

No. _____

In the Supreme Court of the United States

WAYNE POWELL,
Petitioner,

v.

STATE OF OHIO,
Respondent.

On Petition for Writ of Certiorari to
the Supreme Court of Ohio

APPLICATION FOR LEAVE TO PROCEED *IN FORMA PAUPERIS*

Petitioner Powell respectfully requests leave to file the attached petition for writ of certiorari without payment of costs and to proceed *in forma pauperis*.

[X] Petitioner has previously been granted leave to proceed in forma pauperis in the following courts:

- (1). Ohio Supreme Court
- (2). Toledo Lucas County Court of Common Pleas

[X] A copy of the order of appointment in the respective courts is appended.

Respectfully submitted,
OFFICE OF THE OHIO PUBLIC DEFENDER

/s/ Erika LaHote
Erika LaHote [0092256]
Assistant State Public Defender
Counsel of Record

/s/Richard A. Cline

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Sr. Assistant State Public Defender

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Counsel for Petitioner Powell

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LUCAS COUNTY

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COMMON PLEAS COURT
LUCAS COUNTY
COURT CLERK

IN THE COMMON PLEAS COURT, LUCAS COUNTY, OHIO

STATE OF OHIO
Plaintiff.

v.

WAYNE S POWELL
Defendant.

* CASE NO:
* G-4801-CR-0200603581-000
*

* ORDER
*

* JUDGE GARY G. COOK
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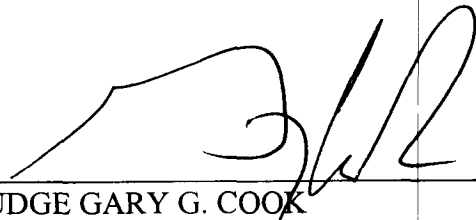
December 04, 2006. Court Reporter CHRISTINE ARDLEY, Assistant Prosecutor DEAN MANDROS, and Defendant, WAYNE S POWELL present in court.

Indigency hearing held. Defendant notified of application fee for appointment of counsel. JOHN B. THEBES appointed as lead counsel and ANN BARONAS appointed co-counsel. Counsel present and arraignment held.

Defendant acknowledged receipt of a copy of the indictment, waived any defects as to time, place or manner of service, and waived its reading in open Court. Defendant entered a plea of Not Guilty.

Matter set for pretrial on December 19, 2006 at 9:00 a.m.

Bond hearing held. Bond ordered set at \$100,000.00 as to each of the eleven counts for a total bond of \$1,100,000.00 no 10% with the added condition no direct or indirect contact with the victim's family.



JUDGE GARY G. COOK

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COMMON PLEAS COURT
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COURT HOUSE

IN THE COMMON PLEAS COURT, LUCAS COUNTY, OHIO

STATE OF OHIO	*	G-4801-CR-0200603581-000
Plaintiff	*	
	*	
v.	*	
	*	JUDGMENT ENTRY
WAYNE POWELL	*	
Defendant	*	JUDGE GARY G. COOK

On September 13, 2007, defendant Wayne Powell's sentencing hearing was held pursuant to 2929.19. Court reporter Kelly Wingate and the State's attorneys Christopher Anderson, Tim Braun and Jevne Meader were present. Defendant and his counsel, John Thebes and Ann Baronas were present and afforded all rights pursuant to Criminal Rule 32. The Court has considered the record, oral statements, victim impact statement (in a limited degree), a pre-sentence report was not prepared (at the request of the defendant), as to count one the Court also considered the principles and purposes of sentencing under R.C. Section 2929.11, and has balanced the seriousness and recidivism factors under R.C. Section 2929.12.

