and cruel. Moreover, the State failed to follow its own protocol by allowing team members to miss training and practice sessions and failing to conduct all required vein checks.

75. Broom had previously placed the State on notice, as early as March 2007, that he believed the State's adoption and use of the Subject Execution Protocols presented a substantial risk that he would be subjected to severe and wanton pain during his execution, and that this substantial risk could be avoided with reasonable and readily available alternatives. Cooey v. Strickland, Case No. 2:04-cv-1156 (Fed. Dist. Ct. Southern District, Ohio) The State ignored Broom's complaints and did nothing to address them.

76. The State also knew long before September 15, 2009, from their prior experiences conducting lethal injection executions in Ohio with the Subject Execution Protocols and the Subject Execution Team, that their use of the Subject Execution Protocols had caused other inmates to experience severe and wanton pain during executions. These prior executions include, but are not limited to, the execution of Joseph Clark in May 2006, and the execution of

Christopher Newton in May 2007. Clark's and Newton's executions differed from Broom's in that the State eventually was able to set IVs in Clark's and Newton's arms, so, unlike Broom, Clark and Newton did not survive the harrowing experience. As of September 15, 2009, the State had demonstrated a pattern of inexcusable neglect and reckless indifference to the constitutional rights of the condemned inmates. The State's pattern of being unable to effectively establish and maintain IV access is significant because IVs that are set after numerous failed attempts are less likely to be properly set in the vein, thus creating a substantial risk that the drugs will not be successfully delivered into the circulatory system and that the inmate will suffer serious harm.

77. Despite their actual knowledge from these recent executions that had actually caused inmates to suffer severe and wanton pain, and despite Broom's prior specific complaints that the defendants' Subject Execution Protocols needlessly exposed him to a substantial risk of severe pain, the State did nothing on September 15, 2009, to protect Broom from the known and foreseeable risks of severe pain that he had warned about. The State was deliberately indifferent to the risks. The injuries Broom suffered on that date, and is continuing to suffer, were foreseeable and avoidable.

#### **FIRST CLAIM FOR RELIEF**

**ANY FURTHER ATTEMPTS TO EXECUTE ROMELL BROOM WILL VIOLATE THE STATE AND FEDERAL CONSTITUTIONAL PROHIBITIONS AGAINST CRUEL AND UNUSUAL PUNISHMENTS AND THE OHIO LAW REQUIRING THAT EXECUTIONS BE QUICK AND PAINLESS: EIGHTH, AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION; ART. I, SEC. 9, 10, AND 16 OF THE OHIO CONSTITUTION; OHIO REVISED CODE §2949.22(A)**

78. Broom incorporates by reference all facts and allegations described throughout this Petition as if fully re-written herein.

79. The State of Ohio has tried to execute Broom once and has failed.

80. Broom is blameless for the failure. He was cooperative in the process and did nothing to obstruct or delay the process or to cause it to fail.

81. The State bears all blame for the failure. The State was unable to successfully complete Broom's execution after it was started because, among other failures to be developed in discovery:

- The State failed to have properly trained and qualified personnel to perform the IV insertions on Broom's body.
- The State failed to follow its own protocol in a number of ways, including but limited to, skipping a required vein examination and by allowing team members to miss training sessions.
- The State failed to recognize that each inmate presents unique issues of IV access and thus failed to prepare and train for the unique issues Romell Broom presented.
- The State failed to have sufficient and proper procedures in place to address the manner in which IV access would be obtained on Broom in the event the peripheral IV sites could not be established in a reasonable amount of time, and the State failed in this respect even though its own expert in the "Cooey" litigation had as recently as March 2009 stated that the State's failure to address this issue in the Subject Executions Protocols was a serious deficiency in their protocol.
- The State failed to have any contingency plans in place to address a known and recurring problem, i.e., difficult peripheral IV access, even though the State has had at least two other executions in the past three years (Clark and Newton) during which access problems occurred and caused the subject inmates to experience severe and wanton pain during their executions.

