

IN THE SUPREME COURT OF OHIO  
2018

STATE OF OHIO,

Plaintiff-Appellee

-vs-

GERALD R. HAND,

Defendant-Appellant

Case No. 2003-1325

On Appeal from the  
Delaware County Court  
of Common Pleas

Common Pleas  
Case No. 02CR-I-08-0366

DEATH PENALTY CASE

**MOTION OF PLAINTIFF-APPELLEE STATE OF OHIO  
TO SET EXECUTION DATE**

**MOTION OF PLAINTIFF-APPELLEE STATE OF OHIO  
FOR EXPEDITED CONSIDERATION**

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**MOTION OF PLAINTIFF-APPELLEE STATE OF OHIO  
TO SET EXECUTION DATE**

**MOTION OF PLAINTIFF-APPELLEE STATE OF OHIO  
FOR EXPEDITED CONSIDERATION**

For the reasons stated in the attached memorandum in support, plaintiff-appellee State of Ohio respectfully requests that this Court set an execution date for defendant Hand.

In light of R.C. 2929.05(B), which requires that this Court give priority to the review of death-sentence cases “over all other cases,” the State also respectfully requests expedited consideration of the motion to set execution date.

The Federal Public Defender, Ms. Cors, and Ms. Kinsley are being served with these motions because those offices and attorneys most recently represented the defendant in his federal habeas matters and petition for writ of certiorari.

Respectfully submitted,

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## MEMORANDUM IN SUPPORT

Defendant Hand is facing the death penalty for the aggravated murders of two persons. In denying habeas relief, the federal Sixth Circuit summarized the course of proceedings, as follows:

This case presents a habeas petitioner who has been convicted of two counts of aggravated murder and sentenced to death. Over the span of nearly thirty years, petitioner Gerald Hand married four women. Three of those women would die, two of them victims of violent, unsolved home invasions. The death of Hand's fourth and final wife, however, revealed a different story. At home at the time of her death, Hand allegedly confronted and shot the intruder, who turned out to be his friend and employee Lonnie Welch. Subsequent police investigation uncovered a decades-long plot conducted by Hand and Welch to murder Hand's wives in order to collect their lucrative insurance policies. Having been convicted in state court and having exhausted his state appeals, Hand now brings this habeas corpus petition. The district court denied the petition, and for the following reasons, we affirm.

In March 1976, Hand's first wife Donna was found strangled to death in the basement of their home. She had also been struck on the head. There were no signs of forced entry, but some items in the house had been disturbed. Hand filed for and received \$67,386 in life insurance proceeds and \$50,000 from the Ohio Court of Claims victims-compensation fund. Hand married his second wife, Lori, just over a year later in June 1977. They had one son together, Robert Jr. Like Donna, Lori was found strangled to death in the basement of their home. Lori had also been shot twice. Just as with Donna's murder, police found no signs of forced entry but some items in the house had been disturbed. Hand also filed for and received over \$126,000 in life insurance proceeds.

Although Hand was a suspect, neither Donna's nor Lori's murder was solved. Hand married a third time, but that marriage ended in divorce.

Hand married his fourth wife, Jill, in 1992. Hand moved into her house, and they remained married until her death on January 15, 2002. On the night of her death, Hand called police and reported that a home intruder had shot his wife and that he had shot the intruder in self-defense. The home intruder was later identified as Lonnie Welch. The Supreme Court of Ohio best describes the police investigation that followed:

Police found Welch's body lying face down on Hand's neighbor's driveway. Inside Hand's house, Jill's body was found lying between the living room and the kitchen. Hand told police that he had shot the intruder but did not know his identity. He also gave police two .38-caliber revolvers that he used to shoot him. On the way to the hospital, Hand saw the intruder's vehicle and told Mark Schlauder, a paramedic, that "it could have belonged to somebody that worked for" Hand.

