

ORIGINAL

IN THE SUPREME COURT OF OHIO

STATE OF OHIO,	:	Case No. 1993-1245
	:	
Appellee	:	
	:	
v.	:	[Capital Case]
	:	
JOSE TRINIDAD LOZA,	:	
	:	
Appellant.	:	

On Appeal from the Butler County Court of Appeals
Case No. CA91-11-198

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MOTION TO SET EXECUTION DATE
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I. INTRODUCTION

Appellant Jose Trinidad Loza is an Ohio Death Row inmate who was convicted and sentenced to death for the aggravated murders of Georgia Davis, Gary Mullins, Cheryl Senteno and Jerri Jackson committed on June 16, 1991, in the city of Middletown, Butler County, Ohio. Appellant has exhausted all state and federal remedies. The State of Ohio respectfully requests that this Honorable Court issue an order and Death Warrant setting an execution date for Appellant.

II. PROCEDURAL HISTORY

A. Indictment

Appellant was indicted on March 22, 1991, for four counts of aggravated murder contrary to R.C. 2903.01(A). Each count included three death penalty specifications charging Appellant with

committing the murders to escape or avoid detection, apprehension, trial, or punishment for child stealing and contributing to the delinquency or unruliness of a minor [R.C. 2929.04(A)(3)]; committing the murders as part of a course of conduct involving the purposeful killing of two or more persons [R.C. 2929.04(A)(5)]; and committing the murders as the principal offender while committing aggravated robbery [R.C. 2929.04(A)(7)]. In addition, each of the four aggravated murder counts included a firearm specification pursuant to R.C. 2941.141. The case was assigned number CR91-02-0104.

B. Trial

On August 5, 1991, Appellant waived his right to a jury trial and the matter proceeded before a three-judge panel. The bench trial resulted in a mistrial without prejudice, which was declared on August 8, 1991. On October 22, 1991, retrial commenced before a jury. At the conclusion of the jury trial, the trial court granted a judgment of acquittal as to specification 3 to Count Four pertaining to the murder of Jerri Jackson being committed while Appellant was committing aggravated robbery. On October 31, 1991, the jury found Appellant guilty as charged on all four counts of aggravated murder and specifications with the exception of the first specification in Counts Three and Four: that the murders of Cheryl and Jerri, respectively, were committed for the purpose of escaping detection.

A two day penalty phase hearing was held on November 6 and 7, 1991. At the conclusion of the hearing, the trial court merged the R.C. 2929.04(A)(3) and R.C. 2929.04(A)(4) specifications with respect to the aggravated murders of Georgia Davis and Gary Mullins. The jury recommended the death sentence for the aggravated murders of Cheryl Senteno, Gary Mullins, and Jerri Jackson. For the aggravated murder of Georgia Davis, the jury recommended a life sentence. The trial court accepted the jury's recommendation and sentenced Appellant to thirty years to life for the aggravated

murder of Georgia Davis and death for the remaining aggravated murders. The life sentence was imposed consecutive to the death sentences. The trial court issued its written opinion pursuant to R.C. 2929.03(F) on November 15, 1991.

C. Direct Appeal

Appellant filed his appeal as of right to the Twelfth District Court of Appeals. In a decision released on April 19, 1993, the Twelfth District affirmed his convictions and sentences. *State v. Loza*, 12th Dist. Butler No. 91-11-198, 1993 WL 120028 (April 19, 1993). This Court accepted jurisdiction and on November 30, 1994, unanimously affirmed Appellant's convictions and sentence. *State v. Loza*, 71 Ohio St.3d 61, 641 N.E.2d 1082 (1994). On December 28, 1994, this Court denied Appellant's motion for reconsideration. *State v. Loza*, 71 Ohio St.3d 1437, 643 N.E.2d 142 (1994). Thereafter, the United States Supreme Court denied Appellant's petition for writ of certiorari on May 15, 1995. *Loza v. Ohio*, 514 U.S. 1120, 115 S.Ct. 1983, 131 L.E.2d 871 (1995).