- The State's flawed protocols called for the team members to take as much time as they needed, even as long as 14 hours (if started at 10:00AM and continued until the execution order expired at midnight), and by thus having no known time limit for attempting peripheral IV access, the State placed the team members in such an oppressively stressful situation that, when the inevitable problems occurred, a policy of responding to those problems by resorting solely to repeated and persistent attempts at IV access was doomed to fail and was guaranteed to cause Broom severe pain in the process.

82. The pain, suffering and distress to which Broom was subjected on September 15, 2009, went well beyond that which is tolerated by the Constitution. It was a form of torture that exposed Broom to the prospect of a slow, lingering death, not the quick and painless one he was promised and to which he was constitutionally entitled if he was going to be executed by the State. In the circumstances of this case including the State's prior knowledge, the pain, suffering and distress were deliberately and intentionally inflicted upon Broom. The fact that he would suffer such pain, suffering and distress was completely foreseeable to the State, and was not the result of an "accident," or an "innocent misadventure," or an "isolated mishap."

83. What happened to Broom on September 15, 2009, at the State's hands and under its direction, was inhuman and barbarous. The State's repeated ineffectual attempts and sometimes brutish attempts to establish IV lines were cruel. The United States Supreme Court noted in Baze v. Rees, 128 S. Ct. 1520 (2008), that "a hypothetical situation" involving "a series of abortive attempts" at execution could raise Eighth Amendment concerns. *Id.* at 1531 The State exhibited cruel indifference to Broom's rights and his humanity.

84. The trauma inflicted upon Broom continued after the attempted execution. He was been forced by the State to remain at SOCF, and was thus forced to be guarded and supervised

by the very persons who tried to take his life once and will try again a second time unless enjoined.

85. Because the State has already subjected Broom to the pain, suffering and distress he endured during the attempted execution on September 15, 2009, it would violate the Eighth and Fourteenth Amendments for the State to make any further attempts to execute Broom by any means or methods. It would also violate Art. I, sections 9, 10, and 16 of the Ohio Constitution and Ohio Revised Code §2949.22(A). No further attempts at Broom's execution may constitutionally take place by any means or methods.

86. Broom is entitled to an order vacating or setting aside the judgment or sentence, in part, or to other appropriate relief, ORC §2953.21(A)(1)(a), barring the State of Ohio from ever again trying to execute Broom by any means or methods for the same crime and conviction at issue and/or to invalidate in part Broom's 1985 criminal judgment, insofar as it pertains to his death sentence, as being violative of the Ohio and U.S. Constitutions to the extent said judgment is attempted to be used by the State of Ohio after September 15, 2009, as purported authority for imposing a sentence of death upon Romell Broom. In addition and/or alternatively, Broom is entitled to declaratory relief to that same effect under ORC §2721.01 et seq. and Ohio R. Civ. P. 57.

87. Although Broom was sentenced to death at the conclusion of his trial, it would now be unlawful and in violation of his constitutional rights for the State to seek again to carry out a death sentence on Romell Broom. Any further attempts by the State to execute Broom, by lethal injection or any other means, would deny Broom due process of law and violate the prohibitions against cruel and unusual punishment and being twice placed in jeopardy. Any

further attempts would also violate Broom's right to substantive due process as guaranteed by the Fourteenth Amendment to the United States Constitution.

88. Broom is also entitled to such other legal and equitable relief as may be appropriate.

#### **SECOND CLAIM FOR RELIEF**

#### **IMPOSITION OF THE DEATH PENALTY UNDER THE CIRCUMSTANCES OF THIS CASE WOULD VIOLATE ARTICLE I, SECTIONS 1, 2, 8, 9, 10 AND 16 OF THE OHIO CONSTITUTION**

89. Broom hereby incorporates all facts and allegations that appear throughout this Petition as if fully re-written.

90. This case appears to be a case of first impression in the State of Ohio. This Court should examine each allegation as it relates to the specific provisions of the Ohio Constitution. Any attempt to execute Broom again is cruel and unusual under the Ohio Constitution, Art 1, section 9; violates due process under Art. I, section 16; constitutes double jeopardy under Art. I, Section 10; violates his right to habeas corpus under Art. I, section 8; violates his right to life under Art. I, section 1 and to equal protection under Art. I, section 2.

