

IN THE SUPREME COURT OF OHIO

STATE OF OHIO,	)	
	)	
Plaintiff-Appellee	)	CASE NO. 1990-177
	)	
-vs-	)	Trumbull County Court
	)	of Common Pleas
DANNY LEE HILL,	)	Case No.: 1985-CR-317
	)	
Defendant-Appellant	)	DEATH PENALTY CASE
	)	

MOTION TO SET EXECUTION DATE

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APPELLEE, DANNY LEE HILL**

Now comes the Plaintiff, the State of Ohio (herein after “the State”), by and through Dennis Watkins, Trumbull County Prosecuting Attorney, and hereby move this Court to set an execution date for Defendant, Danny Lee Hill (herein after “Hill” or “Defendant”), who was sentenced to death more than thirty-five years ago, and who has been on Ohio’s death row since February of 1986. Hill's decades-long tenancy on death row is similar to that of Jarvis Atwood, who was executed by lethal injection this year by the State of Arizona.

On September 17, 1984, Vicki Lynne Hoskinson, an eight-year old girl, disappeared while riding her bicycle to mail a birthday card to her aunt in Tucson, Arizona and was eventually found murdered. Her abductor, Jarvis Atwood, was found guilty of first degree murder. He was sentenced to death and was executed by a lethal injection of a single drug, pentobarbital, on June 8, 2022 by the State of Arizona.¹

On September 10, 1985, Raymond Fife, a twelve-year old boy, disappeared while riding his bicycle to visit a friend in Warren, Ohio and was eventually found by his father in a field, murdered. His abductor, Hill, was convicted of Aggravated Murder. He was sentenced to death, and after many years of appeals in both the courts of Ohio and the federal system, including the Supreme Court of the United States, now sits on Ohio’s death row awaiting an execution date.²

¹After her daughter's murder, Debbie Carlson became a victims' rights activist. She helped establish a victims' advocacy group called "We the People"; worked for the passage of Arizona's Victims' Bill of Rights, which was passed in 1990; and helped institute Southern Arizona's Amber Alert system in 2000.

² Like Debbie Carlson, after his murder, Miriam became a victim advocate for the Trumbull County Prosecutor’s Office, working tirelessly, assisting other families of homicide victims, as well as other victims creating the Trumbull County Chapter of Parents of Murdered Children in 1987. She also was instrumental in getting victims the right to submit statements in juvenile court. She is still on the Board of Trumbull County Rape Crisis Team, and the Trumbull County Juvenile Victim Witness Division.

I. Procedural Summary

A. Factual Summary

The Eleventh District Court of Appeals initially described the victim's encounter with the Defendant:

On September 10, 1985, at approximately 5:15 p.m., Raymond Fife, age twelve, left the home of his parents in Warren, Ohio to visit his friend, Billy Simmons. He was to return home by 6:30 p.m. to attend a scout meeting. The victim decided to take a shortcut through a large field which was overgrown with thick woods, dense brush and trees and was located behind the nearby Value King [sic]. This area, which was crisscrossed by numerous dirt paths, was used by local residents as a shortcut between streets and as an area in which to ride bicycles.

At 5:50 p.m., Billy Simmons telephoned the victim's parents to ask why Raymond had not arrived. Concerned, the Fifes, along with some relatives and friends, began to search for Raymond. About three hours later, Raymond's father found him in the field directly behind the supermarket. At the time he was found, Raymond was alive, but unconscious. His body was nude, except that his shoes and socks were still on his feet, and his underwear had been tied around his neck. Two days later, Raymond died from the injuries he sustained on the evening of September 10.

State v. Hill, 1989 WL 142761, Ohio App. 11 Dist., Nov. 27, 1989, para 1.

