

IN THE SUPREME COURT OF OHIO

STATE OF OHIO, :
 : Case No. 2010-2198
Plaintiff-Appellee, :
v. :
CALVIN McKELTON :
 :
Defendant-Appellant. : **This is a death penalty case.**

**MOTION FOR STAY OF EXECUTION OF DEATH SENTENCE PENDING
DISPOSITION OF AVAILABLE STATE REMEDIES**

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COUNSEL FOR APPELLANT

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Calvin McKelton respectfully moves this Court for an Order continuing his stay of execution pending exhaustion of his available state remedies. He is currently still litigating his appeal of the denial of postconviction relief, he will be filing a Motion to Reconsider this Court's denial of his direct appeal, and he will be pursuing his right to file an Application for Reopening under S.Ct.Prac.R 11.06. He is entitled to a stay until he exhausts these appeals. *State v. Steffen*, 70 Ohio St. 3d 399, 639 N.E.2d 67 (1994).

The reasons for this motion are more fully set forth in the attached Memorandum.

Respectfully submitted,

OFFICE OF THE
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MEMORANDUM

On September 13, 2016, this Court affirmed Calvin McKelton's convictions and death sentence. *See State v. McKelton*, Slip Op. No. 2016-Ohio-5735. Upon the denial of that appeal, this Court has set McKelton's execution date as November 18, 2020.

McKelton now moves this Court for an order continuing his stay of execution pending the exhaustion of available postconviction remedies, including all appeals. Under *State v. Steffen*, 70 Ohio St. 3d 399, 639 N.E.2d 67 (1994), McKelton is entitled to a stay of execution until he has "exhausted ... one round of postconviction relief, and one motion for delayed reconsideration ... in the court of appeals" 70 Ohio St.3d at 412, 639 N.E.2d at 77. *See also State v. Glenn*, 33 Ohio St. 3d 601, 514 N.E.2d 869 (1987).

McKelton has been litigating his request for postconviction relief since December 28, 2011. He is currently awaiting this Court's review of his Memorandum in Support of Jurisdiction, concerning his postconviction relief issues, which was filed on November 30, 2015. In addition, undersigned counsel will be filing a motion urging this Court to reconsider its denial of his direct appeal, and they will be seeking a writ of certiorari in the Supreme Court of the United States. If this Court denies his Motion to Reconsider, McKelton will also exercise his right to file an Application for Reopening, pursuant to S.Ct.Prac.R 11.06 and *State v. Murnahan*, 63 Ohio St. 3d 60 (1992).

A stay is needed to ensure that the issues raised in McKelton's postconviction petition and subsequent appeals are fully resolved. This Court has granted similar motions. *See, e.g., State v. Raglin*, 85 Ohio St. 3d 1429, 707 N.E.2d 945 (1999).

WHEREFORE, Calvin McKelton respectfully requests that this Honorable Court grant a stay of execution pending the exhaustion of available state remedies, in accordance with *State v. Steffen*, 70 Ohio St. 3d 399, 639 N.E.2d 67.

Respectfully submitted,

OFFICE OF THE
OHIO PUBLIC DEFENDER

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CERTIFICATE OF SERVICE

I hereby certify that a true copy of **Appellant McKelton's Motion for Stay of Execution** was mailed, postage pre-paid, to Michael Gmoser, Butler County Prosecutor, and Lina N. Alkawahwi, Butler County Assistant Prosecutor, Government Services Center, 315 High Street, 11th floor, Hamilton, OH 45011, on this 20th day of September, 2016.

/s/Rachel Troutman
RACHEL TROUTMAN (0076741)