

IN THE SUPREME COURT OF OHIO

<b>State of Ohio,</b>	:
	: <b>Case No. 2012-1212</b>
<b>Plaintiff-Appellant,</b>	:
	:
<b>v.</b>	: <b>THIS IS A DEATH PENALTY CASE</b>
	:
<b>Caron E. Montgomery,</b>	:
	:
<b>Defendant-Appellee.</b>	:

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**CARON MONTGOMERY’S MOTION TO CONTINUE ORAL ARGUMENT**

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Now comes Caron Montgomery, by and through counsel, and moves this Court to continue the oral argument scheduled for January 27, 2016, until completion of the post-conviction litigation. A Memorandum in Support is attached.

Respectfully submitted,

Office of the Ohio Public Defender

/s/Kathryn L. Sandford

Kathryn L. Sandford (0063985)

Supervising Atty., Death Penalty Department  
(Counsel of Record)

Shawn P. Welch (0085399)

Assistant State Public Defender

Lisa Lagos (0089299)

Assistant State Public Defender

250 E. Broad Street, Suite 1400  
Columbus, Ohio 43215  
(614) 466-5394  
(614) 752-0708 (fax)  
kathryn.sandford@opd.ohio.gov  
shawn.welch@opd.ohio.gov  
lisa.lagos@opd.ohio.gov

Counsel for Defendant-Appellee,  
Caron Montgomery

MEMORANDUM IN SUPPORT

On April 29, 2013, Caron Montgomery filed his Direct Appeal Merit Brief in this Court. The State filed its Merit Brief on September 12, 2013. On October 25, 2013, Montgomery filed his Reply Brief.

On April 9, 2013 Montgomery filed his Post-conviction Petition, amended on April 25, 2013, in the trial court. The State filed its Motion to Dismiss on June 24, 2013. On July 3, 2013 Montgomery filed his Reply Brief.

The trial court denied Montgomery's Post-conviction Petition on December 2, 2013. Subsequently, Montgomery appealed the trial court's decision to the Tenth District Court of Appeals. Briefing was completed in the court of appeals on May 9, 2014.

On December 30, 2014, the court of appeals reversed the trial court. *State v. Montgomery*, case no. 13AP-1091 (10th Dist. Ct. App. 12/30/14). The case was remanded to the trial court for an evidentiary hearing on the issues of ineffective assistance of counsel for counseling Montgomery to waive a jury and the failure to present mitigating evidence. *Id.* at pp. 5-6.

On February 17, 2015, the State filed a Memorandum in Support of Jurisdiction with this Court appealing the decision of the court of appeals. On March 18, 2015, Montgomery filed his

Memorandum in Opposition to Jurisdiction. These pleadings are currently pending before this Court.

On November 30, 2015, this Court scheduled oral argument on the direct appeal for January 27, 2016.

Judicial economy supports granting Montgomery's motion to continue oral argument. Should this Court deny the State's Memorandum in Support of Jurisdiction, the case would return to the trial court for the evidentiary hearing ordered by the court of appeals. The result of the evidentiary hearing could obviate the direct appeal, should Montgomery prevail and the State not appeal the decision. If the State appealed the decision granting relief, that would start new appeals that could still result in Montgomery obtaining a new trial or sentencing hearing, if the State did not ultimately prevail on that appeal.

If this Court grants the State's Memorandum in Support of Jurisdiction, full briefing would be ordered and argument scheduled on that appeal. Again, if Montgomery prevails in that litigation then the case would be sent back to the trial court for an evidentiary hearing with the same potential outcomes as listed above.

In all of the potential scenarios involving the post-conviction litigation in this case, judicial economy favors continuing the direct appeal argument until a decision is rendered on the Memorandum in Support of Jurisdiction and, depending on the outcome, there could be an evidentiary hearing in the trial court.

Based on the foregoing, Montgomery moves this Court to stay the direct appeal oral argument until after the Memorandum in Support of Jurisdiction is ruled on by this Court.

Respectfully submitted,

Office of the Ohio Public Defender

/s/Kathryn L. Sandford

Kathryn L. Sandford (0063985)  
Supervising Atty., Death Penalty Department  
(Counsel of Record)

Shawn P. Welch (0085399)  
Assistant State Public Defender

Lisa Lagos (0089299)  
Assistant State Public Defender

250 E. Broad Street, Suite 1400  
Columbus, Ohio 43215  
(614) 466-5394  
(614) 752-0708 (fax)  
kathryn.sandford@opd.ohio.gov  
shawn.welch@opd.ohio.gov  
lisa.lagos@opd.ohio.gov

Counsel for Defendant-Appellee,  
Caron Montgomery

### **CERTIFICATE OF SERVICE**

I hereby certify that a true copy of the foregoing CARON MONTGOMERY'S MOTION TO CONTINUE ORAL ARGUMENT was forwarded by electronic mail to Steven Taylor, Assistant Prosecuting Attorney, staylor@franklincountyohio.gov on this 2nd day of December, 2015.

/s/ Kathryn L. Sandford  
Kathryn L. Sandford (0063985)  
Supervisor, Death Penalty Division

Counsel for Defendant-Appellee,  
Caron Montgomery