The murder of Raymond Fife was so gruesome, that some federal courts have been reluctant to detail the brutality, summarily noting: “[t]he boy had been beaten, sexually assaulted, strangled, and burned. He died two days later without regaining consciousness.” (*Hill v. Anderson*, 300 F.3d 679, 680); and “a three-judge Ohio state court panel convicted [Defendant] of the murder of Raymond Fife, a twelve-year-old boy [who was] abused and injured *** in multiple horrible ways.” (*Hill v. Shoop*, 11 F.4th 373, 381). Furthermore, the United States Supreme Court noted: “[a]lthough alive, [Raymond] had sustained horrific injuries that we will not describe.” *Shoop v. Hill*, 139 S.Ct. 504, 505, 202 L.Ed.2d 461. However, this Court's factual recitation in *State v. Hill*,

64 Ohio St.3d 313, delineated the brutal, heinous, torturous, and violent death experienced by young Raymond:

At approximately 9:30 p.m., Mr. Fife found his son in the wooded field behind the Valu-King. Raymond was naked and appeared to have been severely beaten and burnt in the face. One of the medics on the scene testified that Raymond's groin was swollen and bruised, and that it appeared that his rectum had been torn. Raymond's underwear was found tied around his neck and appeared to have been lit on fire.

Raymond died in the hospital two days later. The coroner ruled Raymond's death a homicide. The cause of death was found to be cardiorespiratory arrest secondary to asphyxiation, subdural hematoma and multiple trauma. The coroner testified that the victim had been choked and had a hemorrhage in his brain, which normally occurs after trauma or injury to the brain. The coroner also testified that the victim sustained multiple burns, damage to his rectal-bladder area and bite marks on his penis. The doctor who performed the autopsy testified that the victim sustained numerous external injuries and abrasions, and had a ligature mark around his neck. The doctor also noticed profuse bleeding from the victim's rectal area, and testified that the victim had been impaled with an object that had been inserted through the anus, and penetrated through the rectum into the urinary bladder."

Dr. Curtis Mertz, a forensic odontologist, stated that: "It's my professional opinion, with reasonable degree of medical certainty, that Hill's teeth, as depicted by the models and the photographs that I had, made the bite on Fife's penis."

The defense called its own forensic odontologist, Dr. Lowell Levine, who stated that he could not conclude with a reasonable degree of certainty as to who made the bite marks on the victim's penis. However, Levine concluded: "What I'm saying is either Hill or Combs, or both, could have left some of the marks but the one mark that's consistent with the particular area most likely was left by Hill."

[T]he pathologist who performed the autopsy of the victim's body, testified that the size and shape of the point of the [broken broom]stick found by Detective Carnahan was "very compatible" with the size and shape of the opening through the victim's rectum. Adelman described the fit of the stick in the victim's rectum as "very similar to a key in a lock."

State v. Hill, 64 Ohio St.3d 313, 314-317, 595 N.E.2d 884, 889 (1992)

In that initial opinion, Justice Sweeney noted that on September 12, 1985, two (2) days after Raymond died, the “Defendant went downtown to the Warren Police Station to inquire about a \$5,000 reward that was being offered for information concerning the murder of Raymond Fife,” and attempted to implicate another individual, Reecie Lowery. *Id.*, 314. He also pointed fingers at a juvenile Co-Defendant, Timothy Combs³. “[W]hen *** asked if he knew Tim Combs, defendant replied, “Yeah, I know Tim Combs. * * * I ain't seen him since he's been out of the joint. He like boys. He could have done it too.” *Id.*, 314. However, during two voluntary statements, one audio and one video, Hill's story changed, and he shed further light on the brutality endured by Raymond. During these statements, Defendant placed himself with Combs at the murder, although still denying involvement. This Court continued:

Defendant was given and waived his *Miranda* rights again, and then made two more voluntary statements, one on audiotape and the other on videotape. In both statements, defendant admitted that he was present during the beating and sexual assault of Raymond Fife, but that Combs did everything to the victim. Defendant stated that he saw Combs knock the victim off his bike, hold the victim in some sort of headlock, and throw him onto the bike several times. Defendant further stated that he saw Combs rape the victim anally and kick him in the head. Defendant stated that Combs pulled on the victim's penis to the point where defendant assumed Combs had pulled it off. Defendant related that Combs then took something like a broken broomstick and jammed it into the victim's rectum. Defendant also stated that Combs choked the victim and burnt him with lighter fluid. While defendant never admitted any direct involvement in the murder, he did admit that he stayed with the victim while Combs left the area of the attack to get the broomstick and the lighter fluid used to burn the victim.

Id., 315.