This cause was tried by a jury of twelve upon the charges against the defendant for the offenses of:

- count 1 aggravated arson, 2909.02(A)(1), F-1;
- count 2 aggravated murder, 2903.01(A)(F), an unclassified Felony, and specifications 2929.04(A)(5), & 2929.04(A)(7);
- count 3 aggravated murder, 2903.01(A)(F), an unclassified Felony, and specifications 2929.04(A)(5), & 2929.04(A)(7);
- count 4 aggravated murder, 2903.01(A)(F), an unclassified Felony, and specifications 2929.04(A)(5), 2929.04(A)(7), & 2929.04(A)(9);
- count 5 aggravated murder, 2903.01(A)(F), an unclassified Felony, and specifications 2929.04(A)(5), 2929.04(A)(7), & 2929.04(A)(9);

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count 6 aggravated murder, 2903.01(B)(F), an unclassified Felony, and specifications 2929.04(A)(5), & 2929.04(A)(7);
count 7 aggravated murder, 2903.01(B)(F), an unclassified Felony, and specifications 2929.04(A)(5), & 2929.04(A)(7);
count 8 aggravated murder, 2903.01(B)(F), an unclassified Felony, and specifications 2929.04(A)(5), 2929.04(A)(7), & 2929.04(A)(9);
count 9 aggravated murder, 2903.01(B)(F), an unclassified Felony, and specifications 2929.04(A)(5), 2929.04(A)(7), & 2929.04(A)(9);
count 10 aggravated murder, 2903.01(C)(F), an unclassified Felony, and specifications 2929.04(A)(5), 2929.04(A)(7), & 2929.04(A)(9); and
count 11 aggravated murder, 2903.01(C)(F), an unclassified Felony, and specifications 2929.04(A)(5), 2929.04(A)(7), & 2929.04(A)(9).

At the conclusion of the trial, the jury, being duly instructed as to the applicable law, deliberated and, on August 21, 2007, returned verdicts of guilty against the defendant on all eleven counts contained in the indictment and the specifications attendant to counts two, three, four, five, six, seven, eight, nine, ten and eleven charging aggravated murder.

At Defendant's request, the sentencing phase of the trial was held on August 22 & 23, 2007 consistent with R.C. Section 2929.03(D)(1). Duplicative counts of aggravated murder, were merged and the State elected to proceed to sentencing on four counts of aggravated murder, along with each of the attached specifications of which Powell had been found guilty. As there were four separate victims the State proceeded in the sentencing phase on one count of aggravated murder for each victim; for Mary McCollum, count two in violation of R.C. Section 2903.01(A)&(F) an unclassified felony and the attached specifications; for Rose McCollum, count seven in violation of R.C. Section 2903.01(B)&(F) an unclassified felony and the attached specifications; for Sanaa Thomas, count nine in violation of R.C. Section 2903.01(B)&(F) an unclassified felony and the attached specifications; and for Jamal McCollum-Myers, count ten in violation of R.C. Section 2903.01(C)&(F) an unclassified felony and the attached specifications. The Court made the specific finding that none of the remaining specifications were duplicative and therefore would not be merged.

Following the sentencing phase of the trial, the jury, again being duly instructed as to the applicable law, returned its unanimous verdict finding that the aggravating circumstances of which defendant was found guilty outweighed, beyond a reasonable doubt, the mitigating factors shown, and recommended to the Court the imposition of the death penalty for each of the separate aggravated murder counts and specifications proven beyond a reasonable doubt consistent with R.C. Section 2929.03(D)(2).

The Court, as required by R.C. Section 2929.03(D)(3) of the Ohio Revised Code, independently considered the relevant evidence raised at trial, the testimony, and arguments of counsel. No presentence investigation or mental examination was requested by the defendant. The Court, upon due consideration of the recommendation of the jury, all evidence, arguments of counsel and other matters to be considered, finds, by proof beyond a reasonable doubt, the

aggravating circumstances outweigh any mitigating factors shown in this case.

