

IN THE SUPREME COURT OF OHIO

STATE OF OHIO, :
Appellee, : Supreme Court Case No. 2011-2005
-vs- : Clark County No. 05 CR 0348
JASON DEAN, : **This is a capital case.**
Appellant. :

APPELLANT DEAN'S MOTION FOR APPOINTMENT OF COUNSEL

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COUNSEL FOR APPELLANT

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Appellee, : Clark County No. 05 CR 0348
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JASON DEAN, :
Appellant.

APPELLANT DEAN'S MOTION FOR APPOINTMENT OF COUNSEL

Appellant Jason Dean moves this Court for the appointment of undersigned counsel for the purpose of preparing and filing his Application for Reopening Pursuant to S.Ct. Prac. R. 11.06. A memorandum in support of this motion is attached.

Respectfully submitted,

s/ Angela Wilson Miller
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MEMORANDUM IN SUPPORT

On January 20, 2016, this Court affirmed Appellant Jason Dean's ("Appellant") convictions and death sentence. *State v. Dean*, 2016-Ohio-172. Appellant requests that this Court appoint counsel for the purpose of preparing and filing his application for reopening. His application is due April 19, 2016.

I. THE SIXTH AND FOURTEENTH AMENDMENTS ENTITLE APPELLANT TO APPOINTED COUNSEL.

Appellant Dean is currently under a sentence of death. Appellant had a direct appeal as of right to this Court. Ohio Constitution, Article IV, Section (B)(2)(b); O.R.C. §2929.05(A). "Once the State chooses to establish appellate review in criminal cases, it may not foreclose indigents from access to any phase of that procedure because of their poverty." *Burns v. Ohio*, 360 U.S. 252, 257 (1959). Because Appellant was indigent, he was entitled to, and received the benefit of, appointed counsel on direct appeal. See *Douglas v. California*, 372 U.S. 353, 355 (1963).

The effective assistance of counsel is encompassed in the right to counsel. *Wainwright v. Torna*, 455 U.S. 586, 587-88 (1982); *State v. Buell*, 70 Ohio St.3d 1211 (1994). The only means that Appellant has available to ensure that he received effective assistance of counsel on direct appeal to this Court is to file an application for reopening pursuant to S.Ct. Prac. R. 11.06. He requires the assistance of appointed counsel to review the record, identify any omitted issues, and prepare and draft an application.

II. APPELLANT WILL BE DENIED DUE PROCESS AND EQUAL PROTECTION BY APPLICATION OF S.CT. R. PRAC. 11.06.

As currently formulated, S.Ct. R. Prac. 11.06 denies Appellant due process and equal protection of the law as guaranteed by the Fifth, Sixth, Eighth and Fourteenth Amendments to the Constitution of the United States and Article I, Sections 2, 9, 10 and 16 of the Ohio Constitution.

The State cannot premise the availability of S.Ct. R. Prac. 11.06 review on the ability to pay for the process. *Griffin v. Illinois*, 351 U.S. 12, 18 (1956). The rule identifies what must be contained in an application for reopening. Appellant must include: “[a]ny parts of the record available to the applicant and all supplemental affidavits upon which the applicant relies.” Appellant is indigent and unable to afford the costs of reproducing the parts of the record necessary to support the application for reopening. Appellant is without the means necessary to reproduce materials and submit the necessary copies required.

Additionally, the appointment of counsel for the application to reopen is contingent upon this Court determining that “there is a genuine issue as to whether the applicant was deprived of the effective assistance of counsel on appeal . . . If the Supreme Court grants the application, . . . The Supreme Court will . . . (1) appoint counsel.” S.Ct. R. Prac. 11.06(F)(1). All of this means that Appellant must proceed without counsel to challenge the performance of the court appointed counsel on direct appeal.

Without doubt, an Appellant with financial resources to retain counsel to prepare the application for reopening would not be forced to proceed alone. It is inconsistent with due process to present the merits of claims before counsel can be appointed. *Anders v. California*, 386 U.S. 738, 744 (1967). See also *Draper v. Washington*, 372 U.S. 487 (1963) (state cannot make free transcripts contingent on determination of a judge that an appeal would not be frivolous).

Destitute defendants must be afforded appellate review that is as adequate as defendants who have enough money to buy transcripts. *Griffin*, 351 U.S. at 19. The thought of an indigent capital defendant attempting to draft a complex legal document with supporting affidavits demonstrates the need for the appointment of counsel.

III. THE PRACTICE OF THIS COURT HAS BEEN TO APPOINT COUNSEL TO PURSUE APLICATIONS TO REOPEN IN CAPITAL CASES.

This Court has a history of appointing counsel to prepare applications to reopen in death penalty cases. See *State v. Turner*, 114 Ohio St.3d 1494 (2007); *State v. Jackson*, 108 Ohio St.3d 1477 (2006); *State v. Cassano*, 101 Ohio St.3d 1478 (2004). Appellant Dean requests that this Court also appoint counsel to assist him with his application for reopening.

IV. CONCLUSION.

Appellant Jason Dean respectfully requests appointment of undersigned counsel to assist him with a review of his appellate representation. Counsel is certified pursuant to S. Ct. R. 20 for the purpose of drafting, researching, and filing an application for reopening of his direct appeal.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on January 29, 2016, I served a copy of the foregoing by regular

United States mail addressed to:

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