

ORIGINAL

IN THE SUPREME COURT OF OHIO

STATE OF OHIO,

:

Appellee,

: Case No. 10-0576

-vs-

: Appeal taken from Stark County
Court of Common Pleas

JAMES MAMMONE, III,

: Case No. 2009-CR-0859

Appellant.

: **This is a death penalty case**

**MOTION FOR STAY OF EXECUTION OF DEATH SENTENCE PENDING
DISPOSITION OF AVAILABLE STATE REMEDIES**

Stark County Prosecutor's Office

Office of the Ohio Public Defender

Kathleen O. Tatarsky - #0017115
Assistant Prosecuting Attorney

Shawn P. Welch - #0085399
Assistant State Public Defender

Renee M. Watson - #0072906
Assistant Prosecuting Attorney

Office of the Ohio Public Defender
250 East Broad St., Suite 1400
Columbus, Ohio 43215
(614) 466-5394
(614) 644-0708 – Fax
shawn.welch@opd.ohio.gov

Stark County Prosecutor's Office
110 Central Plaza South, Suite 510
Canton, Ohio 44702
(330) 451-7897
(330) 451-7965 (fax)

and

Angela Miller – #0064902
322 Leeward Drive
Jupiter, Florida 33477
(561) 529-0545
awmillerlaw@gmail.com
Counsel of Record

COUNSEL FOR APPELLEE

COUNSEL FOR APPELLANT

FILED
AUG 05 2014
CLERK OF COURT
SUPREME COURT OF OHIO

IN THE SUPREME COURT OF OHIO

STATE OF OHIO, :
Appellee, : Case No. 10-0576
-vs- : Appeal taken from Stark County
JAMES MAMMONE, III, : Court of Common Pleas
: Case No. 2009-CR-0859
Appellant. : **This is a death penalty case**

**MOTION FOR STAY OF EXECUTION OF DEATH SENTENCE PENDING
DISPOSITION OF AVAILABLE STATE REMEDIES**

Appellant James Mammone respectfully moves this Court for an Order continuing his stay of execution pending exhaustion of his available state remedies. On September 20, 2012, Mammone timely filed a Memorandum in Support of Jurisdiction. Those proceedings are pending. The reasons for this motion are set forth in the attached Memorandum.

Respectfully submitted,

Office of the
Ohio Public Defender



Shawn P. Welch - #0085399
Assistant State Public Defender

Office of the Ohio Public Defender
250 East Broad Street - Suite 1400
Columbus, Ohio 43215
(614) 466-5394

Angela Miller - #0064902
322 Leeward Drive
Jupiter, Florida 33477
(561) 529-0545
Counsel of Record

COUNSEL FOR APPELLANT

MEMORANDUM

On May 14, 2014, this Court affirmed James Mammone's convictions and death sentence. (Exhibit A). A motion for reconsideration was denied July 23, 2014. (*Id.*) Previously, this Court granted a stay of execution for Mammone pending his direct appeal. Upon the denial of that appeal, this Court has set Wednesday, March 8, 2017 as the new execution date for James Mammone. (*Id.*)

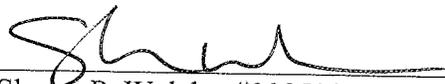
Mammone now moves this Court for an order continuing his stay of execution pending the exhaustion of all available State remedies, including all postconviction appeals. Under *State v. Steffen*, 70 Ohio St. 3d 399, 639 N.E.2d 67 (1994), Mammone is entitled to a stay of execution until he has "exhausted ... one round of postconviction relief, and one motion for delayed reconsideration" 70 Ohio St.3d at 412, 639 N.E.2d at 77. *See also State v. Glenn*, 33 Ohio St. 3d 601, 514 N.E.2d 869 (1987).

On September 20, 2012, Mammone timely filed a Memorandum in Support of Jurisdiction. Those proceedings are pending. Thus, a stay is needed to ensure that the issues raised in his postconviction petition are fully resolved. This Court has granted similar motions. *See, e.g., State v. Raglin*, 85 Ohio St. 3d 1429, 707 N.E.2d 945 (1999).

WHEREFORE, James Mammone respectfully requests that this Honorable Court grant a stay of execution pending the exhaustion of available state remedies, and more specifically, his postconviction proceedings, in accordance with *State v. Steffen*, 70 Ohio St. 3d 399, 639 N.E.2d 67.

Respectfully submitted,

Office of the
Ohio Public Defender



Shawn P. Welch - #0085399
Assistant State Public Defender

Office of the Ohio Public Defender
250 East Broad Street - Suite 1400
Columbus, Ohio 43215
(614) 466-5394

and

Angela Miller – #0064902
322 Leeward Drive
Jupiter, Florida 33477
(561) 529-0545
Counsel of Record

COUNSEL FOR APPELLANT

Certificate of Service

I hereby certify that a true copy of the foregoing MOTION FOR STAY OF EXECUTION was forwarded by first-class, postage prepaid U.S. Mail to Kathleen O. Tatarsky and Renee Watson, Assistant State County Prosecuting Attorneys, Stark County Prosecutor's Office, 110 Central Plaza, South, Suite 510, Canton, Ohio, 44702, on the 5th day of August, 2014.



