

IN THE SUPREME COURT OF OHIO

STATE OF OHIO,

Plaintiff-Appellee,

v.

JEROME HENDERSON,

Defendant-Appellant.

On Appeal from the
Hamilton County Court of Appeals

Case No. 87-0447

Death Penalty Case

MEMORANDUM OF DEFENDANT-APPELLANT JEROME HENDERSON IN
OPPOSITION TO MOTION TO SET EXECUTION DATE

Joseph T. Deters (0012084P)
Prosecuting Attorney
Ronald W. Springman, Jr. (0041413P)
Assistant Prosecuting Attorney
Counsel of Record

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COUNSEL FOR PLAINTIFF-APPELLEE
STATE OF OHIO

Joseph Wilhelm (0055407)
Chief Counsel
Death Penalty Division
Counsel of Record

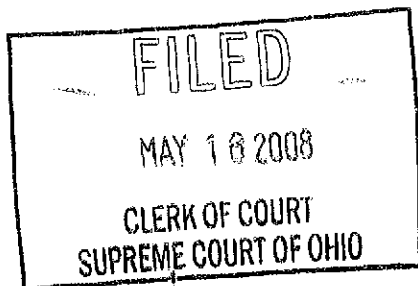
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COUNSEL FOR DEFENDANT-
APPELLANT
JEROME HENDERSON

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Anne Owings Ford (0043717)

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COUNSEL FOR HENDERSON IN
6TH CIRCUIT COURT OF APPEALS



Pursuant to Rule XIV, Section 4(B) of the Rules of Practice of the Supreme Court of Ohio, Defendant-Appellant Jerome Henderson opposes the motion of the State of Ohio to set a date for his execution, because he has a case currently pending in the U.S. Court of Appeals for the Sixth Circuit.

Mr. Henderson filed *In re: Jerome Henderson*, Case Number 07-3942, in the U.S. Court of Appeals for the Sixth Circuit on July 26, 2007. *See* Docket of Case Number 07-3942, attached as Exhibit A. That court appointed pro bono counsel – the below-signed attorneys – in November 2007 and has allowed counsel time to become familiar with the voluminous record and files relating to Mr. Henderson’s case. Mr. Henderson has moved that court to schedule the filing of the pertinent motions and supporting memoranda. *See* Motion to Schedule Filing of Amended Motion for Leave to File Second or Subsequent Petition, attached as Exhibit B. Bizarrely, the State does not even reference this on-going proceeding in the legal history it recites in its motion to set execution date, but instead represents to this Court that all Mr. Henderson’s legal proceedings are at an end.¹

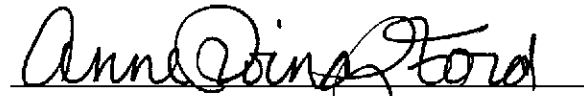
Contrary to the representations in the State’s motion, Mr. Henderson’s legal proceedings continue, and the Sixth Circuit’s decision in this matter is not a foregone conclusion. Because Mr. Henderson’s case currently is pending before the Sixth Circuit, and that court has appointed new counsel to represent Mr. Henderson’s interests in that proceeding, this Court should not set a date for Mr. Henderson’s execution at this time.

¹ In its discussion of Mr. Henderson’s part in *Cooley, et al., v. Taft, et al.*, Case No. 06-4527 (6th Cir.), the State acknowledges that the Sixth Circuit granted Mr. Henderson a stay of execution in that action on December 1, 2006. That stay has never been lifted. *See* Docket of Case Number 06-4527, attached as Exhibit C. But the State announces its anticipation that the stay will someday be lifted, and goes on to declare that Mr. Henderson “currently lacks a federal stay.” Motion to Set Execution Date at 5. In the presence of a valid stay of execution, as issued by the Sixth Circuit, the State’s motion in this Court is premature.

Defendant-Appellant Jerome Henderson therefore respectfully requests that this Court deny the State's motion to set execution date.

Dated: May 16, 2008

Respectfully submitted,

A handwritten signature in black ink, reading "Anne Owings Ford", written over a horizontal line.

