

IN THE SUPREME COURT OF OHIO

STATE OF OHIO,

Appellee

vs.

Case No. 2011-2005

JASON DEAN,

Death Penalty Case

Appellant

ON APPEAL FROM THE CLARK COUNTY
COURT OF COMMON PLEAS CASE NO. 05CR-0348

STATE OF OHIO'S OPPOSITION TO
DEAN'S MOTION TO STRIKE

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STATE OF OHIO'S OPPOSITION TO
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The Court should overrule Dean's motion to strike since it is a transparent effort to reply to the State's arguments contra Dean's motion for reopening, where the rules of the Court do not permit a reply brief. S. Ct. Prac. R. 11.06(A) and (C) (providing for an application to reopen and a response, but no provision for a reply.)

By its express terms, a motion to strike pursuant to Civ. R. 12(f) is directed to a "pleading," and accordingly is not available as an attack on a legal argument such as that presented in the State's opposition to Dean's application to reopen his direct appeal. *Cf. Dawson v. City of Kent*, 682 F. Supp. 920, 922 (N.D. Ohio, 1988) ("The federal rules make only one reference to a motion to strike in Rule 12(f). This rule relates only to pleadings and is inapplicable to other filings."). Under these circumstances, Dean's motion to strike is itself "impertinent," where it is not an available motion in respect to the State's opposition to reopening, and the rules of this Court do not afford a reply to the State's opposition to reopening.

The Court's determination of whether Dean's application is timely or untimely should be an objective assessment of pertinent dates and events, in light of applicable rules regarding filing requirements. Whether the State's evaluation of Dean's untimeliness is correct or incorrect is a matter subject to objective assessment by the Court. Especially where Dean's argument for timeliness does not contain any analysis of the applicable rules, nor any citation to case law, the matter of timeliness under S.Ct. Prac. R. 11.06 would therefore seem to remain an open question. Under these circumstances, Dean's unsupported insistence that his application is timely does not therefore mean the State's contrary position is "impertinent" as Dean alleges.

CONCLUSION

For the reasons expressed, the Court should overrule Dean's motion to strike.

Respectfully submitted,

/s D. Andrew Wilson

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CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing *Appellee State of Ohio's Opposition To Motion To Strike* has been delivered by e-mail to Angela Miller at awmiller@gmail.com on this the 23rd day of May, 2016.

/s D. Andrew Wilson

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