³ Combs, three (3) months shy of his eighteenth (18th) birthday, confessed to both his and Defendant's involvement in the attack of Raymond. Combs was tried as an adult, convicted by a jury of aggravated murder with specifications, kidnapping, rape, aggravated arson and felonious sexual penetration, and sentenced to life in prison. *State v. Combs*, 11th Dist. Portage No. 1725, 1988 WL 129449. He died on November 9, 2018.

B. Trial and Direct Appeal.

The Trumbull County Grand Jury indicted Hill for kidnapping, rape, aggravated arson, felonious sexual penetration, aggravated robbery, and aggravated murder with specifications on September 17, 1985. The trial began on January 21, 1986 and was heard by a three-judge panel, whom after deliberating for only five hours, unanimously found Hill guilty on all counts and specifications, except aggravated robbery. The mitigation phase began on February 26, 1986, and the judicial tribunal after receiving the testimony and arguments, and weighing the aggravating circumstances against the mitigating factors, sentenced appellant to ten to twenty-five years for both aggravated arson and kidnapping; life imprisonment for rape and felonious sexual penetration; and death for aggravated murder with specifications.

Defendant's appeal was initially heard by the Eleventh District Court of Appeals, in *State v. Hill*, 11th Dist. Trumbull No. 3720, 1989 WL 142761.⁴ A unanimous court concluded:

An extensive review of each assignment of error manifests that they are without merit. After an independent review of the evidence, we conclude that appellant was found guilty of the specifications of kidnapping, rape, and arson beyond a reasonable doubt; the aggravating circumstances outweigh the mitigating factors; and that imposition of the death penalty is proper. In this case, the death penalty was appropriate as the sentence was not excessive or disproportionate to sentences imposed in similar cases.

Id., 36.

Subsequently, Justice Sweeney, also writing for a unanimous Supreme Court of Ohio, in *State v. Hill* (1992), 64 Ohio St.3d 313, 595 N.E.2d 884, affirmed the imposition of the sentence of death, noted:

⁴ At the time, death penalty appeals were heard initially by the appellate court before being reviewed by the Supreme Court of Ohio. Pursuant to an amendment to the Ohio Constitution in November 1994 an inmate who commits a capital murder on or after January 1, 1995, must appeal directly from the trial court to the Ohio Supreme Court, skipping the state court of appeals. ORC 2929.05 and ORC 2953.02

In conclusion, we first find that there is no merit to any of the specific propositions of law raised by defendant that would compel a reversal of his convictions of the crimes described. Second, we find that the aggravating circumstances outweigh the mitigating factors presented, beyond a reasonable doubt. Third, we find the evidence sufficient to support the conviction, and the sentence of death appropriate in this case, as it is neither excessive nor disproportionate to the penalty imposed in similar cases. Therefore, in accordance with R.C. 2929.05(A), we affirm the conviction and sentence of death in this cause.

Id., 336.

This Court, in *State v. Hill*, 65 Ohio St.3d 1421, denied Defendant's motion for rehearing. Then on March 29, 1993, in *Hill v. Ohio*, 507 U.S. 1007, the United States Supreme Court denied his petition for certiorari.

C. Post-Conviction Procedural History

Defendant's initial petition for state post-conviction relief was denied by the trial court, and that decision was affirmed in by the Eleventh District Court of Appeals in *State v Hill*, 1995 WL 418683, Ohio App. 11 Dist., June 16, 1995. On November 25, 1995, this Court declined to hear Defendant's appeal. *State v. Hill*, 74 Ohio St.3d 1456.

The Defendant filed a second petition in 2003, seeking to vacate his conviction under *Atkins v. Virginia*, 536 U.S. 304, 122 S.Ct. 2242, 153 L.Ed.2d 335 (2002). The trial court held an evidentiary hearing, where the Defendant, the State, and the court each selected medical experts to evaluate Defendant's intellectual capabilities. All three doctors agreed that Defendant was either "faking bad" and/or malingering in the performance of these tests. The trial court, in an eighty-four (84) page opinion by Judge Thomas P. Curran⁵, who was sitting by assignment, rejected Defendant's *Atkins* claim, concluding that Hill was not intellectually disabled. The Eleventh District Court of Appeals, in *State v. Hill*, 177 Ohio App.3d 171, affirmed the trial court's

⁵ Judge Curran passed away in May of 2019.

decision. This Court declined to hear Defendant's appeal. *State v. Hill*, 122 Ohio St.3d 1502. This has ended all of the Defendant's Ohio legal challenges.