Around 8:00 p.m. on January 15, Detective Dan Otto of the Delaware County Sheriff's Office interviewed Hand at the hospital. Hand said that after arriving home, he had dinner with Jill and then went to the bathroom. Upon exiting, Hand heard Jill scream, "Gerald," heard two gunshots, and saw a man in a red and black flannel shirt at the end of the hallway. Hand then retrieved two .38 caliber revolvers from the master bedroom. Hand started down the hallway firing both guns at the intruder, but had trouble shooting because the guns were "misfiring" and "missing every other round." Hand followed the intruder out the front door and continued firing at him as he ran toward his car, and then the intruder fell on the neighbor's driveway. During the interview, Hand repeated that he did not recognize the gunman, but recognized Welch's car in the driveway. Hand said he "didn't know [Welch] that well; that he did odd jobs around the shop; that he was a thief; that he was a cocaine addict; that he \* \* \* [came] in to the

shop area from time to time.” Hand also said that it had been a year since he had had any contact with Welch, and Welch had no reason to be at his home that night.

Investigators found no sign of forced entry at Hand's residence. Blood spatters were found inside the front door and on the front-door stoop. The top of the storm door was shattered, and particles of glass extended 13 feet into the front yard. All the glass fragments were found on top of the blood spatters. Police also found a black jacket on the front stoop, a spent bullet and glass fragments on top of the jacket, and a tooth outside the front door.

According to Agent Gary Wilgus, a crime-scene investigator, the blood spatters indicated that the victim was bleeding and “blood was dropping from his body” as he was moving away from the house. A bloody trail led onto the sidewalk and through the front yard and ended where Welch was lying in the driveway. Welch was wearing cloth gloves, and a knit hat with two eyeholes and a mouth hole was next to his head. Police also found a .32-caliber revolver on the front lawn.

Inside the house, police found glass fragments and bloodstains extending two to three feet from the front door and another tooth just inside the front door. Jill's body was 12 feet from the front door, her legs pointed towards the front door, and she was wearing a nightgown. Jill had been shot in the middle of her forehead. A second bullet deflected off the floor and was found on the carpet next to Jill's head.

Investigators found a bullet in the living room ceiling, and a second bullet was found in the living room window frame. While investigators could not determine the exact trajectory of the two bullets, they determined that they most likely originated from gunshots in the hallway area. No evidence of gunplay was found elsewhere in the house. On January 17, 2002, Detective Otto reinterviewed Hand, and Hand provided a different version of events. Hand stated that after his wife was shot, he retrieved two guns from the master bedroom, went into the

hallway, and saw Welch “coming down the hallway towards the master bedroom at him.” Hand and Welch then began firing at each other in the hallway and were within four feet of each other during the gun battle. Hand repeated that he chased Welch outside the house but “couldn’t get his guns to fire; that he was missing every other round and \* \* \* they weren’t firing.” When asked about the .32-caliber revolver in the front yard, Hand stated that he did not know who owned it.

During the second interview, Hand said, “I was misquoted on the first interview at the hospital” about not knowing Welch. Hand said that he had known Welch, a former employee, for over 20 years. However, Hand continued to give the impression that they were not close. When asked about a wedding photo showing Welch as his best man, Hand said he “couldn’t find anybody else to stand in as [his] best man.” Hand repeated that “the only thing he saw” on the night of the murder was an unknown person in “red and black flannel,” and he had “no clue who this unknown person was.” Hand also said that “Jill had never met Lonnie; Lonnie’s never been to Walnut Avenue; he had no idea why he was there.”

In discussing his financial situation, Hand said he sold his radiator shop in October 2000 and received \$ 300,000, and later received \$ 33,000 from the sale of his share of the business and its inventory, and \$ 140,000 from somewhere else. Hand said he “always needed money, but if he needed money, he could get some; that he had money.” Hand also told police that he was “hiding the money and that he was considering filing bankruptcy; that that was against Jill’s wishes.” Later, Hand said that he “wasn’t going to file for the bankruptcy \* \* \* and they were going to work it out.” When asked if he had any offices, Hand said that his office was in a bedroom in the house. However, Hand failed to disclose that he kept business records at another location. On January 19, 2002, the police seized several boxes containing Hand’s business and personal records from the storage area above a hardware store near Hand’s former radiator shop. These records included credit cards, credit-

card-and life-insurance-account information, payment receipts, a list of credit card debt prepared by Jill, and other information about Hand's finances.

Heather Zollman, a firearms expert, testified that the .32-caliber revolver found in the front yard was loaded with two fired and three unfired .32-caliber Smith and Wesson ("S & W") Remington-Peters cartridges. Bullet fragments removed from Jill's skull were consistent with being an S & W .32-caliber bullet. In testing the .32-caliber revolver, Zollman found that "on more than 50 percent of [her] testing, the firearm misfired" as a result of "a malfunction of the firearm." The stippling pattern shown in Jill's autopsy photographs indicated that "the muzzle to target distance was greater than six inches, and less than two feet."

