Supreme Court of Ohio Clerk of Court - Filed September 30, 2015 - Case No. 2010-1406

IN THE

SUPREME COURT OF OHIO

STATE OF OHIO	:	**NO. 2010-1406**
Plaintiff-Appellee	:	On Appeal from Hamilton County
vs.	:	
MARK PICKENS	:	Death Penalty Case
Defendant-Appellant	:	

MEMORANDUM IN OPPOSITION TO APPLICATION FOR REOPENING

Joseph T. Deters (0012084P)
Prosecuting Attorney

Philip R. Cummings (0041497P)
Assistant Prosecuting Attorney
230 East Ninth Street, Suite 4000
Cincinnati, Ohio 45202
Phil.Cummings@hcpros.org
(513) 946-3012; Fax No. (513) 946-3021

COUNSEL FOR PLAINTIFF-APPELLEE, STATE OF OHIO

The Office of the Ohio Public Defender

Tyson Fleming (0073135)
Assistant State Public Defender
Tyson.Fleming@opd.ohio.gov
Counsel of Record

Daniel P. Jones (0041224)
Assistant State Public Defender
Dan.Jones@opd.ohio.gov

Office of the Ohio Public Defender
250 East Broad Street, Suite 1400
Columbus, Ohio 43215
(614) 466-5394; Fax No. (614) 644-0708

COUNSEL FOR DEFENDANT-APPELLANT, MARK PICKENS

PROCEDURAL POSTURE

On December 16, 2014, this Court affirmed Appellant Mark Pickens' ("Appellant") convictions and death sentence. *State v. Pickens*, 141 Ohio St.3d 462. This Court's mandate indicated that the death sentence was to be carried into execution on July 19, 2017. (See Mandate attached.)

On September 1, 2015, Pickens filed an Application for Reopening under S.Ct.Prac.R. 11.06.

MEMORANDUM

Under S.Ct. Prac. R. 11.06, Pickens' application is untimely. The Rule reads in part:

S.Ct.Prac.R. 11.06. Application for Reopening.

(A) General

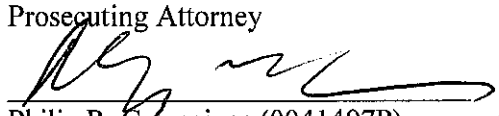
> An appellant in a death-penalty case involving an offense committed on or after January 1, 1995, may apply for reopening of the appeal from the judgment of conviction and sentence, based on a claim of ineffective assistance of appellate counsel in the Supreme Court. An application for reopening shall be filed within ninety days from the issuance of the mandate of the Supreme Court, unless the appellant shows good cause for filing at a later time. (emphasis added)

Pickens filed his application well over the 90-day time limit and has not even addressed the "good cause" requirement.

For this reason, Pickens' application should be denied.

Respectfully submitted,

Joseph T. Deters (0012084P)
Prosecuting Attorney

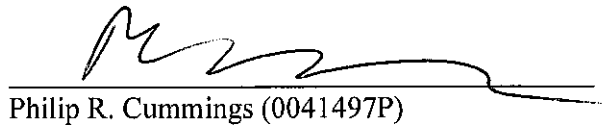


Philip R. Cummings (0041497P)
Assistant Prosecuting Attorney
230 East Ninth Street, Suite 4000
Cincinnati, Ohio 45202
Phil.Cummings@hcpros.org
(513) 946-3012; Fax No. (513) 946-3021

Attorneys for Plaintiff-Appellee

PROOF OF SERVICE

I hereby certify on this 30 day of September, 2015, that I have mailed a copy of the foregoing MEMORANDUM IN OPPOSITION TO APPLICATION FOR REOPENING PURSUANT TO APP. R. 26(B), by United States mail, addressed to Tyson Fleming (0073135) and Daniel P. Jones (0041224), Assistant State Public Defenders, Office of the Ohio Public Defender, 250 East Broad Street, Suite 1400, Columbus, Ohio 43215.



Philip R. Cummings (0041497P)
Assistant Prosecuting Attorney