On July 8, 2022, the Federal Public Defender's Office has just filed in the Trumbull County Court of Common Pleas a "60(B) Motion for Reconsideration," which this Court has declared is presumed solely for the purpose of delay.⁶

D. Federal Court Procedural History

After Defendant's murder conviction and death sentence were upheld by both the Eleventh District Court of Appeals and this honorable Court, Hill filed a petition for federal habeas relief, claiming under *Atkins v. Virginia*, his alleged intellectual disability precluded his execution. He also presented several other claims for relief. The United States District Court for the Northern District of Ohio denied the petition on June 25, 2014. *Hill v. Anderson*, 2014 WL 2890416, N.D. Ohio. However, the 6th Circuit Court of Appeals disagreed, reversed, and remanded the matter. *Hill v. Anderson*, 881 F.3d 483, 6th Cir.(Ohio), Feb. 02, 2018, rehearing *en banc* denied (Apr 09, 2018). That decision was then reviewed by the United States Supreme Court, in *Shoop v. Hill*, 139 S.Ct. 504, 202 L.Ed.2d 461, which granted certiorari, and in a *per curiam* decision without dissent, vacated the judgment, and remanded the case back to the Sixth Circuit Court.

On remand, after the same three-judge panel again reversed the district court's decision, an *en banc* panel of the Sixth Circuit Court of Appeals disagreed with that panel's conclusions, and "affirm[ed] the district court's denial of [defendant's] petition for writ of habeas corpus. *Hill v.*

⁶ "When a criminal defendant has exhausted direct review, one round of postconviction relief, and one motion for delayed reconsideration under *State v. Murnahan* in the court of appeals and in the Supreme Court, any further action a defendant files in the state court system is likely to be interposed for purposes of delay and would constitute an abuse of the court system. *State v. Steffen*, 70 Ohio St.3d 399, 639 N.E.2d 67 (1994)

Shoop, 11 F.4th 373, 381. The United States Supreme Court denied certiorari on June 30, 2022, ending Defendant's federal legal challenges. 2022 WL 2347631

II. Victim's Rights.

As this Court is aware, Marsy's Law was passed in November of 2017 with an overwhelming 83% of voters in favor of the constitutional amendment. It became effective February 5, 2018. Ohio's victims specifically have the constitutional right "to proceedings free from unreasonable delay and prompt conclusion of the case." Constitution of Ohio Art. I., Sec. 10(a)(A)(8). "Marsy's Law provides Ohio's crime victims with meaningful rights in the criminal justice process and the ability to enforce these rights through counsel. Ohio's voters have made a clear statement that they want to ensure that Ohio's victims' rights are protected and enforced. In addition, in passing Marsy's Law, Ohio voters have prioritized victims' rights and the idea that these rights should be enforced no less vigorously than the rights of the accused." Ohio Crime Victim, *Marsy's Law Summary*, Justice Center <https://www.ocvjc.org/marsys-law-summary>. Furthermore, victims' rights have been codified by the federal government in 18 U.S. Code 3771-Crime Victim's Rights, which include "[t]he right to proceedings free from unreasonable delay." As such, it is not only the charge of the prosecuting attorney, but the courts as well, to ensure, victims are accorded justice, and that their rights are not subservient to those of the defendant. "[J]ustice, though due to the accused, is due to the accuser also. The concept of fairness must not be strained till it is narrowed to a filament. We are to keep the balance true." *Snyder v. Massachusetts*, 291 U.S. 97, 122 (1934), overruled in part on other grounds, *Malloy v. Hogan*, 378 U.S. 1 (1964). The victims herein deserve to have their rights protected and enforced.

Raymond was found by his father, Ike Fife, alive, naked, burned, severely beaten and bleeding in a wooded field behind a local supermarket, Raymond never regained consciousness,

and died two (2) days later. Ike has since passed, prior to seeing justice carried out. Raymond's mother, Miriam has seen other murders, including two from Trumbull County, Kenneth Biros,⁷ Roderick Davie,⁸ and Jason Getsey,⁹ who committed their heinous crimes after the Defendant, put to death. Even at the age of 82, through all of the delays, legal challenges and reviews, Miriam has remained steadfast in seeking justice for her, her husband, her family and most importantly for Raymond.