Zollman tested the two .38-caliber revolvers and found that they were both in proper working order, and neither weapon showed any tendency to misfire. A bullet removed from Welch's right forearm was "consistent with the .38 caliber." Zollman also concluded that the bullet and fragments recovered from Welch's mouth and his lower back had rifling class characteristics corresponding with the S & W .38-caliber revolver. Further, gunshot residue around the bullet hole on the back of Welch's shirt revealed a muzzle-to-target distance greater than two feet from the garment but less than five feet.

Jennifer Duvall, a DNA expert, conducted DNA testing of bloodstains found on the shirt Hand was wearing on the night of the murders. Five of the bloodstains were consistent with the DNA profile of Welch. The odds that DNA from the shirt was from someone other than Welch was "one in more than seventy-nine trillion in the Caucasian population; one in more than forty-four trillion in the African-American population, and one in approximately forty-three trillion in the Hispanic population."

Michele Yezzo, a forensic scientist, examined bloodstain patterns on Hand's shirt. There were more than 75 blood

spatters of varying sizes on the shirt. Yezzo concluded that the shirt was “exposed to an impact” that “primarily registered on the front of the garment.” Yezzo also examined glass fragments collected from Hand's residence and “found tiny fragments of clear glass” on Hand's shirt, trousers, tee-shirt, and pair of socks that he was wearing on the night of the murders. However, she found no glass fragments on Welch's boots. Yezzo conducted a fiber analysis of the bullet from Welch's mouth, but found “no fibers suitable for comparison.”

Ted Manasian, a forensic scientist, found particles of lead and barium on both gloves that Welch was wearing, and these are “highly indicative of gunshot residue.” Manasian could not determine how the gunshot residue got on the glove, just that it was there. Thus, Welch could have fired the gun, or was in the proximity of the gun when it was discharged, or handled an item that had gunshot residue on it.

Detective Otto testified that \$ 1,006,645.27 in life insurance and state-benefit accounts were in effect at the time of Jill's death. This amount included \$ 113,700 in Jill's Ohio Public Employees Retirement System account and \$ 42,345.29 accumulated in the Ohio Public Employees Deferred Compensation program.

Dr. Keith Norton, a forensic pathologist in the Franklin County Coroner's office, conducted the autopsy of Jill and Welch. He concluded that Jill died from a single gunshot wound to the head. Dr. Norton found that Welch had been shot five times: in his mouth, left upper chest, left forearm, right shoulder, and lower back. The gunshot wound to Welch's lower back went into the spinal cord and would have paralyzed his legs. However, the gunshot wound to the chest was the cause of death.

According to Kenneth Grimes Jr., Hand's former cellmate in the Delaware County Jail, Hand told him that he “killed his wife and the man he was involved with.” Hand said he hired a man and they had “been doing business together for

years.” Hand said he “hired the man to kill his wife and, in turn, the deal went sour. He wanted more money, so he killed two birds with one stone. He got both and didn't have to pay anything.” Hand said he had agreed to pay \$ 25,000 to have his wife killed, and the man “wanted it doubled.” Hand said he was going to claim self-defense. He also said the evidence against him was “circumstantial and there were many witnesses that didn't have \* \* \* any actual, proof.”

*State v. Hand*, 107 Ohio St.3d 378, 840 N.E.2d 151, 165–68 (2006).

In sum, Hand's conflicting statements about the night of Jill's death, in conjunction with forensic evidence and statements of other members of the community, strongly implicated Hand and Welch in a plot to kill Jill in order to collect her lucrative insurance policy and pensions. When Welch reneged on the deal and demanded more money, Hand allegedly killed him and staged the scene in order to claim self-defense.