Upon the offenses of aggravated murder charged in the second and sixth counts of the indictment, which were merged for sentencing purposes, and upon the specifications that the offense was committed during a course of conduct which involved the killing of two or more people, the offense was committed while the defendant was committing aggravated arson, and the defendant was the principal offender in the aggravated murder, it is the sentence of the Court that the defendant, Wayne Powell, be put to death by lethal injection in the manner and place directed by the provisions of Section 2949.22 of the Ohio Revised Code.

Upon the offenses of aggravated murder charged in the third and seventh counts of the indictment, which were merged for sentencing purposes, and upon the specifications that the offense was committed during a course of conduct which involved the killing of two or more people, the offense was committed while the defendant was committing aggravated arson, and the defendant was the principal offender in the aggravated murder, it is the sentence of the Court that the defendant, Wayne Powell, be put to death by lethal injection in the manner and place directed by the provisions of Section 2949.22 of the Ohio Revised Code.

Upon the offense of aggravated murder charged in the fifth, ninth and eleventh counts of the indictment, which were merged for sentencing purposes, and upon the specifications that the offense was committed during a course of conduct which involved the killing of two or more people, the offense was committed while the defendant was committing aggravated arson, the defendant purposely caused the death of another who was under thirteen years of age at the time of the commission of the offense, and the defendant was the principal offender in the aggravated murder, it is the sentence of the Court that the defendant, Wayne Powell, be put to death by lethal injection in the manner and place directed by the provisions of Section 2949.22 of the Ohio Revised Code.

Upon the offense of aggravated murder charged in the fourth, eighth and tenth counts of the indictment, merged for sentencing purposes, and upon the specifications that the offense was committed during a course of conduct which involved the killing of two or more people, the offense was committed while the defendant was committing aggravated arson, the defendant purposely caused the death of another who was under thirteen years of age at the time of the commission of the offense, and the defendant was the principal offender in the aggravated murder, it is the sentence of the Court that the defendant, Wayne Powell, be put to death by lethal injection in the manner and place directed by the provisions of Section 2949.22 of the Ohio Revised Code.

It is ORDERED that the defendant, Wayne Powell, be conveyed to the Ohio Department of Rehabilitations and Corrections, and specifically to the Reception Center at Orient, by the Sheriff of Lucas County, Ohio within thirty days of this ORDER.

It is further ORDERED that after the procedures performed at the reception facility are completed, the defendant be assigned to an appropriate correctional institution, conveyed to the

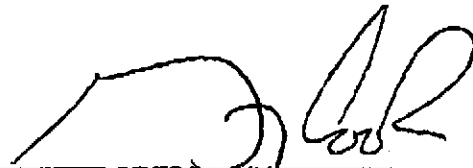
institution, and kept within the institution until the execution of his sentences on March 13, 2008, at midnight, and in accordance with R.C. Section 2949.22 of the Ohio Revised Code, the sentence of death shall be carried out by lethal injection. The defendant has been found guilty beyond a reasonable doubt by a jury of aggravated arson which occurred on the 11th day of November, 2006, as set forth in the first count of the indictment. Accordingly, it is the sentence of the Court that the defendant serve a term of ten years in prison on the aggravated arson charge in the first count of the indictment.

All the sentences are ORDERED to be served consecutively to one another.

Defendant given notice of appellate rights under R.C. Section 2953.08 and post release control notice under R.C. Section 2929.19(B)(3) and R.C. Section 2967.28. Defendant notified of application fee for appointment of counsel. Defendant found indigent and appointed the following appellate counsel of record: Spiros Cocoves and Gary Crim.

It is further ORDERED that defendant be given credit for 305 days of confinement awaiting disposition of this case. In accordance with R.C. Section 2929.03(F) of the Ohio Revised Code, this Court will file a separate written opinion within fifteen days hereof setting forth the Court's specific findings of the aggravating circumstances proven beyond a reasonable doubt and the existence or non-existence of mitigating factors, and the Court's reasons why the aggravating factors outweighs the mitigating factors beyond a reasonable doubt.

Dated: 9-26-07



JUDGE GARY G. COOK

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