There are only two (2) murderers currently scheduled to be executed that committed their respective offenses prior to September 19, 1985, the date that Raymond Fife was brutalized, sexually assaulted, bitten, hanged, burned, impaled and left to die. This Defendant has, under the laws of the State of Ohio, forfeited his right to life. He has earned a fast pass to the execution chamber, if not a ticket to the front of the line. Indeed, the current "Execution/Clemency Schedule" reflects that nothing is scheduled in the months of April or July of 2023.

III. Relief Sought.

The instant case has been prosecuted and defended by armies of attorneys, and reviewed and analyzed by a cornucopia of courts, in both the state and federal legal systems, including the Supreme Court of Ohio and the United States Supreme Court. Defendant's death sentence has survived every legal contest and has been approved, affirmed, and upheld by the highest courts at both the state and federal level. All of his legal challenges have been concluded. It is time for the

⁷ Biros mutilated, murdered and dismembered 22-year old Tami Engstrom, scattering her body parts in Ohio and Pennsylvania.

⁸ Davie shot and murdered 38-year-old John Ira Coleman, and using a folding chair, beat 21-year-old Tracey Jefferys to death and shot and attempted to murder William Everett.

⁹ Getsey and an accomplice, in a murder for hire pact, murdered 66-year-old Ann Serafino, shooting her in the face and attempted to murder her son, 39-year-old Charles Serafino after breaking into their home. Getsey later bragged about the murder.

Citizens of Ohio and Raymond Fife's family to finally get their justice. It is time to set an execution date. It is time for Defendant's sentence to be carried out.

In 1974, the State of Ohio re-instated the death penalty, with the first execution occurring in 1997. Ohio's death penalty scheme has withstood a myriad of challenges, and most recently this Court, on May 12, 2022, in a unanimous decision, *St. v. McAlprin*, ___NE 3d ___, 2022WL 1493680, again upheld the constitutionality of Ohio's Death Penalty law under both the Ohio and the United States Constitutions, which "death sentence shall be executed by causing the application to the person, upon whom the sentence was imposed, of a lethal injection of a drug or combination of drugs ***." R.C. 2924.22(A). Further, this Court has opined that lethal injection is an appropriate method to perform executions. "Adams challenges the constitutionality of lethal injection to carry out the death penalty. However, we have previously rejected similar arguments. See *State v. Carter*, 89 Ohio St.3d at 608, 734 N.E.2d 345." *State v. Adams*, 103 Ohio St.3d 508, 2004-Ohio-5845, 817 N.E.2d 29, ¶ 131.

Both the legislature and the courts have approved the death penalty. Additionally, pursuant to R.C. 2949.22(A) and (B) The Department of Rehabilitation and Correction ("DRC") is responsible for carrying out death sentences in Ohio and has adopted and maintained a written execution protocol since 1994. "The protocol has gone through 20 versions; the current one, designated DRC policy 01-COM-11¹⁰, took effect on October 7, 2016." *O'Neal v. State*, 2021-Ohio-3663, reconsideration denied, 165 Ohio St.3d 1496, 2021-Ohio-4515, 178 N.E.3d 535, and reconsideration denied, 165 Ohio St.3d 1496, 2021-Ohio-4515, 178 N.E.3d 535. Ohio's current execution protocol provides for the use of either a single dose of thiopental sodium or pentobarbital, or a three drug combination consisting of midazolam, used to render the prisoner

¹⁰ <https://perma.cc/N8UU-C9EF>.

unconscious; one of three possible paralytic drugs, to prevent involuntary movement; and potassium chloride, to stop the heart. The Warden of Southern Ohio Correctional Facility may, at any time, direct the ordering of Execution Drugs [including compounded Execution Drugs¹¹] from the Ohio Pharmacy Services of the Ohio Department of Mental Health and Addiction Services, or from a pharmacy, manufacturer, supplier, wholesaler or distributor, or from any other licensed pharmacist.” DRC policy 01-COM-11, pg. 6.

