

IN THE SUPREME COURT OF OHIO  
2016

STATE OF OHIO,

Case No. 01-1518

Plaintiff-Appellee,

-vs-

LARRY JAMES GAPEN,

DEATH PENALTY CASE

Defendant-Appellant

**MOTION OF AMICUS CURIAE FRANKLIN COUNTY PROSECUTOR RON  
O'BRIEN FOR LEAVE TO FILE MEMORANDUM IN SUPPORT OF PLAINTIFF-  
APPELLEE STATE OF OHIO'S OPPOSITION TO "MOTION FOR ORDER OR  
RELIEF"**

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**MOTION OF AMICUS CURIAE FRANKLIN COUNTY PROSECUTOR RON O'BRIEN FOR LEAVE TO FILE MEMORANDUM IN SUPPORT OF PLAINTIFF-APPELLEE STATE OF OHIO'S OPPOSITION TO "MOTION FOR ORDER OR RELIEF"**

For the reasons stated in the attached memorandum in support, amicus curiae Franklin County Prosecutor Ron O'Brien respectfully requests leave to submit an amicus memorandum in support of plaintiff-appellee State of Ohio's opposition to defendant's May 11th "motion for order or relief."

Respectfully submitted,

RON O'BRIEN 0017245  
Prosecuting Attorney  
/s Steven L. Taylor  
STEVEN L. TAYLOR 0043876  
(Counsel of Record)  
Chief Counsel, Appellate Division  
Counsel for Amicus Curiae Franklin  
County Prosecutor Ron O'Brien

**MEMORANDUM IN SUPPORT**

In the wake of *Hurst v. Florida*, 136 S.Ct. 616 (2016), defendant Gapen has filed a "motion for order or relief," relying on the general motion practice mechanism provided in S.Ct.Prac.R. 4.01. This motion was filed several years after the death sentence was affirmed, after reconsideration was denied, and after reopening was denied.

Similar motions have been filed in other cases. *State v. Kirkland*, Sup.Ct.No. 10-854; *State v. Sheppard*, Sup.Ct.No. 97-1474; *State v. Fears*, Sup.Ct.No. 98-19.

It is respectfully submitted that a "motion for order or relief" should not be entertained because such a motion represents an attempted end-run around the strict

time limits on reconsideration. Entertaining such motions will erode the finality of this Court's judgments on direct appeal. This is an important concern not only for the death sentences arising from Franklin County but also for death-penalty cases from throughout the state. Allowing such motion practice could multiply the work of this Court and of prosecutors, resulting in repeated rounds of post-judgment briefing in this Court when only one round of reconsideration is allowed by this Court's rules.

It is also important to point out that this Court's decision in *State v. Belton*, \_\_\_ Ohio St.3d \_\_\_, 2016-Ohio-1581, undercuts defendant's claim that *Hurst* has overruled the validity of independent sentence review as curing penalty-phase error.

Accordingly, in the interest of aiding this Court's review, this amicus respectfully requests leave to file a memorandum in support of the State's position in this matter.

Respectfully submitted,

RON O'BRIEN 0017245  
Prosecuting Attorney  
/s Steven L. Taylor  
STEVEN L. TAYLOR 0043876  
(Counsel of Record)  
Chief Counsel, Appellate Division  
Counsel for Amicus Curiae Franklin  
County Prosecutor Ron O'Brien

#### **CERTIFICATE OF SERVICE**

This is to certify that a copy of the foregoing was sent by e-mail on May 20, 2016, to Kirsten A. Brandt, brandtk@mcohio.org , counsel for State of Ohio, and to Sharon A. Hicks, Sharon\_Hicks@fd.org, counsel for defendant.

/s Steven L. Taylor  
STEVEN L. TAYLOR