

ORIGINAL

IN THE  
SUPREME COURT OF OHIO

IN RE D.M.,

A Minor Child-Appellant.

Case No. 2013-0579

Appeal No. C-1200794

Trial No. 12-9552Z

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ON APPEAL FROM THE FIRST DISTRICT COURT OF APPEALS  
HAMILTON COUNTY, OHIO

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**MOTION FOR STAY**

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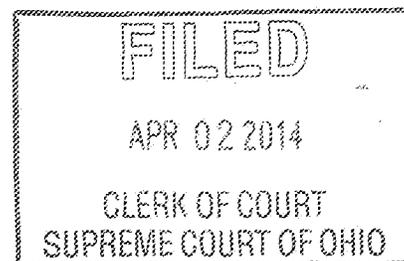
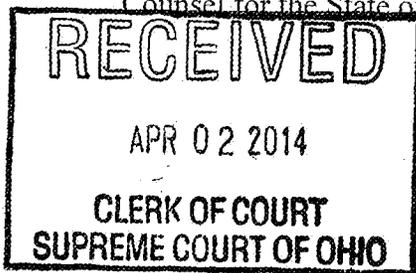
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## MOTION FOR STAY

Now comes D.M., a juvenile, by and through counsel, and moves this Court to stay further proceedings in the juvenile court, including a probable cause hearing.

This matter was initially dismissed without prejudice on November 19, 2012 when the state refused to provide D.M. with two police reports after being ordered to provide them by the juvenile court. The First District reversed this decision and remanded this matter on February 27, 2013.

D.M. moved this Court to accept jurisdiction on April 10, 2013, which this Court accepted. On May 14, 2013, the juvenile court stayed proceeding “until issuance of the Supreme Court’s Decision.” Ex. A.

No further hearings were held in the juvenile court in this matter, and no further pleadings were filed until March 5, 2014 when the state moved to lift the stay. Ex. B. Nearly a year passed before the state took any action to modify the stay. The state did not seek leave to appeal the stay. *See* R.C. 2945.67 and App.R. 5. Nor did the state seek to reconsider the stay for virtually the entire time that the matter was pending before this Court.

Oral arguments were heard before this Court on March 12, 2014. The matter was submitted to the court and is now decisional. There is no reason to upset the status quo, i.e., the stay, at the eleventh hour when there is nothing left but for this Court to render its decision.

D.M. did previously seek a stay of “the Decision of the First District Court of Appeals pending this appeal” in this Court. This stay was not sought until August 10, 2013, three months after the juvenile court issued its stay. D.M.’s request only pertained to the First District’s decision, as there was no reason to seek a stay of juvenile proceedings since the juvenile court had already issued a stay. The stay was sought in this Court not to preserve D.M.’s interests, as

the case had already been stayed by the juvenile court, but to protect the interests of similarly situated children who were affected by the First District's decision in *In re D.M.*, 2013-Ohio-668, 989 N.E.2d 123 (1st Dist.).

In its Motion to Set Aside Judge's Stay, Ex. B, the state claimed injustice and an interest in expediency, but the simple fact is that the state was ordered to provide two police reports, the 301 and the 527(B), 509 days ago, as of the date of this motion, Ex. C. If the state would have simply complied, this matter surely would have been resolved by now. It is hard to see how the delay occasioned by the state's refusal to provide discovery, the state's appeal, and the time that this matter was pending before this Court was all very acceptable to the state. But, now that this matter is "in the home stretch" before this Court, it appears somehow imperative to the state that D.M.'s case be rammed through immediately.

D.M. filed a written response to the state's Motion to Set Aside Judge's Stay, on March 14, 2014. Ex. D. On March 17, 2014, the juvenile court, this time through a different judge, heard oral arguments on the state's motion. From the bench, the court expressed that the court wanted to keep things moving and indicated that, if this Court wanted to stay proceedings, it would. The juvenile court granted the state's motion and set the matter for a bindover probable cause hearing on April 17, 2014. Ex. E-F.

D.M. submits that he has one chance for a probable cause hearing that lives up to the requirements of due process and fair treatment. *See State v. Iacona*, 93 Ohio St.3d 83, 2001-Ohio-1292, 752 N.E.2d 957; *Kent v. United States*, 383 U.S. 541, 86 S.Ct. 1045, 16 L.Ed.2d 84 (1966). And one chance for a probable cause hearing where he has received adequate discovery and his attorney has a full opportunity to prepare for the one hearing that will determine whether he will ultimately be tried as an adult or as a juvenile. *See Juv.R.* 24.

The complaints against D.M. were filed nearly 18 months ago. The juvenile court's stay was in place for nearly 10 months before the state moved to lift it. Everything has been completed in this matter but for this Court rendering its decision. It is imprudent and unfair to force D.M. to go forward with a probable cause hearing at this stage.

Therefore, D.M. respectfully requests that this Court stay further proceedings in the juvenile court, including a probable cause hearing.

Respectfully submitted,



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**CERTIFICATE OF SERVICE**

The undersigned certifies that, on this 1st day of April 2014, a copy of the foregoing Motion for Stay was personally served on:

Joseph T. Deters, Esq.  
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## APPENDIX

The following Exhibits have been provided:

- Ex. A, Judicial Entry, May 14, 2013
- Ex. B, Motion to Set Aside Judge's Stay, Mar. 5, 2014
- Ex. C, Judicial Entry, Nov. 8, 2012
- Ex. D, Memorandum in Response to State's Motion to Set Aside the Judge's Stay, Mar. 14, 2014
- Ex. E, Judicial Entry, Mar. 18, 2014
- Ex. F, Judicial Entry, Mar. 28, 2014

The above exhibits have been provided separately with an accompanying motion that they be filed under seal, because these exhibits contain personal identifiers and confidential information concerning a child.