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Counsel for Defendant-Appellant
JEROME HENDERSON in In re Jerome
Henderson, No. 07-3942 (6th Cir. filed July
26, 2007)

TAB A

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General Docket
United States Court of Appeals for the Sixth Circuit

Court of Appeals Docket #: 07-3942

Docketed: 07/26/2007

In Re: J. Henderson

Appeal From: Southern District of Ohio at Cincinnati

Case Type Information:

- 1) Original Proceeding
- 2) Successive Habeas Corpus
- 3) null

Originating Court Information:

District: 0648-1 : 94-00106

Trial Judge: S. Arthur Spiegel, U.S. District Judge

Date Filed:

Prior Cases:

03-3988

Date Filed: 07/22/2003 **Date Disposed:** 06/09/2006 **Disposition:** Oral Argument

03-4054

Date Filed: 08/07/2003 **Date Disposed:** 06/09/2006 **Disposition:** Oral Argument

03-4080

Date Filed: 08/14/2003 **Date Disposed:** 06/09/2006 **Disposition:** Oral Argument

99-4046

Date Filed: 08/26/1999 **Date Disposed:** 08/28/2001 **Disposition:** Oral Argument

99-4088

Date Filed: 09/09/1999 **Date Disposed:** 08/28/2001 **Disposition:** Oral Argument

Current Cases:

None

In re: JEROME HENDERSON (#A186-271)

Appellant

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[COR LD NTC CJA Appointment]

Jones Day

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Jerome Henderson

[NTC Pro Se]

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 Jones Day
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In re: JEROME HENDERSON

Movant

07/26/2007 Original Proceeding Death Penalty Second Successive HC Docketed. Notice filed by Appellant Jerome Henderson.

07/26/2007 LETTER SENT by nb directing Jerome Henderson to file a corrected second successive habeas motion. [07-3942] Response due 8/28/07 .

07/26/2007 The case manager for this case is: nb Nancy


07/26/2007 Electronic case filing. District court record can be downloaded electronically. [07-3942]


07/26/2007 RULING to extend appointment of Reinhart & Stebbins as counsel under the Criminal Justice Act for Jerome Henderson. [07-3942] .

07/31/2007 APPEARANCE filed by Attorney Laurence R. Snyder for Respondent Terry Collins [07-3942]

08/27/2007 Appellant MOTION filed by Mr. Harry R. Reinhart and Mr. David C. Stebbins for Jerome Henderson to extend time for filing motion for permission to file second or successive petition. Certificate of service: 08/25/2007

08/27/2007 Appellant MOTION filed by Jerome Henderson to proceed in forma pauperis. Certificate of service: 08/22/2007

08/27/2007  Corrected second successive motion filed by Jerome Henderson with exhibits




08/30/2007  LETTER SENT granting motion for appellant's attorneys to extend time to 9/28/07 to file the corrected secessive petition filed by Mr. Harry R. Reinhart for Jerome Henderson and Mr. David C. Stebbins for Jerome Henderson.

08/30/2007 MEMORANDUM IN SUPPORT filed regarding motion to proceed ifp previously filed by filed by Jerome Henderson in 07-3942. Certificate of service:08/24/2007.

08/30/2007 FILED: affidavit and exhibit 1 and 2 of Jerome Henderson opposing the appointment of counsel, by Jerome Henderson.

09/10/2007 Appellant RESPONSE in opposition filed regarding a motion fopposing the appointment of counsel Reinhart and Stebbins, previously filed by filed by Mr. Harry R. Reinhart for Jerome Henderson and Mr. David C. Stebbins for Jerome Henderson in 07-3942. Response from Party

Jerome Henderson. Certificate of Service:08/22/2007.

