

NO. 1987-1674

IN THE SUPREME COURT OF OHIO

STATE OF OHIO,

Plaintiff-Appellee

-vs-

ROMELL BROOM,

Defendant-Appellant

MOTION TO SET EXECUTION DATE

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The State of Ohio respectfully requests that this Honorable Court set a date for the execution of Defendant-Appellant Romell Broom, who has exhausted his state and federal appeals. Broom's case is now ripe for the execution of his sentence.

1. Romell Broom kidnapped, raped, and murdered a 14-year old girl.

On the night of September 21, 1984, 14-year old Tryna Middleton attended a high school football game with two of her friends. As the three girls were walking home afterwards, at approximately 11:30 at night, Romell Broom grabbed Tryna from behind, said "[c]ome here, bitch," forced her into a car at knifepoint, and drove away. Broom drove Tryna to a parking lot a mile away, raped her vaginally and anally, and stabbed her in the chest seven times, killing her.

Broom, then 28 years old, had been released from prison three months earlier after serving nine years for raping his niece's 12-year old babysitter in 1975. He was arrested two-and-a-half months after Tryna's murder, on December 6, 1984, when he attempted to

abduct another 11-year old girl who jumped out of his moving car as he drove away. Subsequent DNA testing, conducted during Broom's federal habeas appeals in 2001, identified Broom as the source of semen found in Tryna's vagina and rectum.

2. Broom has exhausted his state and federal appeals.

a. Broom's direct appeal.

On October 3, 1985, a jury found Broom of aggravated murder with two felony-murder specifications (kidnapping and rape) and recommended the death penalty. The trial court adopted the jury's recommendation and sentenced Broom to death. Both the Eighth District Court of Appeals and this Court affirmed his conviction and sentence on direct appeal. *See State v. Bloom* [sic], 8th Dist. No. 51237, 1987 Ohio App. LEXIS 8018 (July 23, 1987); *State v. Broom*, 40 Ohio St.3d 277, 533 N.E.2d 682 (1988). The Supreme Court of the United States denied Broom's petition for a writ of certiorari. *Broom v. Ohio*, 490 U.S. 1075, 109 S. Ct. 2089, 104 L.Ed.2d 653 (1989).

b. Broom's post-conviction proceedings.

Broom also filed a petition for post-conviction relief. The trial court dismissed that petition on April 24, 1997. The Eighth District affirmed. *State v. Broom*, 8th Dist. Cuyahoga No. 72581, 1998 Ohio App. LEXIS 2110 (May 7, 1998). This Court declined discretionary jurisdiction over Broom's appeal of that decision. *State v. Broom*, 83 Ohio St.3d 1430, 699 N.E.2d 946 (1998).

c. Broom's federal habeas proceedings.

With his state court appeals exhausted, on June 21, 1999, Broom filed a petition for a writ of habeas corpus in the United States District Court for the Northern District of Ohio pursuant to 28 U.S.C.S. § 2254. The district court held an evidentiary hearing in January 2002

and thereafter filed an opinion and order on August 28, 2002 denying Broom's petition. *Broom v. Mitchell*, N.D. Ohio No. 1:99-cv-0030, unpublished (Aug. 28, 2002). During the course of that litigation, the district court granted Broom's request for DNA testing of the semen taken from Tryna's vagina and rectum. The results of that DNA testing confirmed the presence of Broom's DNA.

Broom appealed the district court's denial of his habeas petition to the Sixth Circuit Court of Appeals, which unanimously affirmed. *Broom v. Mitchell*, 441 F.3d 392 (6th Cir.2006). The Supreme Court again denied Broom's petition for a writ of certiorari. *Broom v. Mitchell*, 549 U.S. 1255, 127 S. Ct. 1376, 167 L.Ed.2d 165 (2007).

With Broom's state and federal appeals exhausted, this Court granted the State's Motion to Set an Execution Date and scheduled Broom's execution for October 18, 2007.

d. Broom's successive postconviction petition.

At that point, Broom filed a second, successive post-conviction petition in the trial court raising, for the first time, a *Brady* claim based on investigative records he received in response to a public records request in 1994. This stayed Broom's execution date. The trial court dismissed Broom's petition on March 17, 2008. Broom appealed that decision to the Eighth District. While that appeal was pending, this Court rescheduled Broom's execution date for September 15, 2009.

The Eighth District reversed the trial court's denial of Broom's petition and remanded to the trial court for reconsideration. *State v. Broom*, 8th Dist. Cuyahoga No. 91297, 2009-Ohio-3731. The State appealed that decision to this Court, which, on September 11, 2009, reversed the Eighth District's decision per curiam and dismissed Broom's successive

petition. *State v. Broom*, 123 Ohio St.3d 114, 2009-Ohio-4778, 914 N.E.2d 392. Broom's execution remained scheduled for September 15, 2009.