91. The Ohio Constitution may provide more protection for Broom than the federal constitution.

92. Broom is entitled to an order vacating or setting aside the judgment or sentence, in part, or to other appropriate relief, ORC §2953.21(A)(1)(a), barring the State of Ohio from ever again trying to execute Broom by any means or methods for the same crime and conviction at issue and/or to invalidate in part Broom's 1985 criminal judgment, insofar as it pertains to his death sentence, as being violative of the Ohio Constitution to the extent said judgment is attempted to be used by the State of Ohio after September 15, 2009, as purported authority for imposing a sentence of death upon Romell Broom. In addition and/or alternatively, Broom is

entitled to declaratory relief to that same effect under ORC §2721.01 et seq. and Ohio R. Civ. P. 57.

93. Although Broom was sentenced to death at the conclusion of his trial, it would now be unlawful and in violation of his constitutional rights for the State to seek again to carry out a death sentence on Romell Broom. Any further attempts by the State to execute Broom, by lethal injection or any other means, would deny Broom his rights under the Ohio Constitution.

94. Broom is also entitled to such other legal and equitable relief as may be appropriate.

### THIRD CLAIM FOR RELIEF

#### **THE PROHIBITION AGAINST DOUBLE JEOPARDY WOULD BE VIOLATED BY ANOTHER ATTEMPT TO EXECUTE ROMELL BROOM: FIFTH AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION; ART. I, SECTION 10, OHIO CONSTITUTION**

95. Broom hereby incorporates all facts and allegations throughout this Petition as if fully re-written here.

96. Any further attempt to execute Broom by any means or methods would violate the Fifth Amendment's guarantee against Double Jeopardy as applied to the States through the Fourteenth Amendment. It would also violate Art. I, Section 10, of the Ohio Constitution.

97. The Fifth Amendment states "...nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb."

98. The United States Supreme Court has held that, "the Double Jeopardy Clause protects against three distinct abuses: a second prosecution for the same offense after acquittal; a second prosecution for the same offense after conviction; and multiple punishments for the same offense." United States v. Halper, 490 U.S. 435, 441 (1989). Moreover, "The Double Jeopardy

Clause, . . . ‘prohibits . . . punishing twice, or attempting a second time to punish criminally, for the same offense.’” *Id.* at 442.

99. Broom has already been placed “in jeopardy of life or limb” once as a result of the State’s failed execution attempt on September 15, 2009. Another execution attempt would subject Broom to the loss of life or limb for the second time.

100. Broom is entitled to an order vacating or setting aside the judgment or sentence, in part, or to other appropriate relief, ORC §2953.21(A)(1)(a), barring the State of Ohio from ever again trying to execute Broom by any means or methods for the same crime and conviction at issue and/or to invalidate in part Broom’s 1985 criminal judgment, insofar as it pertains to his death sentence, as being violative of the Ohio and U.S. Constitutions to the extent said judgment is attempted to be used by the State of Ohio after September 15, 2009, as purported authority for imposing a sentence of death upon Romell Broom. In addition and/or alternatively, Broom is entitled to declaratory relief to that same effect under ORC §2721.01 et seq. and Ohio R. Civ. P. 57.

101. Although Broom was sentenced to death at the conclusion of his trial, it would now be unlawful and in violation of his constitutional rights for the State to seek again to carry out a death sentence on Romell Broom. Any further attempts by the State to execute Broom, by lethal injection or any other means, would deny Broom due process of law and violate the prohibitions against cruel and unusual punishment and being twice placed in jeopardy. Any further attempts would also violate Broom’s right to substantive due process as guaranteed by the Fourteenth Amendment to the United States Constitution.

102. Broom is also entitled to such other legal and equitable relief as may be appropriate.

#### FOURTH CLAIM FOR RELIEF

##### **BROOM IS ENTITLED TO A DECLARATORY JUDGMENT IN HIS FAVOR.**

103. Broom hereby incorporates all facts and allegations throughout this Petition as if fully re-written here.

104. A real, live, and present controversy exists between the parties as to whether any further attempts by the State of Ohio, after September 15, 2009, to carry out a death sentence upon Romell Broom pursuant to his 1985 criminal conviction and death sentence would violate Broom's rights under the U.S. and Ohio Constitutions. That controversy is justiciable in character.