- 09/26/2007 Respondent RESPONSE in opposition filed regarding a motion for second successive relief filed by Jerome Henderson and Mr. David C. Stebbins for Jerome Henderson in 07-3942. Response from Attorney Mr. Laurence R. Snyder for Respondent Terry J. Collins. Certificate of Service:09/25/2007.
- 09/27/2007 Appellant MOTION filed by Mr. Harry R. Reinhart and Mr. David C. Stebbins, for Harry Reinhard and David Stebbins to withdraw as counsel for Movant, Jerome Henderson, and to appoint counsel under the Criminal Justice Act for Henderson.. Certificate of service: 09/25/2007.
- 09/28/2007 FILED: Original petition under 2254 (not filed in corrected petition for she) by Jerome Henderson.
- 10/11/2007  ORDER filed granting Reinhart and Stebbins' motion to withdraw as counsel and to appoint new court appointed counsel for Jerome Henderson . Entered by order of the court.
- 10/11/2007 Appellant MOTION filed by Jerome Henderson to appoint counsel under the Criminal Justice Act for Henderson.. Certificate of service: 10/08/2007.
- 10/11/2007 REPLY filed by Jerome Henderson regarding respondant's response to she Certificate of Service:10/08/2007.
- 11/07/2007 LETTER SENT to appoint Anne O. Ford and John Q. Lewis counsel under the Criminal Justice Act for the defendant. The appearance form is to be filed by 11/21/2007.
- 11/07/2007 CJA voucher issued to David Stebbins. Response due by 12/24/2007.
- 11/09/2007 MEMORANDUM IN SUPPORT filed regarding motion for permission for second habeas corpus petition, be granted, filed by Jerome Henderson in 07-3942. Certificate of service:11/06/2007.
- 11/27/2007 PETITIONER APPEARANCE filed by Ms. Anne Owings Ford for Appellant Jerome Henderson and Mr. John Q. Lewis for Appellant Jerome Henderson.
- 12/20/2007 CJA VOUCHER filed making claim for reimbursement. Voucher, [3682495-2] filed by David Stebbins for Jerome Henderson.
- 12/20/2007  CJA VOUCHER sent to Alan E. Norris, Circuit Judge. Voucher, [3682495-2] filed by David Stebbins for Jerome Henderson.
- 01/02/2008 NOTIFICATION filed by Jerome Henderson regarding affidavit regarding legal representation: Sixth Circuit Habeas Corpus. Certificate of Service:12/30/2007.
- 02/08/2008 CJA VOUCHER back from approving Judge Norris. Voucher of David Stebbins, [3682495-2] ..
- 02/08/2008  CJA VOUCHER sent to the Administrative Office. Claiming compensation: Attorney time: \$1909.00; Expenses: \$0.00; Total: \$1909.00. Voucher of David Stebbins [3682495-2] ..

PACER Service Center			
Transaction Receipt			
05/15/2008 18:11:40			
PACER Login:	jd0406	Client Code:	
Description:	Docket Report (filtered)	Search Criteria:	07-3942
Billable Pages:	2	Cost:	0.16

TAB B

Appeal No. 07-3942

**IN THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT**

IN RE: JEROME HENDERSON,

Movant.

**MOTION TO SCHEDULE FILING OF AMENDED MOTION FOR ORDER
AUTHORIZING CONSIDERATION OF SECOND OR SUBSEQUENT
PETITION**

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Counsel for Movant
Jerome Henderson

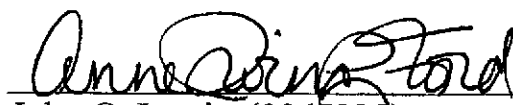
Jerome Henderson hereby moves this Court to schedule the filing of his Amended Motion Under 28 U.S.C. § 2244 for Order Authorizing District Court to Consider Second or Successive Application for Relief under 28 U.S.C. § 2254 (“Amended Motion”), on or after thirty (30) days from the Court’s ruling on this motion.

This Court has provided Henderson’s recently-appointed pro bono counsel with time to gather and review the record in this complex death-penalty matter before drafting an Amended Motion. The State of Ohio, however, has recently moved the Ohio Supreme Court to set an execution date for Henderson. *See* Motion to Set Execution Date, attached as Exhibit A. Henderson will oppose that motion within the time allotted by rule, on the grounds that the pendency of this litigation before this Court makes the setting of an execution date premature and improper.