“Ohio was the first state to adopt a one-drug execution protocol,” and, on December 8, 2009, Kenneth Biros, one of Trumbull County’s convicted murderers, was the first person executed by lethal injection in the United States with the use of a single drug, sodium thiopental. “Ohio was also the first state to change from the one-drug protocol of sodium thiopental to pentobarbital.” Death Penalty Information Center, <https://deathpenaltyinfo.org/state-and-federal-info/state-by-state/ohio>. Then Ohio Governor Ted Strickland, an ordained minister, counseling psychologist at Southern Ohio Correctional Facility, and opponent of the death penalty, denied Biros’ clemency request, sanctioning his execution and took affirmative action to ensure that the DRC complied with this Court’s ordered execution date.

Unfortunately, executions have come to a halt. The last inmate executed in Ohio was Robert Van Hook on July 18, 2018. Since then “[o]f the 68 execution dates set for August 2018 through the end of 2022, 45 have been rescheduled after being halted by reprieves issued by former Governor John Kasich or by Gov. DeWine” Ohio Death Penalty Information Center, *Ohio Governor Issues Three More Reprieves, Reschedules Executions for 2025*. <https://deathpenaltyinfo.org/news-brief/ohio-governor-issues-three-more-reprieves-reschedules->

¹¹ Compounding is the creation of a drug by a licensed pharmacist to meet the unique needs. Compounding pharmacies combine, mix, or alter drugs.

executions-for-2025. Indeed, eight killers have been granted four or more reprieves each, including one¹² with nine reprieves, one¹³ with seven, and one¹⁴ with six. Three reprieves have also been granted to two of the three Trumbull County murders, Stanley Adams¹⁵ and Sean Carter,¹⁶ who have had execution dates set. With the most recent round of reprieves, Charles Lorraine¹⁷, another Trumbull County killer, is the next murderer currently schedule to be executed on March 15, 2023. However, given current history of granting reprieves, this office is doubtful that this honorable Court's established execution date will be honored.

The authority of the governor to grant reprieves stems from the Ohio Constitution, Article 3, Section 11. Additionally, RC 2967.08 provides: "[t]he governor may grant a reprieve for a definite time to a person under sentence of death, with or without notices or application." Furthermore, the term "Reprieve" is defined in R.C. 2967.01: "Reprieve" means the temporary suspension by the governor of the execution of a sentence or prison term." This same definition is recognized in *Black's Law Dictionary*, 2nd Ed.:

"REPRIEVE Definition & Citations: In criminal law. The withdrawing of a sentence of death for an interval of time, whereby the execution is suspended. 4 Bl. Comm. 394. And see *Butler v. State*, 97 Ind. 374; *Sterling v. Drake*, 29 Ohio St. 400, 23 Am. Rep. 702; *In re Buchanan*, 146 N. Y. 264, 40 N. E. 853."

Black's Law Dictionary, 2nd Ed., <https://thelawdictionary.org/reprieve/>.

"Reprieve" is defined in the *The People's Law Dictionary* by Gerald and Kathleen Hill, as
a temporary delay in imposition of the death penalty (a punishment which cannot be reduced afterwards) by the executive order of the Governor of the

¹² Warren K. Henness.

¹³ Gregory Lott.

¹⁴ Cleveland Jackson.

¹⁵ Adams, a serial killer, who beat, stabbed and murdered a mother and beat, raped, strangled and murdered her 12 year old daughter, was granted back to back reprieves by Governors.

¹⁶ Carter raped, stabbed and murdered his adoptive grandmother.

¹⁷ Lorraine murdered Raymond and Doris Montgomery, ages seventy-seven and eighty, stabbing them both to death.

state. Reasons for reprieves include the possibility of newly discovered evidence (another's involvement, evidence of mental impairment), awaiting the result of some last-minute appeal, or concern of the Governor that there may have been some error in the record which he/she should examine. On occasion, a reprieve has saved a man found to be innocent. Upon the expiration of the reprieve, the date for execution can be reset and the death penalty imposed. A reprieve is only a delay and is not a reduction of sentence, commutation of sentence or pardon.

The People's Law Dictionary by Gerald and Kathleen Hill, <https://dictionary.law.com/Default.aspx?selected=1803#:~:text=n.,the%20Governor%20of%20the%20state.>

Justice Gilmore, writing for the Court in *Sterling*, *supra* noted:

Sir W. Blackstone, 4 Com. 394, says that, 'A reprieve, from *reprendre*, to take back, is the withdrawing of a sentence for an interval of time, whereby the execution is suspended.'