105. Prompt declaratory relief is necessary to preserve rights which may otherwise be impaired or lost. Declaratory relief will remove uncertainty and clarify the parties' respective rights.

106. Broom requests that this Court issue a declaratory judgment that any further attempts by the State of Ohio, after September 15, 2009, to carry out a death sentence upon Romell Broom, by any means or methods, for or pursuant to Broom's 1985 criminal judgment and sentence of death at issue here, would violate Broom's rights under the Ohio and/or U.S. Constitutions as set forth herein, including Broom's rights to be free from cruel and unusual punishments, to substantive due process, to the prohibition against double jeopardy, to habeas corpus, to equal protection, and/or to life. Broom requests that this Court further issue a declaratory judgment that, because of the aforesaid constitutional violations, the State of Ohio is barred from ever again seeking to carry out a sentence of death upon Romell Broom, by any means or methods, for or pursuant to Broom's 1985 criminal judgment and sentence of death at issue here.

#### **IV. CONCLUSION AND PRAYER FOR RELIEF**

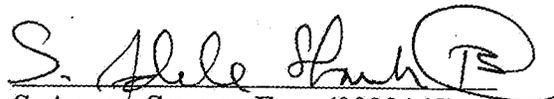
WHEREFORE, Petitioner Romell Broom respectfully prays that this Court:

- (1) Order the State to file an answer or other responsive pleading to the allegations as contained in the Petition to this Court;
- (2) Grant Petitioner, who is indigent, sufficient funds to secure any expert testimony as may be necessary to prove any of the facts as alleged in the Petition to this Court;
- (3) Grant Petitioner the authority to obtain subpoenas in forma pauperis for witnesses and documents necessary to prove the facts as alleged in the petition to this Court, and allow the Petitioner to conduct discovery;
- (4) Conduct a hearing at which proof may be offered concerning the allegations raised in the Petition to this Court;
- (5) Issue an order vacating or setting aside Broom's judgment or sentence, in part, or granting other appropriate relief, ORC §2953.21(A)(1)(a), such that the State of Ohio is barred from ever again trying to carry out a sentence of death upon Broom, by any means or methods, for the same crime and conviction at issue and/or invaliding in part Broom's 1985 criminal judgment, insofar as it pertains to his death sentence, as being violative of the Ohio and U.S. Constitutions to the extent said judgment is attempted to be used by the State of Ohio after September 15, 2009, as purported authority for imposing a sentence of death upon Romell Broom;
- (6) Issue a declaratory judgment that: (a) any further attempts by the State of Ohio, after September 15, 2009, to carry out a sentence of death upon Romell Broom, by any means or methods, for or pursuant to Broom's 1985 criminal judgment and sentence of death at issue here, would violate Broom's rights under the Ohio and/or U.S. Constitutions as set forth herein,

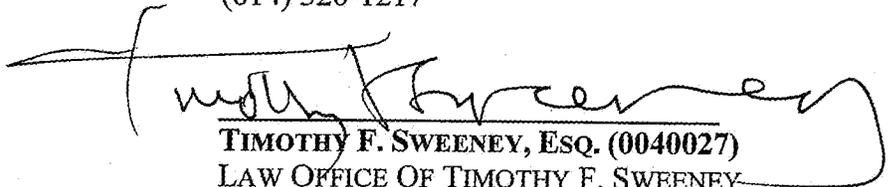
including Broom's rights to be free from cruel and unusual punishments, to substantive due process, to the prohibition against double jeopardy, to habeas corpus, to equal protection, and/or to life; and (b) because of the aforesaid constitutional violations, the State of Ohio is barred from ever again seeking to carry out a sentence of death upon Romell Broom, by any means or methods, for or pursuant to Broom's 1985 criminal judgment and sentence of death at issue here;

(7) Grant such other and further legal and/or equitable relief as may be appropriate and to dispose of the matter as law, equity, and justice require.