Henderson therefore respectfully requests that this Court schedule the filing of Henderson's Amended Motion, on or after thirty (30) days from this Court's ruling on this motion, as well as scheduling the remaining proceedings in this matter, in order to bring the merits of Henderson's Amended Motion before this Court.

Dated: May 15, 2008

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Anne Owings Ford", is written over a horizontal line.

John Q. Lewis (0067235)

Anne Owings Ford (0043717)

JONES DAY

North Point

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Facsimile: (216) 579-0212

Counsel for Movant

Jerome Henderson

IN THE
SUPREME COURT OF OHIO

STATE OF OHIO	:	NO. 87-0447
Plaintiff-Appellee	:	
vs.	:	Death Penalty Case
JEROME HENDERSON	:	
Defendant-Appellant	:	

MOTION TO SET EXECUTION DATE

Joseph T. Deters (0012084P)
Prosecuting Attorney

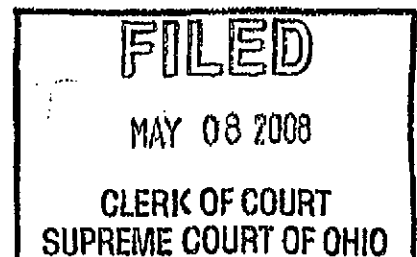
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Counsel of Record

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COUNSEL FOR PLAINTIFF-APPELLEE, STATE OF OHIO

David C. Stebbins
Harry R. Reinhart
Attorneys at Law
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COUNSEL FOR DEFENDANT-APPELLANT, JEROME HENDERSON



IN THE
SUPREME COURT OF OHIO

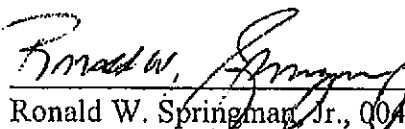
STATE OF OHIO	:	NO. 87-0447
Plaintiff-Appellee	:	
vs.	:	Death Penalty Case
JEROME HENDERSON	:	
Defendant-Appellant	:	

MOTION TO SET EXECUTION DATE

The State of Ohio respectfully requests this Court to set an execution date for Defendant, Jerome Henderson. The reasons in support of this motion are stated in the attached memorandum.

Respectfully submitted,

Joseph T. Deters, 0012084P
Prosecuting Attorney



Ronald W. Springman Jr., 0041413P
Assistant Prosecuting Attorney
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Phone: 946-3052

Attorneys for Plaintiff-Appellee

MEMORANDUM IN SUPPORT

INTRODUCTION

Jerome Henderson was convicted of aggravated murder and sentenced to death by the Hamilton County Court of Common Pleas for the murder of Mary Acoff in her home at 1944 Highland Avenue in Cincinnati, Ohio on or about March 3, 1985. In the twenty three years since his sentence and conviction, Henderson's attorneys have pursued all available avenues of appeal afforded under both Ohio and federal law. The conviction and sentence have been upheld, and Henderson has now completed all state litigation and one round of federal habeas litigation. A federal district judge subsequently permitted a collateral attack on the first federal habeas denial, but the Sixth Circuit recently vacated the district court's judgment, thus confirming that Henderson is not entitled to pursue further federal habeas remedies. Further, Henderson was permitted to join a lawsuit challenging Ohio's lethal injection protocol. That lawsuit has been resolved and it has been determined that Ohio's method of execution is constitutional. Because Henderson has exhausted all state and federal proceedings, the State of Ohio hereby requests this Court set an execution date for Jerome Henderson.

STATE COURT PROCEEDINGS

The Hamilton County Court of Appeals affirmed Henderson's conviction and sentence of death on January 14, 1987. *State v. Henderson* (Hamilton App. 1987), 1987 Ohio App. LEXIS 5519. This Court affirmed the conviction and sentence on September 28, 1988. *State v. Henderson* (1988), 29 Ohio St.3d 24, 26, 538 N.E.2d 1237, 1240. The U.S. Supreme Court denied Henderson's petition for a writ of certiorari. *Henderson v. Ohio* (1989), 489 U.S. 1072.