Id. at 460-61.

Indeed, these repeated reprieves, are not what the framers envisioned. As noted a reprieve is a "temporary suspension," or "a temporary delay," and "only a delay and is not a reduction of sentence, commutation of sentence or pardon"¹⁸.

Allegedly, the forty-five (45) "reprieves [are] due to ongoing problems involving the willingness of pharmaceutical suppliers to provide drugs to the Ohio Department of Rehabilitation and Correction (DRC) ***." *Governor DeWine Issues Reprieves*, July 1, 2022, <https://governor.ohio.gov/media/news-and-media/governor-dewine-issues-reprieves-07012022>.

However, executions continue in the United States. Since Ohio's execution of Robert Van Hooks, and the subsequent reprieves granted to Ohio killers, sixty-eight murderers have been put to death nationwide. Six states¹⁹ and the federal government have executed forty-seven convicts using a

¹⁸ The governor is vested with the power to grant a commutation or even issue a pardon, however he should not be using successive reprieves to effectively grant commutations or pardons.

¹⁹ Alabama, Arizona, Georgia, Missouri, South Dakota, and Texas.

single drug, pentobarbital.²⁰ Indeed, seven convicts, including Frank Jarvis Atwood, who was just executed June 8, 2022, have all been executed by lethal injection, just in 2022. Similarly, in 2021 eleven murders were executed, all by lethal injection; seven with just pentobarbital or a pentobarbital compound. Apparently, other states are not having any issue obtaining the requisite drugs.

As Trumbull County Prosecuting Attorney, it is appropriate to request this Honorable Court to set an execution date for Defendant Danny Lee Hill. Additionally, because of special circumstances involving the current status of all scheduled executions on Ohio, I would have one additional, unusual request. As I have alluded to in my very beginning sentences, justice is at a stand-still in the State of Ohio with no final sentences being carried out in capital cases since 2018. This is unreasonable, ignores, or is indifferent to the Constitutional rights of victims of crime, and most importantly, undermines public confidence in the judicial system to enforce its judgments and bring finality to a case.

This Court previously has examined many issues involving the courts and judicial system. This Court has the ability to establish “a board, commission, advisory committee, to task force to ‘assist the Court in reviewing issues and topics involving the law, courts, the legal profession, the judicial system, or the administration of justice.’” *Guidelines for the Creation and Operation of Supreme Court Boards, Commissions, Advisory Committees, and Task Forces*, <https://www.supremecourt.ohio.gov/Boards/GuidelinesSCBdComm.pdf>. Examples include the Ohio Sentencing Commission, Task Force on Conviction Integrity and Postconviction Review, Task Force to Examine the Ohio Bail System, and Joint Task Force to Review the Administration

²⁰ Death Penalty Information Center, <https://deathpenaltyinfo.org/executions/2018>, <https://deathpenaltyinfo.org/executions/2019>, <https://deathpenaltyinfo.org/executions/2020>, <https://deathpenaltyinfo.org/executions/2021>, and <https://deathpenaltyinfo.org/executions/2022>.

of Ohio's Death Penalty. Also S.Ct. Prac. R. 12.10 permits this court to "refer original actions to a master commissioner for the presentation of evidence, hearings and oral arguments."

Since 2018, not a single murderer has been put to death after having exhausted all of the legal challenges available. This Court has set execution dates for more than thirty (30) of Ohio's current death row inmates. Not one of this Court's death warrants has been carried out, but rather they have remained unfinished. Reprieve after reprieve has been summarily granted, predicated upon a claimed unavailability of the lethal injection drug(s). Furthermore, inaction appears to be the norm rather than action as nothing has been done to even attempt to comply with this Court's directives.

