

IN THE SUPREME COURT OF OHIO

STATE OF OHIO : SC Case No: 2014-1862  
 Plaintiff : CP Case No: 14CR 29826  
 -vs- :  
 AUSTIN GREGORY MYERS :  
 Defendant : THIS IS A CAPITAL CASE

FILED  
 SEP 23 2015  
 CLERK OF COURT  
 SUPREME COURT OF OHIO

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**(1) MOTION TO STRIKE THE COURT’S JUNE 22, 2015 NOTICE OF FILING THE RECORD, AND (2) MOTION TO COMPLETE THE RECORD, AND (3) MOTION TO ORDER WARREN COUNTY COMMON PLEAS COURT CLERK TO COMPLETE THE RECORD**

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Appellant, Austin Gregory Myers, through counsel, requests this Court to strike its June 22, 2015, Notice of filing of the record, and to order that the record be completed in the Warren County Court of Common Pleas and transmitted to the Clerk of this Court. The reasons for the requested relief are set forth more fully below.

**MEMORANDUM IN SUPPORT**

Austin Gregory Myers was convicted of, *inter alia*, aggravated murder, and sentenced to death by a jury and judge in the Warren County Court of Common Pleas. He is currently before this Court as an appeal of right. On June 22, 2015, the Notice of Filing the Record was entered on the Court’s docket.

Unfortunately, however, the record is incomplete. Upon review, missing from the

record are numerous transcripts concerning substantive matters, including the arraignment, motion to suppress, conference, and other hearings. This is through no fault of the defendant-appellant.

In Ohio, a criminal defendant is entitled to a complete, unabridged, transcript and record on appeal. *State, ex rel Spirko v. Court of Appeals*, 27 Ohio St. 3d 13, 501 N.E. 2d 625 (1986). A thorough review of the entire record is necessary to give Mr. Myers a full and fair opportunity to litigate his appeal as of right in this Court. Without a complete record for review, counsel cannot provide effective representation to Mr. Myers. See, *State v. Buell*, 70 Ohio St.3d 1211, 639 N.E.2d 110 (1994).

Because so many items are missing from the record, appellant counsels cannot fulfill their duties to Mr. Myers without the time necessary to review and digest the entire record in this case. No prejudice would occur, as the imposition of the death penalty had been previously stayed by this court, and no briefing has yet been filed by either the Appellant or the State.

This court in prior capital cases has reset the filing deadline in other cases where the record was incomplete. See e.g., *State v. James Mammone, III*, Case No. 0859 (Stark C.P. November 30, 2010); *State v. Calvin Neyland, Jr.*, Case No. 07-CR-359, (Wood C.P. October 2, 2009); *State v. Vernon A. Brown*, Case No. CR-447663, (Cuyahoga C.P. February 10, 2006); *State v. Christopher Newton*, Case No. 02-CR-48H (Richland C.P. September 2, 2003); *State v. Nawaz Ahmed*, Case No. 99-CR-192 (Belmont C.P. April 8, 2002); *State v. Terrell Yarbrough*, Case No. Case No. 99-CR-116 (Jefferson C.P. July 3, 2001); *State v. Sidney Cornwell*, Case No. 96 CR 525, (Mahoning Cty. C. P. July 8, 1998). In these capital cases, jury questionnaires and other transcripts were not made

part of the original records. The trial courts issued orders requiring the county clerks of courts to supplement the records in the Ohio Supreme Court. Furthermore, the trial courts ordered that the 180-day filing period specified in Ohio Rev. Code Ann. Sec. 2953.21(A)(2) commence upon receipt by the Clerk of the Supreme Court of Ohio of the supplemental record.

Wherefore, appellant requests an Order of this Court: (1) vacating the notice of filing of the record as of June 22, 2015, as that date does not accurately reflect the filing of the records; (2) directing the Warren County Clerk to file a complete copy of the record including the transcripts not filed; and (3) that the 180-day filing period be reset to commence upon receipt by the Clerk of the Supreme Court of Ohio of the complete record.

Respectfully submitted,

s/ Timothy J McKenna  
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**CERTIFICATE OF SERVICE**

A copy of the foregoing pleading was served upon the Warren County Prosecutor office by fax and mail this 22 day September 2015.

*s/ Timothy J McKenna*

Timothy J. McKenna (0075027)