Henderson pursued post-conviction relief, and after an evidentiary hearing on December 17 and 18, 1990, the trial court denied relief. Henderson appealed, and on March 7, 1991, the Hamilton County Court of Appeals dismissed the appeal as untimely. This Court dismissed a further appeal as well as a request for rehearing.

Henderson also pursued an application for delayed reopening, which the Hamilton County Court of Appeals denied, and this Court affirmed. *State v. Henderson* (1993), 67 Ohio St.3d 1485, 621 N.E.2d 407.

FEDERAL COURT PROCEEDINGS

On February 14, 1994, Henderson filed a petition for writ of habeas corpus in the Southern District of Ohio, Western Division, under Case No. 94-CV-106. On August 4, 1999, Judge S. Arthur Spiegel granted Henderson a conditional writ of habeas corpus as to the death sentence based on a supplemental charge to the jury when it was deadlocked during its penalty phase deliberations. *Henderson v. Collins* (S.D. Ohio 1999), 101 F. Supp.2d 866, 913-18. After both parties appealed, the Sixth Circuit reinstated Henderson's death sentence and upheld the district court's denial of guilt-phase relief. *Henderson v. Collins* (C.A. 6 Cir. 2001), 262 F.3d 615. On April 15, 2002, the Supreme Court denied Henderson's petition for a writ of certiorari. *Henderson v. Collins* (2002), 535 U.S. 1002.

On April 24, 2002, after completion of Henderson's habeas proceedings, the Warden filed a motion before the Southern District of Ohio to explicitly lift the stay of execution that was granted to Henderson during his original habeas action. Henderson opposed and filed a "Rule 60(b) Motion for Relief from Judgment," which asked the district to reconsider its original denial of relief and reimpose its grant of relief on the penalty-phase instruction claim. After a great deal of litigation and

DNA testing, on July 10, 2003, the district court denied habeas relief, but issued a certificate of appealability based on the DNA Report (which had confirmed the presence of the victim's blood on Henderson's coat but did not confirm the presence of Henderson's sperm in the victim). The Court also vacated its previous denial of Henderson's "Rule 60(b) motion" and granted him a conditional writ of habeas corpus based on appellate counsel's failure to raise the "acquittal first" jury instruction.

Both parties appealed, and on June 9, 2006, the Sixth Circuit again reversed the district court's grant of relief. The Sixth Circuit held that no relief was warranted for the jury instruction claim, and the court held that the district court properly denied relief on the DNA testing claim. *Henderson v. Collins* (C.A. 6 2006), 2006 U.S. App. LEXIS 16015. Ultimately the Sixth Circuit construed Henderson's various requests to be for permission to litigate a second habeas petition, and the court denied it.

On August 21, 2006, Henderson moved to intervene in the case of *Cooey, et al. vs. Strickland, et al.*, 2:04-cv-01156 (S.D. Ohio), a lawsuit filed by inmate Cooey challenging the constitutionality of Ohio's lethal injection protocol. On October 25, 2006, Henderson filed a second motion to intervene in District Court, and moved for a preliminary injunction. On November 9, 2006, the Federal District Court granted Henderson's motion to intervene, but denied his motion for a preliminary injunction. On December 1, 2006, the Sixth Circuit Court of Appeals granted Henderson's motion to stay execution of sentence.

