

**IN THE SUPREME COURT OF OHIO  
CASE NO. 88-351**

**STATE OF OHIO**

Appellee

v.

**RICHARD WADE COOEY, II**

Appellant

On Appeal from the Summit  
County Court of Appeals,  
Ninth Appellate District  
Court of Appeals No. 12943

**DEATH PENALTY CASE**

**STATE'S MOTION TO SET NEW EXECUTION DATE**

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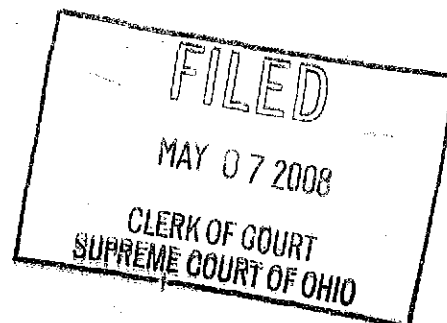
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On the night of August 31, 1986, Wendy Offredo, twenty-one, and Dawn McCreery, twenty, finished their shift at the Brown Derby Restaurant in Montrose, Ohio and were driving to the Harbor Inn, located in Portage Lakes when the defendant and his accomplices threw a chunk of concrete from an overpass disabling their car. After pretending to help the girls and promising Wendy Offredo's mother that he would protect them, the defendant and Clint Dickens, drove to an isolated area in Norton, Ohio where they robbed and raped both girls. The two men beat the young woman with a nightstick and strangled them to death. They dumped the girls' bodies in some bushes and the defendant attempted to sell their jewelry. See, *State v. Cooley* (1989), 46 Ohio St. 3d 20, 21. On December 9, 1986 the defendant was sentenced to death. Although the defendant raped and killed the two victims in a matter of hours, the State has waited over 21 years to carry out a lawful sentence. This Court must answer the State's call for justice and set a prompt execution date.


This Court had previously set an execution date for July 24, 2003. *State v. Cooley*, 98 Ohio St.3d 1560, 2003-Ohio-2242, 787 N.E.2d 1226. On July 8, 2003 the defendant had a clemency hearing and the parole board recommended to the governor that he deny the request for clemency. On July 22, 2003 the Governor denied the defendant's request for clemency. On July 22, 2003, the defendant filed in the district court a motion for relief pursuant to Fed. R. Civ. P. 60(b), and a motion for stay of his scheduled July 24, 2003 execution pending the court's review of his Rule 60(b) motion. On July 23, 2003, at about 9:12 P.M., the district court granted defendant's motion and stayed his execution. The stay remained in effect and the defendant was not executed on July 24, 2003. The district court subsequently denied this motion under Rule 60(b) and the Sixth Circuit denied defendant's appeal of that judgment.

In the interim, the defendant filed a complaint in which he challenged Ohio's use of lethal injection on constitutional grounds. The Sixth Circuit Court of Appeals ruled that Cooley failed to raise his claim that lethal injection was unconstitutional within the statute of limitations for a 42 USC § 1983 claim. *Cooley v. Strickland*, 479 F.3d 412 (2007). It ordered that Cooley's case be remanded to the District Court with orders that Cooley's lawsuit be dismissed. Cooley filed a writ of certiorari to the Supreme Court of the United States, thereby staying the Sixth Circuit's mandate. On April 21, 2008, the Supreme Court of the United States denied the writ of certiorari. *Cooley v. Strickland* (2008), S.Ct., 2008 W.L. 1775072. Once the Sixth Circuit mandates goes into effect, the District Court will be required to dismiss Cooley's § 1983 challenge.

The State contends that there is no pending state litigation and that the Ohio Attorney General who litigates the federal litigation has indicated that there is no pending federal litigation that would delay the execution of the defendant. The State asserts that this Court should set an execution date in this case as there are currently no federal or state court orders preventing the defendant's execution.

Respectfully submitted,

**SHERRI BEVAN WALSH**  
Prosecuting Attorney

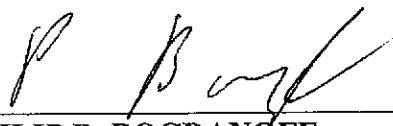


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**PROOF OF SERVICE**

I hereby certify that a copy of the foregoing was sent by regular U.S. mail to Attorney Gregory Meyers, Office of the Public Defender 8 E. Long Street, 11<sup>th</sup> floor, Columbus, Ohio, 43215, on the 6<sup>th</sup> day of May, 2008.



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