D. Postconviction Proceedings

Appellant filed his postconviction proceedings, pursuant to R.C. 2953.21, in the Court of Common Pleas of Butler County on November 27, 1995. The State filed a motion to dismiss the petition on December 7, 1995. The trial court granted the State's motion and dismissed Appellant's petition on September 24, 1996. Appellant directly appealed the dismissal of his petition to the Twelfth District Court of Appeals. On October 13, 1997, the Twelfth District issued a unanimous decision overruling Appellant's assignments of error and affirming the lower court's dismissal of his petition. *State v. Loza*, 12th Dist. Butler No. CA96-10-214, 1997 WL 634348 (Oct. 13, 1997). This Court originally accepted jurisdiction of the case, however, on January 28, 1998, this Court sua sponte dismissed the appeal as not involving a substantial constitutional question. *State v. Loza*, 81

Ohio St.3d 1429, 689 N.E.2d 49 (Table) (1998). Certiorari was not sought in the Supreme Court of the United States.

E. Manahan Appeal

Appellant did not seek to reopen his direct appeal.

F. Federal Habeas Proceedings

On February 12, 1998, Appellant filed a notice of his intention to file a habeas corpus petition in the United States District Court for the Southern District of Ohio. Two months later, on April 17, 1998, Appellant filed his formal habeas corpus petition pursuant to 28 U.S.C. §2254. The Magistrate Judge granted respondent's motion to dismiss claims 7, 19, 20 (paragraph 252), 26, and 33; and denied claim 4. *Loza v. Mitchell*, S.D. Ohio No. C-1-98-287, 2002 WL 1580520 (June 11, 2002). The remainder claims were then considered on the merits. On March 31, 2010, the Honorable Judge Sargus issued a decision rejecting all of Appellant's remaining claims and denying his petition for habeas corpus. *State v. Loza*, 705 F.Supp.2d 773 (S.D. Ohio 2010). Appellant filed a motion to alter or amend the decision, but Judge Sargus denied his motion. *Loza v. Mitchell*, S.D. Ohio No. 1:98-cv-287, 2011 WL 1236602 (March 29, 2011).

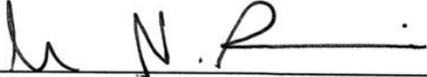
Appellant appealed the District Court's denial of his habeas petition to the United States Court of Appeals for the Sixth Circuit, which subsequently affirmed the District Court's decision on September 2, 2014. *Loza v. Mitchell*, 766 F.3d 466 (6th Cir. 2014). Appellant then requested a hearing en banc, but the Sixth Circuit denied his request on October 24, 2014. *Id.* The Supreme Court of the United States denied certiorari on June 29, 2015. *Loza v. Jenkins*, __ U.S. __, __ S.Ct. __, 2015 WL 1359707 (June 29, 2015).

CONCLUSION

With this procedural history, it is clear that the Appellant has exhausted all of the state and federal court reviews of his conviction and capital sentence and has not sought a stay in this Court. In *State v. Steffan*, 70 Ohio St.3d 399, 412, 639 N.E.2d 67, 1994-Ohio-111, this Court held “when a criminal defendant has exhausted direct review, one round of postconviction relief, and one motion for delayed reconsideration under *State v. Murnahan* in the court of appeals and in the Supreme Court, any further action a defendant files in the state court system is likely to be interposed for purposes of delay and would constitute an abuse of the court system. In order to prevent such abuse, this court will fashion appropriate relief upon application by the prosecuting authority.”

Accordingly, as no stay has been sought, the State of Ohio respectfully moves for an order and Death Warrant setting an Execution Date for Jose Trinidad Loza.

Respectfully submitted,
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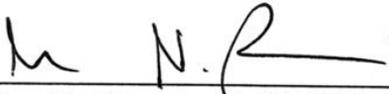
PROOF OF SERVICE

This is to certify that a copy of the foregoing Motion to Set Execution Date was served upon the following by ordinary US mail, postage prepaid, this 6th day of July, 2015:

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