Following its December 1, 2006 stay, the Sixth Circuit stayed all further proceedings in Henderson's case pending resolution of the Cooey lawsuit. On April 21, 2008, the United States Supreme Court denied Cooey's petition for writ of certiorari. On April 24, 2008, a copy of the

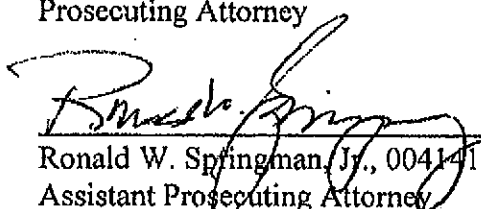
Supreme Court's order denying Cooley's petition on statute of limitation grounds was filed with the Sixth Circuit. Under the Federal Rules of Appellate Procedure, the Sixth Circuit must issue a mandate and dismiss Cooley's lawsuit. Since Henderson's complaint is likewise barred on statute of limitations grounds, the State anticipates that the Sixth Circuit will vacate its previously issued stay of execution and affirm the District Court's denial of a preliminary injunction.

CONCLUSION

Since Henderson has fully litigated to completion one round of federal habeas review and he currently lacks a federal stay or entitlement to additional federal review, there is then no impediment to prevent this Court from setting an execution date.

Respectfully submitted,

Joseph T. Deters, 0012084P
Prosecuting Attorney




Ronald W. Springman, Jr., 0041413P
Assistant Prosecuting Attorney
230 East Ninth Street, Suite 4000
Cincinnati, Ohio 45202
Phone: (513) 946-3052

Attorneys for Plaintiff-Appellee

CERTIFICATE OF SERVICE

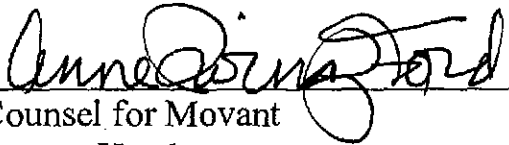
I hereby certify that I have sent a copy of the foregoing MOTION TO SET EXECUTION DATE, by United States mail, addressed to David C. Stebbins and Harry R. Reinhart, 400 S. Fifth Street, Suite 202, Columbus, Ohio 43215-5430, counsel of record, this 2nd day of May, 2008.



Ronald W. Springman, Jr. 0041413P
Assistant Prosecuting Attorney

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Motion to Schedule Filing of Amended Motion for Order Authorizing Consideration of Second or Subsequent Petition was served upon Laurence R. Snyder, Esq., Assistant Attorney General, Ohio Attorney General, 615 W. Superior Avenue, 11th Floor, Cleveland, Ohio 44113, this 15th day of May, 2008, via postage prepaid, first-class United States Mail.


Counsel for Movant
Jerome Henderson

TAB C

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General Docket
United States Court of Appeals for the Sixth Circuit

Court of Appeals Docket #: 06-4527 **Docketed:** 11/28/2006
Nature of Suit: 3550 Prisoner: Civil Rights
 Cooley v. Taft, et al
Appeal From: Southern District of Ohio at Columbus

Case Type Information:

- 1) Prisoner
- 2) State
- 3) Prisoner Civil Rights

Originating Court Information:

District: 0648-2 : 04-01156
Trial Judge: Gregory L. Frost, U.S. District Judge
Date Filed: 12/08/2004
Date Order/Judgment: 11/09/2006 **Date NOA Filed:** 11/28/2006

Prior Cases:

05-301
Date Filed: 04/26/2005 **Date Disposed:** **Disposition:**
 05-4489
Date Filed: 11/23/2005 **Date Disposed:** 11/28/2005 **Disposition:** Motions Panel, Other
 06-4374
Date Filed: 10/18/2006 **Date Disposed:** 10/23/2006 **Disposition:** Motions Panel, Other

Current Cases:

Related	Lead	Member	Start	End
	05-4057	05-4489	11/23/2005	
	05-4057	06-4374	10/18/2006	
	05-4057	06-4527	11/28/2006	
	05-4057	06-4655	12/22/2006	
	06-4527	06-4655	12/22/2006	

RICHARD WADE COOEY, II
 Plaintiff

JEROME HENDERSON (#A186-271)
 Intervenor - Appellant

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v.

ROBERT TAFT
Defendant - Appellee

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JAMES S. HAVILAND, Warden
Defendant - Appellee

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Charles L. Wille, Assistant Attorney General
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Carol Ann Ellensohn
Direct: 614-644-1264
[COR Retained]
(see above)

RICHARD WADE COOEY, II, et al.,;

Plaintiffs

JEROME HENDERSON

Intervenor Plaintiff - Appellant

v.