Armed with this information, Ohio prosecutors sought and received a grand-jury indictment in state court against Hand on six counts. Counts One and Two charged Hand with the aggravated murder of Jill and Welch and included several death-penalty specifications: two “ ‘course of conduct’ specification[s],” (one for each count) *id.* at 170 (citation omitted), because the murders were part of a course of conduct involving the murders of two or more people; “three specifications of murdering Welch to escape detection for Hand's complicity in the murders of Donna, Lori, and Jill Hand; and two specifications of murdering Welch for the purpose of preventing his testimony as a witness in the murders of Donna and Lori Hand.” *Ibid.* Counts Three, Four, and Five charged Hand with conspiracy to commit the aggravated murder of Jill, and Count Six charged Hand with escape for his involvement in an attempt to escape police custody after he was arrested.<sup>1</sup>*Ibid.*

Hand pleaded not guilty. The jury found Hand guilty of all of the charges listed in the indictment. At the sentencing hearing, psychologist Dr. Daniel Davis testified about Hand's background and his ability to adjust to life in prison; Hand's son and another witness also testified on his behalf, and Hand submitted an unsworn statement. *Id.* at 188–89. The jury recommended the death penalty for both murders. *Id.* at 170. The judge accepted the jury's recommendation and sentenced Hand to death for Counts One and Two of the indictment. The judge also sentenced Hand to consecutive sentences of three years for two of the remaining counts of conviction.

On January 18, 2006, the Ohio Supreme Court affirmed Hand's convictions and sentence. *State v. Hand*, 840 N.E.2d at 161. Hand filed a Motion for Reconsideration with the Ohio Supreme Court on January 30, 2006, in which he re-raised the first two propositions of law that the Ohio Supreme Court rejected on direct appeal. The court denied the motion on April 29, 2006.

While Hand's Motion for Reconsideration was still pending with the Ohio Supreme Court, Hand obtained new counsel who filed an application to reopen his direct appeal.

Hand's application, filed on April 18, 2006, was denied by the Ohio Supreme Court on August 2, 2006. *State v. Hand*, 110 Ohio St.3d 1435, 852 N.E.2d 185 (2006) (unpublished table decision).

While Hand's application to reopen his direct appeal was still pending, he also filed a petition for a writ of certiorari from the Ohio Supreme Court's original denial of his direct appeal with the United States Supreme Court. The Court denied Hand's petition on October 10, 2006. *Hand v. Ohio*, 549 U.S. 957, 127 S.Ct. 387, 166 L.Ed.2d 277 (2006).

Hand filed a second application to reopen his direct appeal pursuant to Ohio Supreme Court Practice Rule XI on September 24, 2007.

Because Hand's application, filed over a year after his direct appeal had concluded, fell outside of the 90-day filing deadline, the Ohio Supreme Court denied it on December 12, 2007. *State v. Hand*, 116 Ohio St.3d 1435, 877 N.E.2d 987 (2007). This ended Hand's unsuccessful direct appeal.

On December 27, 2004, while Hand's direct appeal was still pending, he filed a petition for state post-conviction relief in the Delaware County Court of Common Pleas. On May 27, 2005, the state trial court dismissed Hand's petition for post-conviction relief.

On June 23, 2005, Hand appealed the state trial court's dismissal of his petition for post-conviction relief. The Ohio Court of Appeals affirmed the trial court's decision on April 21, 2006. *State v. Hand*, No. 05CAA060040, 2006 WL 1063758 (Ohio Ct. App.). Hand filed a notice of appeal to the Supreme Court of Ohio on June 5, 2006, but the court declined review. *State v. Hand*, 110 Ohio St.3d 1468, 852 N.E.2d 1215 (2006) (unpublished table decision). Hand then filed a petition for certiorari to the United States Supreme Court, which was also denied. *Hand v. Ohio*, 549 U.S. 1217, 127 S.Ct. 1271, 167 L.Ed.2d 94 (2007). This ended Hand's unsuccessful attempt to obtain state post-conviction relief.

Hand then filed a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254 in federal district court on August 22, 2007. After the magistrate judge entered a report and recommendation and a supplemental report recommending that the district court deny Hand's petition—both swiftly followed by Hand's strenuous objections—the district court adopted the magistrate judge's report and denied Hand's petition in its entirety. *Hand v. Houk*, No. 2:07-cv-846, 2013 WL 2372180 (S.D. Ohio May 29, 2013).

The district court granted Hand a Certificate of Appealability (COA) on six of those claims and associated sub-claims, and we expanded the COA to include an

additional ineffective-assistance-of-appellate-counsel claim with three sub-claims.

*Hand v. Houk*, 871 F.3d 390, (6<sup>th</sup> Cir. 2017).

The Sixth Circuit reviewed the federal habeas litigation. The district court had denied habeas relief. The Sixth Circuit in September 2017 affirmed the district court's denial of habeas relief. The United States Supreme Court denied defendant's petition for writ of certiorari on April 23, 2018. See U.S. Sup.Ct. No. 17-7463.

