

IN THE OHIO SUPREME COURT

No. 2014-0989

STATE OF OHIO,

Plaintiff-Respondent,

VS

DONNA ROBERTS,

Defendant-Petitioner.

DEATH PENALTY CASE

**MOTION FOR STAY OF EXECUTION DURING PENDENCY OF STATE
POSTCONVICTION REMEDIES PURSUANT TO R.C. §2953.21**

FOR THE PLAINTIFF-APPELLEE

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IN THE OHIO SUPREME COURT

No. 2014-0989

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| STATE OF OHIO, | : | |
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| Plaintiff-Respondent, | : | |
| | : | |
| vs | : | |
| | : | |
| DONNA ROBERTS, | : | |
| | : | <u>MOTION TO STAY</u> |
| | : | <u>EXECUTION DURING PENDENCY</u> |
| Appellant-Petitioner. | : | <u>OF STATE POSTCONVICTION</u> |
| | : | <u>REMEDIES; R.C. § 2953.21</u> |

Now comes the appellant-petitioner, Donna Roberts, by and through undersigned counsel and respectfully moves this Court to grant this motion for a stay of execution of the death sentence. Although an execution date for Ms. Roberts, W55276, does not appear on the ODRC schedule, there is an pending order from this Court that has not been stayed. An execution date of August 12, 2020, has been set by this Court. To ensure no confusion on this issue, Roberts is requesting a stay of this order.

On August 20, 2008, a petition to vacate pursuant to R.C. §2953.21 was filed by Roberts in the Trumbull County Common Pleas Court. The trial court stayed the proceeding during the pendancy of her direct appeals. The trial court ultimately granted the the State's motion for summary judgment on December 20, 2019. The matter remains pending in the Eleventh District Court of Appeal, CA 2019 TR 89. The reasons in support of this motion are more fully set forth in the following memorandum.

Respectfully submitted,

S/David L. Doughten
DAVID L. DOUGHTEN

S/Robert A. Dixon
ROBERT A. DIXON, ESQ

Counsel for Donna Roberts

CERTIFICATE OF SERVICE

The foregoing appellant's Brief was served upon Dennis Watkins, Trumbull County
Prosecutor and/or Christopher Becker, Esq. Assistant Trumbull County Prosecutor,
Administration Building, 160 High Street, Warren, Ohio 44481, by Regular U. S. mail and/or
email on this 12th day of June, 2020.

S/David L. Doughten
DAVID L. DOUGHTEN

Counsel for Appellant

MEMORANDUM

Roberts originally filed her petition to vacate pursuant to R.C. §2953.21 on September 24, 2004. On February 11, 2005, the trial court, denied the petition and affirmed the convictions and sentence. The Notice of Appeal was filed to the Eleventh District Court of Appeals, but stayed by agreement of the parties pending the disposition by the Supreme Court of Ohio.

On October 10, 2006, this Court affirmed the convictions but reversed the sentence of death and remanded this matter for a new sentencing. State v. Roberts, 110 Ohio St.3d 71, 2006-Ohio-3665. On the remand, pursuant to a defense motion, Roberts was referred for a competency evaluation. On October 28, 2007, the trial court found Roberts competent for the hearing. Roberts had filed a motion to the court to allow her to present a full mitigation hearing, but this request was denied by the court. Roberts was permitted only to allocute for the judge.

That same day, the remand hearing was conducted. The trial court again sentenced Roberts to death. Roberts again appealed her case to this Court.

In the meantime, on August 20, 2008, Roberts again filed a motion to vacate as her original petition was essentially moot, and had been filed before, as it turns out, she had been actually sentenced. The parties agreed this to be the appropriate action. The proceedings were kept in abeyance pending her second appeal.

On May 7, 2013, this Court again reversed her sentence of death and remanded the matter for the limited purpose of having the sentencing judge prepare a sentencing opinion which complied with the mandates of R.C. §2929.03. State v. Roberts, 137 Ohio St.3d 230, 2013-Ohio-4580.

On April 30, 2014, the trial court again, albeit a different judge, sentenced Roberts to death and filed its independent opinion in compliance with the Supreme Court mandate. Roberts appealed the decision a third time. Roberts was unsuccessful as this Court affirmed her sentence

of death. State v. Roberts, 150 Ohio St.3d 47, 2017-Ohio-2998. Her motion for reconsideration was denied by that court on July 28, 2017. Roberts appealed her case to the United States Supreme Court on December 18, 2017. Her petition for an issuance of a writ of certiorari was denied on February 20, 2018. Roberts v. Ohio, 138 S.Ct. 998 (2018) .

While the direct appeal was pending, the parties agreed that a filing of an amended postconviction petition, in which claims that were deemed moot were actually dropped, would be appropriate. It was also agreed that the proceeding would stay in abeyance until her direct appeal process was completed. The agreed judgment was filed on July 20, 2015 in this Court.

On December 20, 2019, the trial court granted the State's summary judgment to dismiss the petition without an evidentiary hearing. I

Roberts timely filed her appeal of the denial of the postconviction petition to the Eleventh District Court of appeals. The briefs have been filed. Oral argument is set for July 22, 2020.

The petitions raises issues that draw into question not only the sentence, but also the legitimacy of the convictions.

Therefore, pursuant to State v. Glenn (1987), 33 Ohio St. 3d 601 the appellant-petitioner Roberts respectfully requests a stay of the execution of his death sentence so that he may pursue his Petition to Vacate or Set Aside Sentence pursuant to Ohio Revised Code 2953.21.

The petitioner requests a stay of the execution of his death sentence until the state postconviction proceedings have been completed.

Respectfully submitted,

S/David L. Doughten
DAVID L. DOUGHTEN

Counsel for Appellant