ROBERT TAFT, Governor; REGINALD A. WILKINSON, Director;
JAMES S. HAVILAND, Warden

Defendants - Appellees

11/28/2006 Prisoner Case Docketed . Notice filed by Appellant Jerome Henderson. Transcript needed: n □

11/29/2006 The case manager for this case is: nb Nancy Barnes

11/29/2006 Electronic case filing. District court record can be downloaded electronically. [06-4527]

11/29/2006 RULING to extend appointment of Carol Wright as counsel for appellant under the Criminal Justice Act for . [06-4527] .

11/29/2006 APPEARANCE filed by Attorney Michael L. Collyer for Appellee James S. Haviland, Appellee Reginald A. Wilkinson, Appellee Robert Taft [06-4527]

11/29/2006 Appellant MOTION filed to stay execution date. Motion filed by Carol Wright for Appellant Jerome Henderson. Certificate of service date 11/28/06 [06-4527]

11/29/2006 APPEARANCE filed by Attorney Carol Wright for Appellant Jerome Henderson [06-4527]

11/29/2006 APPEARANCE filed by Attorney Heather L. Gosselin for Appellee Robert Taft [06-4527]

11/29/2006 Appellee RESPONSE opposition filed regarding a motion stay execution date ; previously filed by Carol Wright . Response from Michael L. Collyer and Heather L. Gosselin for Appellee Robert Taft. Certificate of service date 11/29/06 [06-4527]

11/29/2006 FILED : attachement to appellees' response in opposition to motion for stay of execution: from Michael L. Collyer and Heather L. Gosselin for Appellee Robert Taft [06-4527]

11/30/2006 REPLY filed by Carol Wright for Appellant Jerome Henderson regarding motion for stay of execution [06-4527]

11/30/2006 FILED : attachments to reply from Carol Wright for Appellant Jerome Henderson [06-4527]

12/01/2006 ORDER filed GRANTING MOTION TO STAY EXECUTION currently scheduled for 12/05/06 [3488572-1] Alan E. Norris, Alice M. Batchelder, Eric L. Clay, Circuit Judges. Batchelder, J. Filed a DISSENT

12/01/2006 PETITION for en banc rehearing filed by Michael L. Collyer for Appellee James S. Haviland, Appellee Reginald A. Wilkinson, Appellee Robert Taft, Heather L. Gosselin for Appellee Robert Taft . Certificate of service date 12/1/06 . [06-4527]

12/04/2006 ORDER. The court having considered the petition of the defendants-appellees for rehearing en banc of the December 1, 2006 order of a panel of the court granting the plaintiff-appellant's motion for a stay of execution, and Less than a majority of the non-recused judges in active service having favored en banc review; It is ORDERED that the petition for rehearing en banc is hereby DENIED [3491321-1] [06-4527]. Danny J. Boggs, Chief Circuit Judge; Boyce F. Martin, Alice M. Batchelder, Martha C. Daughtrey, Karen N. Moore, R. G. Cole, Eric L. Clay, Ronald L. Gilman, Julia S. Gibbons, John M. Rogers, Jeffrey S. Sutton, David W. McKeague, Richard A. Griffin, Circuit Judge. (Judge Deborah L. Cook recused herself in this case).

12/04/2006 ORDER filed that the application to vacate the stay of execution of sentence of death entered by the U.S. Court of Appeals for the Sixth Circuit on 12/1/06, presented to Justice Stevens and by him referred to the Court, is DENIED. Entered by the U.S. Supreme Court on 12/4/06 [06-4527] .

12/21/2006 BRIEFING LETTER SENT setting death penalty case briefing schedule: appellant brief due 2/20/07 ; appellee brief due 4/23/07 ; appendix due 5/17/07 ; final appellant brief due 6/7/07 . [06-4527] final appellee brief due 6/7/07 ; .

