

# The Supreme Court of Ohio

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## CASE ANNOUNCEMENTS

February 19, 2016

[Cite as *02/19/2016 Case Announcements #2, 2016-Ohio-587.*]

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## MOTION AND PROCEDURAL RULINGS

### **2005-1316. State v. Frazier.**

Lucas C.P. No. CR0200401509. This cause came on for further consideration upon appellee's motion to set an execution date.

Upon consideration thereof, it is ordered by the court that the motion is granted.

It is further ordered that James P. Frazier's sentence be carried into execution by the warden of the Southern Ohio Correctional Facility or, in his absence, by the deputy warden on Thursday, the 17th day of October, 2019, in accordance with the statutes so provided.

It is further ordered that a certified copy of this entry and a warrant under the seal of this court be duly certified to the warden of the Southern Ohio Correctional Facility and that said warden shall make due return thereof to the Clerk of the Court of Common Pleas of Lucas County.

Pfeifer and O'Neill, JJ., dissent.

**PFEIFER, J., dissenting.**

{¶ 1} Today this court sets a date of execution for James Frazier. The act begs the question: Why?

{¶ 2} In 2015, our great state did not execute a single person, and no executions are scheduled for 2016, in large part because, according to a press release issued by the Ohio Department of Rehabilitation and Correction (“ODRC”) in October 2015, obtaining the drugs used for executions has proved to be “exceedingly difficult.” *Execution Dates Revised*, <http://www.drc.ohio.gov/Public/press/press439.htm> (accessed Jan. 19, 2016). At this time (not counting the execution date set today in this case), 11 executions have been scheduled for 2017, eight have been scheduled for 2018, and six have been scheduled for 2019. *Id.* The state does not have the drugs needed to carry out the executions.

{¶ 3} In 2014, a federal judge described Ohio’s then lethal-injection protocol as “an experiment in lethal injection processes.” *In re Ohio Execution Protocol Litigation*, 994 F.Supp.2d 906, 913 (S.D. Ohio 2014). In early 2015, the ODRC announced that the protocol has been revised. *Ohio Revises Lethal Injection Protocol*, <http://www.drc.ohio.gov/Public/press/press436.htm> (accessed Jan. 19, 2016). The new protocol “contemplates the use of pentobarbital and thiopental sodium,” the suppliers of which sought and have been provided anonymity. *In re Ohio Execution Protocol Litigation*, S.D. Ohio No. 2:11-CV-1016, 2015 WL 6446093, \*9 (Oct. 26, 2015). Given that no executions are scheduled to take place in 2016, it is likely that there are no suppliers to shield. We don’t know much about the ODRC’s attempts to procure the necessary drugs other than its enigmatic statement made more than a year ago in the same press release announcing the current protocol that “[a]s Ohio secures a supply of pentobarbital and thiopental sodium, [executions] will be postponed to a date to be announced in the future.” <http://www.drc.ohio.gov/Public/press/press436.htm>. Was the ODRC announcing a fait accompli? Events suggest that that is unlikely.

{¶ 4} At this time, the state is incapable of properly executing the 25 people for whom execution dates have previously been set. It serves no rational purpose for this court to continue to set execution dates while significant logistical obstacles remain in place and more legal challenges are likely.

{¶ 5} I dissent.

O’NEILL, J., concurs in the foregoing opinion.