It is difficult to fathom that the great State of Ohio is unable to procure execution drugs,²¹ including compounded execution drugs such as "nonpharmaceutical" pentobarbital.²² Furthermore, the legislature has not considered approving other constitutionally authorized methods of execution such as electrocution or firing squad or newly enacted methods such as nitrogen hypoxia, which have been approved in several other states. Establishing an entity, whether it be a board, commission, or master commissioner, to examine why court ordered executions have not been undertaken for more than four (4) years and/or to recommend procedures

²¹ A Yahoo search result of the internet for "Pentobarbital for Sale" reveals a link to World of Chemicals and a listing of 15 pentobarbital suppliers, manufacturers and traders in 6 countries and the United States. <https://www.worldofchemicals.com/chemicals/chemical-suppliers/pentobarbital.html>.

²² "Due to this lack of availability, researchers have begun to compound injectable sodium pentobarbital from so-called 'nonpharmaceutical' pentobarbital. Some oversight agencies have objected to this practice, claiming a lack of quality control and degradation of the drug." However, a study of these issues has concluded that "the drug degraded at a maximum of 0.5% per year *** when stored in the dark at room temperature." *Injectable sodium pentobarbital: Stability at room temperature*, J Pharmacol Toxicol Methods, . Nov-Dec 2015;76:38-42. <https://pubmed.ncbi.nlm.nih.gov/26234474/#:~:text=Due%20to%20this%20lack%20of%20availability%2C%20researchers%20have,of%20quality%20control%20and%20degradation%20of%20the%20drug.>

to ensure they proceed is not only appropriate, but necessary, to examine an issue or topic involving the law, courts, the legal profession, the judicial system, or the administration of justice: complying with court directives executing murders who have exhausted the all legal appeals. Respectfully this Court's intervention suggestion is envisioned as a cooperative effort with the Governor to see that progress is made to help ensure that judicial orders in capital cases are reasonably carried out similarly as they are in other sister states like Arizona.

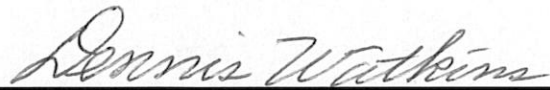
IV. Conclusion.

With this procedural history, it is clear that Hill has exhausted his state and federal court reviews of his conviction and sentence and has not sought a stay from this Court. In *State v. Steffen* (1994), 79 Ohio St. 3d 398, 412, this Court held that once a capital defendant has exhausted their direct appeal, post-conviction review, and delayed reconsideration review, any further filings are likely to be interposed for purposes of delay and that a capital defendant would have to petition this Court for a stay to allow such further litigation. This Court could not have before it a more shining example of actions "interposed for purposes of delay."

Since the date Hill was sentenced to death, until the date of this instant filing 13, 285 days or more than thirty-seven years have lapsed. Only two other killers, who have currently scheduled execution dates, committed their respective offenses before Defendant perpetrated his atrocities. As William Gladstone proclaimed "Justice delayed is justice denied." The citizens of Ohio are entitled to see reasonable and dutiful efforts to enforce its death penalty law. The Fife family too is waiting to see justice carried out. Raymond Fife's mother is 82 years of age and she has said that she would like to see justice done in her life-time. As Defendant has fully exhausted all available legal challenges, both state and federal, to his conviction and death sentence, the State

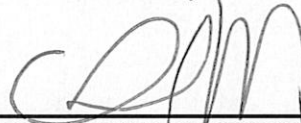
respectfully requests this Court set a date for Defendant's execution and ensure it is actually carried out. It is time.

Respectfully submitted,



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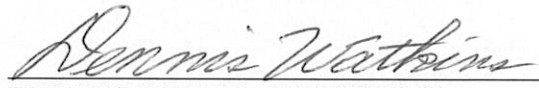
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**COUNSEL FOR PLAINTIFF
STATE OF OHIO**

CERTIFICATE OF SERVICE

On the _____ day of July, 2022, a copy of the foregoing was sent via first class, U.S. mail to Vicki Ruth Adams Werneke (0088560), Assistant Federal Public Defender, Capital Habeas Unit, 1660 W. Second Street, Suite 750, Cleveland, Ohio 44113, Sarah Kostick, 33 N. Stone Ave – 21st Floor, Tucson, Arizona, 85701, Emily Claire Paavola, Justice 360, 900 Elmwood Ave – Suite 200, Columbia, South Carolina 29201 and OFFICE OF THE OHIO PUBLIC DEFENDER, 250 East Broad Street – Suite 1400, Columbus, Ohio 43215.


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