With this procedural history, defendant has now exhausted his state and federal court reviews of his convictions and death sentences. It is now appropriate to set a date for the execution of the two death sentences against defendant.

The State respectfully requests that the execution be set within the next six months or as soon as possible thereafter. R.C. 2929.05(B) provides that "the supreme court shall give priority over all other cases to the review of judgments in which the sentence of death is imposed \* \* \*." The General Assembly plainly adopted this provision requiring expeditious review in order to ensure that there was no undue delay in carrying out the death sentence. This provision would go for naught if this Court could conduct that review but then delay the execution for reasons unnecessary to allow judicial review. This Court "shall appoint a day" for the execution, see R.C. 2953.07, and the need for an expeditious date for execution is fairly implied by the need to give such cases priority over other cases.

Other provisions also point toward the need for an expeditious review and disposition. R.C. 2503.37 provides that cases commenced in this Court shall be entered on the docket in

the order in which they are commenced, received, or filed. The statute further provides that the cases “shall be disposed of in the same order \* \* \*.” Setting the date for execution is the final act of disposing of the case, and such disposition should not be postponed past the disposition of cases that were filed in this Court for the first time in 2018.

To be sure, the statute makes provision for the Court to advance certain cases on the docket ahead of their usual order, see R.C. 2503.37(A) through (I), including cases involving convictions for felonies. See R.C. 2503.37(B). But these exceptions would be a reason for *advancing* the present case on the docket, since the present case involves convictions for felonies, and since R.C. 2929.05(B) calls for giving death-penalty cases priority.

The State also notes R.C. 2503.38, which indicates that “[i]f a case is disposed of and again comes into court, it shall be taken up as if it had its original place on the docket.” Defendant Hand’s case has been in this Court before. See Case Nos. 2003-1325, 2006-1092. As an earlier case, the present motion to set execution date should take its place on the docket well ahead of motion practice in other cases coming to this Court for the first time in 2018.

Moreover, any review by the parole board and/or the Governor can or should be able to occur within six months. The present death-sentence case and the other death-sentence cases that have exhausted judicial review should receive priority over all other cases that would be reviewed by these officials. These officials, just as much as this Court, should give priority to such death-sentence cases and devote the necessary resources to carrying out their duties regarding such cases in an expeditious manner. Setting the execution date in 2020 or beyond would not be expeditious and would not reflect the high priority that this case should

receive.

An execution date in the last half of 2018 in no way could be considered “premature” or “rushed.” Defendant killed Jill Hand and Lonnie Welch more than 16 years ago on January 15, 2002. Federal habeas review alone took over ten years starting when defendant filed his habeas petition in federal district court in August 2007. The case was pending in the Sixth Circuit for over four years from the time the notice of appeal was filed in May 2013 until the decision in September 2017. The time frames allowed for judicial review already have significantly delayed defendant’s execution. It cannot be claimed that even more delay is needed to review a case that has already been reviewed for several years.

Victims Hand and Welch received no such dispensation of delay from defendant. Defendant brutally murdered both 16 years ago. Giving defendant additional multiple years of life through a delayed execution date in 2020 or beyond would be upside down, unnecessarily giving defendant two years or more of additional life. Sixteen years since the killings is long enough.

The case is not complicated. Judicial review is completed. Moreover, there is no doubt that defendant as a double-murderer richly deserves the ultimate penalty of death. These were murders for financial gain. Having received multiple rounds of judicial review, the death penalty should be carried out. This Court previously granted a motion to set execution date regarding defendant. See 1-18-06 Order setting 4-25-06 execution date.

Whatever one thinks of the death penalty, it is the law of the land, and these death sentences have been upheld after the substantial judicial review that such cases entail. A

motion to set execution date at this stage should be routine in most cases, and, even if somewhat complicated, should not take months to decide. Setting the execution date two years or more into the future merely compounds delay upon delay.

In light of the foregoing, the State respectfully requests that this Court grant expedited consideration of the motion to set execution, and, upon such consideration, the State respectfully requests that this Court set an execution within the next six months or as soon as possible thereafter.

Respectfully submitted,

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## CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing was mailed by regular U.S. Mail on this 30<sup>th</sup> day of April, 2018, to the following:

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