

IN THE SUPREME COURT OF OHIO

STATE OF OHIO, : Case No. 11-0451
Appellant, : On appeal from the Court of Appeals,
-vs- : Seventh Appellate District, Mahoning
WILLIE HERRING, : County, Ohio, Case No. 03 MA 12
Appellee. : THIS IS A DEATH PENALTY CASE

APPELLEE WILLIE HERRING'S MOTION TO ENLARGE TIME
FOR ORAL ARGUMENT

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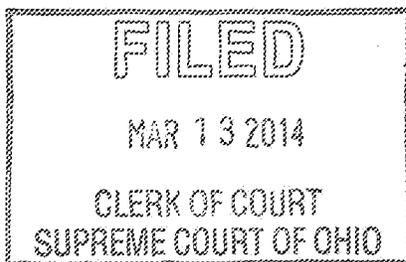
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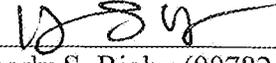
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**APPELLEE WILLIE HERRING'S MOTION TO ENLARGE TIME
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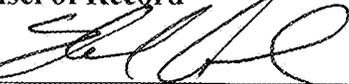
Now comes Appellee, Willie Herring, through counsel, and moves this Court to enlarge the time for oral argument in this death penalty post-conviction appeal from fifteen minutes per side to thirty minutes per side pursuant to S. Ct. Prac. R. 17.05(B). A Memorandum in Support is attached.

Respectfully submitted,

Ohio Public Defender

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MEMORANDUM IN SUPPORT

On March 18, 2011, Appellant filed a Memorandum in Support of Jurisdiction with this Court, appealing the lower courts' grant of relief to Appellee on the basis of ineffective assistance of counsel he received during the mitigation phase of his trial. On February 20, 2013, this Court accepted review of this case. All briefs were filed by July 18, 2013 and this Court set oral argument to take place on April 29, 2014.

According to S. Ct. Prac. R. 17.05(A)(1), “[i]n cases involving the affirmance or imposition of the death penalty, 30 minutes shall be allotted to each side for oral argument on the merits.” Traditionally, the death penalty cases in which this Court hears arguments have been direct appeals. Appellee is before this Court on a discretionary appeal of the grant of his post-conviction petition in which he raised the claim that he received ineffective assistance of counsel when his counsel failed to conduct a reasonable mitigation investigation. The time allowed for oral argument of a discretionary appeal is fifteen minutes. S.Ct. Prac.R. 17.05(A)(2). However, this Court must now decide whether Appellee’s death sentence is an appropriate sentence or is in violation of his 6th Amendment right to effective assistance of counsel during mitigation. This case involves a similar inquiry as is found in all death penalty direct appeals to this Court – whether the death sentence is appropriate. Appellee therefore believes that each party should be allowed thirty minutes for oral argument, instead of fifteen minutes.

In addition, Appellee’s case will likely be the first case this Court hears for review since *Hinton*¹ was decided this year regarding attorney’s reliance on experts. This case likely will have ramifications beyond a review of the lower courts’ treatment of Appellee’s case. Specifically, this Court may establish the extent to which trial counsel can rely on experts in capital cases in Ohio.

¹ *Hinton v. Alabama*, 571 U.S. ____ (2014).

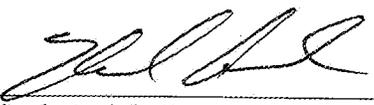
Due to this being a death penalty case involving the issue of ineffective assistance of counsel, Appellee requests this Court allow both parties thirty minutes for oral argument. Counsel for the State was contacted and has no objection to the granting of this Motion.

Respectfully submitted,

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Ohio Public Defender

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CERTIFICATE OF SERVICE

I certify that a true copy of the foregoing APPELLEE WILLIE HERRING'S MOTION TO ENLARGE TIME FOR ORAL ARGUMENT was sent by first class United States mail to Paul Gains, Mahoning County Prosecuting Attorney and Ralph Rivera, Assistant Mahoning County Prosecuting Attorney, 21 W. Boardman Street, 6th Floor, Youngstown, Ohio 44503 on this 13th day of March, 2014.

By: 

Kimberly S. Rigby (0078245)
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