3. Broom's 2009 execution date.

On September 15, 2009, execution team members at the Southern Ohio Correctional Facility found that they were unable to maintain IV access into Broom's veins. The execution team members were able to identify and obtain access to the veins in both Broom's right and left arms multiple times. But in each instance, once they established access, the veins suddenly collapsed when they attempted to run saline through the line as a test. Eventually, the State voluntarily called off the execution. At no point did Broom ever enter the room where the execution was to take place, nor were any drugs to be used in the execution procedure administered to him.

4. Broom's subsequent appeals, 2010-2017.

On September 15, 2010, Broom filed a third petition for post-conviction relief in the trial court asserting that any attempt to execute him at this point would be unconstitutional. On April 7, 2011, the trial court denied Broom's petition. The Eighth District Court of Appeals affirmed. *State v. Broom*, 8th Dist. Cuyahoga No. 96747, 2012-Ohio-587. This Court accepted discretionary jurisdiction over Broom's appeal of that decision, and also affirmed. *State v. Broom*, 146 Ohio St.3d 60, 2016-Ohio-1028, 51 N.E.3d 620.

Broom then filed a petition for a writ of certiorari in the Supreme Court of the United States. On December 12, 2016, the Supreme Court denied Broom's petition, with Justices Breyer and Kagan dissenting. *Broom v. Ohio*, __ U.S. __, 137 S. Ct. 590, 196 L.E.2d 486 (2016). Broom filed a petition for rehearing, which the Supreme Court also denied on February 21, 2017 without dissent. *Broom v. Ohio*, 2017 U.S. LEXIS 948 (Feb. 21, 2017).

5. Pending litigation: Broom's new § 2254 habeas petition.

Broom does have a new petition for a writ of habeas corpus pending in federal district court before the Honorable Judge Christopher A. Boyko, challenging the constitutionality of his execution on cruel and unusual punishment and double jeopardy grounds. The District Court previously stayed that petition in 2010 pending the exhaustion of Broom's state court remedies. *Broom v. Bobby*, N.D. Ohio No. 1:10 CV 2058, 2010 U.S. Dist. LEXIS 126263 (Nov. 18, 2010). Broom's new petition, however, is brought under AEDPA, and is thus limited to whether this Court's decision "was contrary to, or involved an unreasonable application of, clearly established" holdings of the United States Supreme Court. 28 U.S.C. § 2254(d). Given that the only United States Supreme Court precedent on point, *Louisiana ex rel. Francis v. Resweber*, 329 U.S. 459, 67 S. Ct. 374, 91 L.Ed.2d 422 (1947), held that a prior unsuccessful execution – even where the inmate was placed in the electric chair and the switch was thrown – did not bar a later execution, that petition seems to have little chance of success.

Moreover, this Court has already scheduled executions for approximately every other month through early 2020. *See State v. Landrum*, Case No. 1989-0454 (execution date scheduled for February 12, 2020); *see also State v. Adams*, Case No. 2001-2072 (motion to set execution date pending). Assuming this Court follows that pattern, Broom's execution would likely occur in 2020, giving the federal courts plenty of time to adjudicate his successive petition. There is thus no reason to delay the setting of an execution date until after the federal courts have ruled on Broom's petition, which would only further prolong Broom's case years into the future. And if, for whatever reason, the federal courts have not completed their review by that time, Broom will be able to petition either the federal courts or this Court for a stay as necessary.

6. Conclusion: an execution date is warranted.

For seven years, Romell Broom has successfully stalled his own execution, bottling up his case in appeal after appeal. Every single court that has examined this case, up to and including the Supreme Court of the United States, has rejected Broom's arguments. At some point, this Court must declare that the debate is over; that finality has attached; and that the parents of Tryna Middleton have waited long enough for justice. Seven years of appeals on the same issue is enough.

"Both the State and the victims of crime have an important interest in the timely enforcement of a sentence." *Hill v. McDonough*, 547 U.S. 573, 584, 126 S. Ct. 2096, 165 L.Ed.2d 44 (2006). Accordingly, because Broom has exhausted his state and federal court reviews of his convictions and death sentence, the State respectfully asks this Honorable Court to set an execution date in this case.

Respectfully submitted,

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CERTIFICATE OF SERVICE

A copy of the foregoing Motion to Set an Execution Date was served by email this 13th day of March to S. Adele Shank (shanklaw@att.net) and Timothy F. Sweeney (tim@tim-sweeneylaw.com), counsel for Defendant-Appellant Romell Broom.

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