Respectfully submitted,



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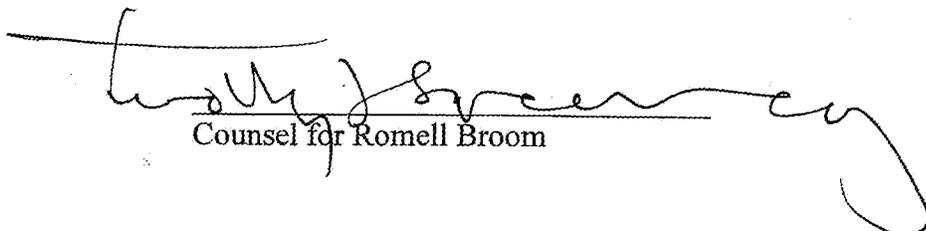


**TIMOTHY F. SWEENEY, ESQ. (0040027)**  
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(216) 241- 5003

**COUNSEL FOR PETITIONER  
ROMELL BROOM**

**CERTIFICATE OF SERVICE**

This is to certify that a copy of the PETITION TO VACATE OR SET ASIDE JUDGMENT AND/OR SENTENCE, IN PART, OR GRANT OTHER APPROPRIATE RELIEF, PURSUANT TO ORC §§2953.21 AND 2953.23, AND/OR FOR DECLARATORY RELIEF UNDER ORC §2721.01 ET SEQ. AND CIV. R. 57 was served upon William Mason, Cuyahoga County Prosecutor, The Justice Center, 9<sup>th</sup> Floor, 1200 Ontario Street, Cleveland, Ohio 44113, counsel for the State of Ohio, by regular U.S. Mail, first-class postage prepaid, this 15th day of September 2010.

  
Counsel for Romell Broom

IN THE UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF OHIO

ROMELL BROOM

-vs-

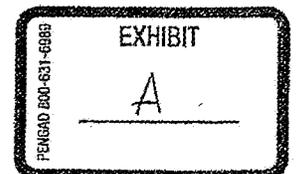
TED STRICKLAND

COUNTY OF SCIOTO     ))  
STATE OF OHIO        ))

AFFIDAVIT OF ROMELL BROOM

I, Romell Broom do hereby state and attest to the following:

1. I am a death row inmate in the State of Ohio.
2. I had an execution date scheduled for Tuesday, September 15, 2009. The execution was to take place at the Southern Correctional Facility (SOCF), in Lucasville, Ohio.
3. Correction officials took me from the Ohio State Penitentiary to SOCF on September 14, 2009.
4. After my arrival, a nurse came over to where I was housed on J-1. The nurse came in found two veins on both my right and left arms, tied up my arm and took note of what she found.
5. After the nurse came in prison officials kept offering liquids. I accepted. During the day I drank coffee, Kool-Aid and water. I had seven cups of coffee, five cups of water and three cups of Kool-Aid.
6. On September 15, 2009, I woke up took a shower and talked to my brother on the phone. At one point, the death squad leader advised me that one of the courts was reviewing my case and that the execution was delayed pending the court's review. Because of the length of the delay, I believed that the court was going to accept my case for review.
7. However, at about 2:00 my attorney informed me that the court had denied my appeal and that there were no more avenues left. The state was going to go through with my execution.



