

IN THE SUPREME COURT OF OHIO

STATE OF OHIO, :
 :
 PLAINTIFF-APPELLEE, : CASE No. 2015-1284
 :
 v. : ON DISCRETIONARY APPEAL FROM THE
 : PORTAGE COUNTY COURT OF COMMON
 TYRONE NOLING, : PLEAS PURSUANT TO R.C. 2953.73(E)(1),
 : CASE No. 95-CR-220
 DEFENDANT-APPELLANT. : **THIS IS A CAPITAL CASE.**

**MOTION TO CONSOLIDATE APPEAL WITH PENDING MEMORANDUM IN SUPPORT
OF JURISDICTION IN CASE NUMBER 2014-1377 OF
APPELLANT TYRONE NOLING**

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**MOTION TO CONSOLIDATE APPEAL WITH PENDING MEMORANDUM IN SUPPORT
OF JURISDICTION IN CASE NUMBER 2014-1377**

Mr. Noling moves to consolidate this appeal with the pending appeal and Memorandum in Support of Jurisdiction in Case No. 2014-1377. App.R. 3(B). As explained below, this is an appeal from the same judgment entries in Portage County C.P. No. 95CR220. Mr. Noling filed appeals from these judgment entries to this Court as well as to the Eleventh District Court of Appeals. The case currently pending before this Court, Case No. 2014-1377, is the appeal directly from the Portage Court of Common Pleas. The instant appeal results from the appeal from the Portage County Court of Common Pleas to the Eleventh District Court of Appeals—which dismissed the appeal for lack of jurisdiction. As this appeal is from the same judgment entries in the same case, Mr. Noling moves to consolidate the instant appeal with the appeal and Memorandum in Support of Jurisdiction pending before this Court in Case No. 2014-1377.

Memorandum in Support

As the result of the dismissal of Mr. Noling’s Amended Application for Postconviction DNA Testing in the Portage County Court of Common Pleas on June 26, 2014, Mr. Noling filed a timely notice of appeal and memorandum in support of jurisdiction to this Court. Notice of Appeal and Memorandum in Support of Jurisdiction, Aug. 11, 2014. Mr. Noling also filed a timely notice of appeal to the Eleventh District Court of Appeals. Notice of Appeal, July 24, 2014.

In his Memorandum in Support of Jurisdiction to this Court in Case No. 2014-1377, Mr. Noling set forth a proposition of law challenging the constitutionality of R.C. 2953.73(E)(1).¹ In the simplest terms, Mr. Noling asserted that he, and all other Ohio offenders sentenced to death,

¹ Mr. Noling set forth four other propositions of law in Case No. 2014-1377. The propositions of law in Case No. 2014-1377 are the same propositions of law set forth in the accompanying Memorandum of Law in the instant appeal.

should be able to appeal the denial of a postconviction application for DNA testing in the court of common pleas to an intermediate appellate court. Currently, only those offenders not sentenced to death may appeal to an intermediate appellate court (and file a jurisdictional appeal to this Court from any decision of the intermediate appellate court). Those sentenced to death may only file a jurisdictional appeal with this Court.

Should this Court exercise jurisdiction and determine that R.C. 2953.73(E)(1) is unconstitutional, Mr. Noling's request would be that his appeal be remanded to the Eleventh District Court of Appeals. In order for the Eleventh District to have jurisdiction, a timely notice of appeal must be filed. Therefore, Mr. Noling's timely appeal to the Eleventh District Court of Appeals ensures that the Eleventh District Court of Appeals could assume jurisdiction if Mr. Noling's appeal to this Court is successful.

The above demonstrates that the facts, judgments entries, and propositions of law on the instant appeal are the same as those in pending Case No. 2014-1377 before this Court. Therefore, this Court should consolidate this appeal with that in Case No. 2014-1377. App.R. 3(B).

CONCLUSION

This appeal should be joined with the pending appeal in Case No. 2014-1377 as it is the same case, the same record, and the same propositions of law.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing **MOTION TO CONSOLIDATE APPEAL WITH PENDING MEMORANDUM IN SUPPORT OF JURISDICTION IN CASE NUMBER 2014-1377 OF APPELLANT TYRONE NOLING** was forwarded by first class U.S. mail to Pamela J. Holder, Assistant Prosecuting Attorney, 241 South Chestnut Street, Ravenna, Ohio 44266, and to Mike DeWine, Ohio Attorney General, DNA Testing Unit, 150 East Gay Street, 16th Floor, Columbus, Ohio 43215 on this the 6th day of August 2015.

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