Shawn P. Welch - #0083599
Assistant State Public Defender

COUNSEL FOR APPELLANT

The Supreme Court of Ohio

FILED

JUL 23 2014

CLERK OF COURT
SUPREME COURT OF OHIO

State of Ohio

v.

James Mammonc, III

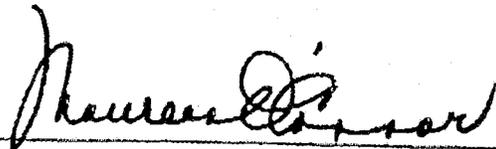
Case No. 2010-0576

RECONSIDERATION ENTRY

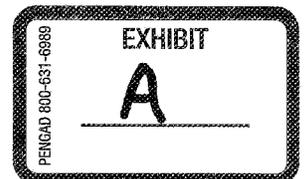
Stark County

It is ordered by the court that the motion for reconsideration in this case is denied.

(Stark County Court of Common Pleas; No. 2009CR0859)



Maureen O'Connor
Chief Justice



The Supreme Court of Ohio

FILED

MAY 14 2014

CLERK OF COURT
SUPREME COURT OF OHIO

State of Ohio

Case No. 2010-0576

v.

JUDGMENT ENTRY

James Mammone, III

APPEAL FROM THE
COURT OF COMMON PLEAS

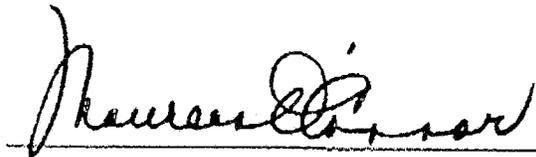
This cause, here on appeal from the Court of Common Pleas for Stark County, was considered in the manner prescribed by law. On consideration thereof, the judgment of the Court of Common Pleas is affirmed, consistent with the opinion rendered herein.

Furthermore, it appearing to the court that the date fixed for the execution of judgment and sentence of the Court of Common Pleas has passed, it is ordered by the court that the sentence be carried into execution by the Warden of the Southern Ohio Correctional Facility or, in his absence, by the Deputy Warden on Wednesday, the 8th day of March, 2017, in accordance with the statutes so provided.

It is further ordered that a certified copy of this entry and a warrant under the seal of this court be certified to the Warden of the Southern Ohio Correctional Facility, and that the Warden shall make due return to the Clerk of the Court of Common Pleas for Stark County.

It is further ordered by the Court that a mandate be sent to the Court of Common Pleas for Stark County to carry this judgment into execution, and that a copy of this entry be certified to the Clerk of the Court of Common Pleas for Stark County for entry.

(Stark County Court of Common Pleas; No. 2009CR0859)



Maureen O'Connor
Chief Justice

I CERTIFY that this document is a true and accurate copy of the judgment entry of the Supreme Court of Ohio filed on 5-14-14 in Case No. 10-576 and constitutes the mandate of the Court pursuant to S.Ct.Prac.R. 18.04.

In witness, I have subscribed my name and affixed the seal of the Supreme Court of Ohio on this 23 day of July, 2014
Clerk of Court
By [Signature] Deputy Clerk

DEATH WARRANT

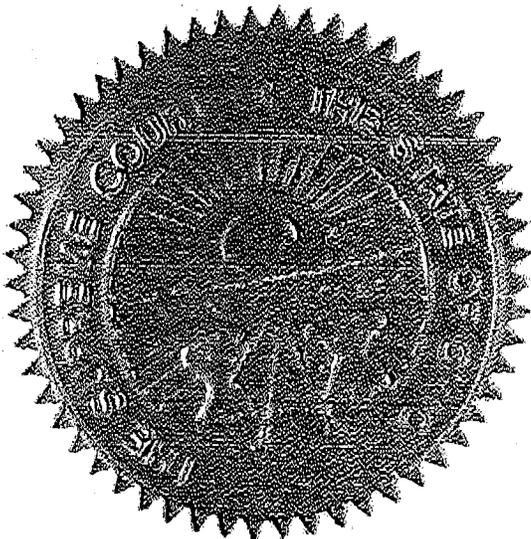
THE STATE OF OHIO

IN THE SUPREME COURT

CITY OF COLUMBUS

TO THE WARDEN OF THE SOUTHERN OHIO CORRECTIONAL FACILITY:

The Supreme Court of Ohio, having affirmed the judgment and sentence of the Court of Common Pleas for Stark County, in the case of The State of Ohio vs. James Mammone, III, and James Mammone, III, having been indicted and convicted of the crime of aggravated murder with specification(s) in the Court of Common Pleas, you are hereby commanded to proceed on Wednesday, the 8th day of March, 2017 (the day fixed by the Supreme Court of Ohio), to carry into execution the sentence of death pronounced on James Mammone, III by the Court of Common Pleas for Stark County, in the manner directed by the statute in such case made and provided, and make due return thereof to the Clerk of the Court of Common Pleas of Stark County.



Given under my hand and the Seal of the
Supreme Court, at Columbus, this 14th
day of May, 2014.

Mark H. Reed

Clerk of the Supreme Court

No. 2010-0576

THE SUPREME COURT OF OHIO

THE STATE OF OHIO

VS.

JAMES MAMMONE, III

DEATH WARRANT

FOR THE EXECUTION OF

JAMES MAMMONE, III

CONDEMNED PRISONER