8. While I was in the cell, Warden Phillip Kerns came in with guard escorts and read the death warrant to me. After that, two nurses came in and advised me to lay down. One of the nurses was a white male and the other was a white female.
9. There were three guards present in the room. One guard was on the right side of me, one was on the left side of me and one was at my feet.
10. The nurses were simultaneously trying to access the veins in my arms. The female nurse tried three separate times to access veins in the middle of my left arm. The male nurse tried three separate times to access veins three times in the middle of my right arm.
11. After those six attempts, the nurses told me to take a break. I continued to lay on the bed for around two and one half minutes.
12. After the break, the female nurse tried twice to access veins in my left arm. She must have hit a muscle because the pain made me scream out loud. The male nurse attempted three times to access veins in my right arm. The first time the male nurse successfully accessed a vein in my right arm. He attempted to insert the IV, but he lost it and blood started to run down my arm. The female nurse left the room. The correction officer asked her if she was okay. She responded, "No" and walked out.
13. The death squad lead made a statement to the effect that this was hard on everyone and suggested that they take another break. The male nurse then left. The correction officer on my right patted me on my right shoulder and told me to relax while we take a break. At this point, I was in a great deal of pain. The puncture wounds hurt and made it difficult to stretch or move my arms.
14. The male nurse returned with some hot towels which he applied to his left arm. The male nurse applied the towels to my arms and massaged my left arm. The nurse told me that the towels would help them access the veins.
15. After applying the towels, the male nurse attempted to access my veins once in the middle of my left arm and three more times in my left hand. After the third attempt to access veins in my hands, the nurse made a comment that heroin use affected my veins. I was upset with this comment because I never used heroin or any intravenous drugs. I told the nurse that I had never told him that I used heroin.
16. The male nurse kept saying that the vein was right there, but they could not get it. I tried to assist them by helping to tie my own arm. A correction officer came over, tapped on my hand to indicate that he also saw the vein and attempted to help the nurse locate the vein.
17. The death squad leader advised me that we were going to take another break and again told me to relax.

18. At that point I became very upset. I began to cry because I was in pain and my arms were swelling. The nurses were placing needles in areas that were already bruised and swollen. I requested that they stop the process, and I requested to speak with my attorney.
19. The death squad leader asked me to sit up so that the blood would flow more freely. After that, the head nurse, an Asian woman, came into the room.
20. The head nurse, attempted to access veins in my right ankle. The head nurse requested for someone to "give her a twenty" and someone handed her a needle. During this attempt the needle hit my bone and was very painful. I screamed. At the same time the head nurse was attempting to access a vein in the lower part of my left leg, the male nurse was simultaneously attempting to access a vein in my right ankle. After these failed attempts, the head nurse took the needle and left the room.
21. The male nurse made another attempt to access veins twice in my right hands. It appeared as though they had given up on the left arm because at that point it was bruised and swollen. The level of pain was at its maximum. I had been poked at least 18 times in multiple areas all in an attempt to give me drugs that would take my life.
22. The death squad leader again told me to relax. There was conversation between the correction officers about how they could see the veins right there.
23. After a while, Director Terry Collins came in the room and told me that they were going to discontinue the execution. Director Collins indicated that he appreciated my cooperation and noted my attempts to help the team. He also expressed his confidence in his execution team and their professionalism. Director Collins advised me that they would call Governor Strickland and advise the Governor of the situation.
24. After the nurses and Director Collins left, the correction officers asked if I would like some coffee and a cigarette. I was still on the bed with the lights down.
25. About a half hour later my attorney, Adele Shank, came and told me that the Governor had issued a reprieve for a week. I told Attorney Shank about my pain and showed her the areas of my bruising.
26. After Attorney Shank left, correction officials moved me to the hospital.
27. The next morning, my arms started to show further evidence of bruising and swelling. Every cite on my arm where an attempt was made showed visible bruising and swelling. Some of the bruising on my hands and ankle have disappeared and some of the swelling went away the next evening.
28. To this day, my arms have large visible bruises, and there is swelling in my arms. The multiple cites where the nurses attempted to access my veins continue to hurt.

29. Correction officials made the decision to keep me housed at SOCF during the week reprieve. During this time, I am constantly watched by the execution crew and the correction officers.
30. Waiting to be executed again is anguishing. It is very stressful to think about the fact that the State of Ohio intends to cause me the same physical pain next week.
31. I am constantly reminded of the fact that next week I will have to undergo the same torture that the State of Ohio exacted on me on Tuesday, September 15, 2009 because there has been no change to Ohio's execution protocol, and there has been no change to my veins.

Further Affiant Sayeth Naught

Romell Broom #187-343  
ROMELL BROOM

Sworn to, affirmed and subscribed in my presence this 17<sup>th</sup> day of September, 2009.

Marcia Dukes  
NOTARY PUBLIC

My Commission Expires: 11-5-2013



MARCIA DUKES  
NOTARY PUBLIC, STATE OF OHIO  
MY COMMISSION EXPIRES 11-5-2013