02/14/2007 Appellant MOTION filed to extend time to file brief until 3/22/07. Motion filed by Carol Wright for Appellant Jerome Henderson. Certificate of service date 2/12/07 [06-4527]

02/20/2007 RULING granting motion in part to file brief on 3/9/07, denying motion to 3/22/07 to extend briefing filed by Carol Wright, resetting death penalty case briefing schedule: [06-4527] . appellant brief due now 3/9/07 ; appellee brief now due 5/11/07 ; appendix now due 6/1/07 ; appellant final brief now due 6/22/07 ; appellee final brief now due 6/22/07

03/01/2007 Appellant MOTION filed to extend time to file brief . Motion filed by Carol Wright for Appellant Jerome Henderson. Certificate of service date 2/28/07 [06-4527]

03/07/2007 Appellant MOTION filed to hold case in abeyance pending a decision on whether the underlying action will be granted en banc or for an extension of time. Motion filed by Carol Wright for Appellant Jerome Henderson. Certificate of service date 3/6/07 [06-4527]

03/07/2007 RULING granting motion to extend briefing filed by Carol Wright [06-4527] (Briefing will not be reset; appellant has since filed a motion to hold case in abeyance) .

03/27/2007 LETTER SENT by nb granting motion to hold case in abeyance pending review of 05-4057; appellant to file status report every 60 days. [06-4527]

05/29/2007 STATUS REPORT filed by Carol Wright for Appellant Jerome Henderson. The decision for rehearing en banc in 05-4057 is still pending in this court. Next report due 7/30/07 [06-4527]

06/18/2007 APPEARANCE filed by Attorney Charles L. Wille for Appellee James S. Haviland, Appellee Reginald A. Wilkinson, Appellee Robert Taft [06-4527]

06/29/2007 APPEARANCE filed by Attorney Brian J. Laliberte for Appellee James S. Haviland, Appellee Reginald A. Wilkinson, Appellee Robert Taft [06-4527]

07/05/2007 APPEARANCE filed by Attorney Carol Ann Ellensohn for Appellee James S. Haviland, Appellee Reginald A. Wilkinson, Appellee Robert Taft [06-4527]

07/31/2007 STATUS REPORT filed by Carol Wright for Appellant Jerome Henderson. Court denied en banc in a split decision on 6/1/07; the petition for writ of cert is due to be filed on 8/30/07 Next report due 10/31/07 [06-4527]

08/01/2007 Appellant MOTION filed for substitution of Lisa Freeland for Carol Wright as counsel for appellant . Motion filed by Carol Wright for Appellant Jerome Henderson. Certificate of service date 7/30/07 [06-4527]

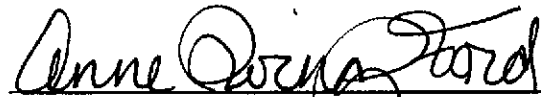
08/09/2007 ORDER filed granting motion to substitute Lisa B. Freeland, Federal Public Defender for current counsel Carol Wright. Carol Wright will also continue to represent appellant. [06-4527] . Entered by order of the court.

08/09/2007 APPEARANCE filed by Attorney Lisa B. Freeland for Appellant Jerome Henderson [06-4527]

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CERTIFICATE OF SERVICE

I hereby certify that copy of the foregoing Memorandum of Defendant-Appellant Jerome Henderson in Opposition to Motion to Set Execution Date was served upon Counsel for Plaintiff-Appellee, State of Ohio, Joseph T. Deters and Ronald W. Springman, Jr., 340 East Ninth Street, Suite 4000, Cincinnati, Ohio 45202, and Counsel of Record for Defendant-Appellant Jerome Henderson, Joseph E. Wilhelm, Office of the Ohio Public Defender, 8 East Long Street, 11th Floor, Columbus, Ohio 43215 via First class U.S. mail, postage prepaid, this 16th day of May, 2008.



Counsel for Defendant-Appellant
Jerome Henderson in In re Jerome Henderson,
No. 07-3942 (6th Cir. filed July 26, 2007)