No. _____

In the Supreme Court of the United States

_____

DUANE SHORT,
Petitioner,

v.

STATE OF OHIO,
Respondent.

_____

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

APPENDIX TO

PETITION FOR WRIT OF CERTIORARI

The Supreme Court of Ohio

State of Ohio

v.

Duane Allen Short

Case No. 2020-1476

ENTRY

Upon consideration of the jurisdictional memoranda filed in this case, the court declines to accept jurisdiction of the appeal pursuant to S.Ct.Prac.R. 7.08(B)(4).

(Montgomery County Court of Appeals; No. 28696)

Maureen O'Connor
Chief Justice

The Official Case Announcement can be found at http://www.supremecourt.ohio.gov/ROD/docs/

[Cite as *State v. Short*, 2020-Ohio-5034.]

IN THE COURT OF APPEALS OF OHIO
SECOND APPELLATE DISTRICT
MONTGOMERY COUNTY

STATE OF OHIO	:	
	:	
Plaintiff-Appellee	:	Appellate Case No. 28696
	:	
v.	:	Trial Court Case No. 2004-CR-2635
	:	
DUANE ALLEN SHORT	:	(Criminal Appeal from
	:	Common Pleas Court)
Defendant-Appellant	:	
	:	

. . . . . .

O P I N I O N

Rendered on the 23rd day of October, 2020.

. . . . . .

MATHIAS H. HECK, JR., by ANDREW T. FRENCH, Atty. Reg. No. 0069384, Assistant Prosecuting Attorney, Montgomery County Prosecutor's Office, Appellate Division, Montgomery County Courts Building, 301 West Third Street, Dayton, Ohio 45422
Attorney for Plaintiff-Appellee

KIMBERLY S. RIGBY, Atty. Reg. No. 0078245 and ERIKA M. LAHOTE, Atty. Reg. No. 0092256, Office of the Ohio Public Defender, 250 East Broad Street, Suite 1400, Columbus, Ohio 43215
Attorneys for Defendant-Appellant

. . . . . .

TUCKER, P.J.

{¶ 1} Appellant Duane Allen Short appeals from a judgment of the Montgomery County Court of Common Pleas, which found that it was without jurisdiction to consider Short's motion for a new mitigation trial. The trial court incorrectly concluded that it lacked jurisdiction. However, Short is not entitled to a new mitigation trial under the authority of *Hurst v. Florida*, 577 U.S. 92 136 S.Ct. 616, 193 L.Ed.2d 504 (2016). Thus, the trial court's judgment will be affirmed.

Facts and Procedural History

{¶ 2} In 2004, Short was indicted for the aggravated murders of Rhonda Short, his estranged wife, and Donnie Sweeney. The murder indictments included aggravating circumstance specifications. The jury found Short guilty of the aggravated murders and the aggravating circumstance specifications. Further, following deliberations regarding the specifications, the jury unanimously found that the aggravating circumstances outweighed the mitigating factors, and therefore the jury recommended a death sentence. The trial court adopted the jury's recommendation and sentenced Short to death. Short's conviction and sentence were affirmed on direct appeal. *State v. Short*, 129 Ohio St.3d 360, 2011-Ohio-3641, 952 N.E.2d 1121.[1]

{¶ 3} In January 2017, Short filed a motion styled as a "* * * Motion For Leave To File A Motion For A New Mitigation Trial Pursuant To Criminal Rule 33 And *Hurst v. Florida*, And To Deem The Attached Motion Filed Instanter[.]" Attached to the motion was a copy of the proposed motion seeking a new mitigation trial. In July 2017, the trial court sustained Short's motion for leave to file a motion for a new mitigation trial. The

[1] In 2014, Short filed a petition seeking post-conviction relief, which was denied by the trial court. This court affirmed the trial court's decision. *State v. Short*, 2d Dist. Montgomery No. 27399, 2018-Ohio-2429.

trial court's order stated that "[Short] must file his motion for New Trial in a timely manner as provided by law."

{¶ 4} Thereafter, Short did not file a motion for a new trial with the Montgomery County Clerk of Courts. The parties, in December 2019, filed a motion styled as a "Joint Motion for Ruling on Motion for New Mitigation Trial[.]" The joint motion noted the trial court had conducted a telephone status conference with counsel during which Short's attorneys informed the trial court that they "had assumed that attaching the Motion for New Trial to the Motion for Leave was sufficient for filing purposes." On December 30, 2019, the trial court filed a decision and order concluding that "Crim.R. 33(B) * * * requires that any motion for new trial be filed within seven days after a defendant is granted leave to file said motion. Short failed to file any motion for a new trial after the court granted him leave, and, as such, there is no timely motion for a new mitigation trial before this court, and the court lacks jurisdiction to consider an untimely motion for a new mitigation trial." (Emphasis sic.) Based upon this jurisdictional conclusion, the trial court overruled Short's motion seeking a new mitigation trial. The trial court also noted that if the motion had been timely filed, it would have been overruled under the authority of *State v. Mason*, 153 Ohio St.3d 476, 2018-Ohio-1462, 108 N.E.3d 56.

{¶ 5} Short appeals.

Trial Court's Jurisdiction to Decide Motion for New Mitigation Trial

{¶ 6} As noted, the trial court concluded it was without jurisdiction to decide Short's

motion seeking a new mitigation trial because, in contravention of Crim.R. 33(B),[2] Short did not file a motion for a new mitigation trial within seven days of the trial court's decision and order granting leave to file the motion.

{¶ 7} Crim.R. 45(B) states in relevant part that a "court may not extend the time for taking any action under Rule 23, Rule 29, Rule 33, and Rule 34 except to the extent and under the conditions stated in them." It seems that this language supports the trial court's jurisdictional conclusion. But the Ohio Supreme Court's decision in *State v. Ross*, 128 Ohio St.3d 283, 2010-Ohio-6282, 943 N.E.2d 992 suggests otherwise.

{¶ 8} In *Ross,* the Ohio Supreme Court considered whether a trial court is without jurisdiction to "reconsider a timely made, but previously denied, motion for acquittal pursuant to Crim.R. 29(C), if the defendant after the 14 day deadline in that rule, renews the motion." *Id.* at ¶ 12. *Ross* concluded that the Crim.R. 29(C)[3] time limitations are appropriately characterized as "a rigid claim-processing rule" as opposed to a jurisdictional bar. *Id.* at ¶ 30.[4]

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[2] Crim.R. 33(B) states in pertinent part: "Application for a new trial shall be made by motion which, except for the cause of newly discovered evidence, shall be filed within fourteen days after the verdict was rendered, or the decision of the court where a trial by jury has been waived, unless it is made to appear by clear and convincing proof that the defendant was unavoidably prevented from filing his motion for a new trial, in which case the motion shall be filed within seven days from the order of the court finding that the defendant was unavoidably prevented from filing such motion within the time provided herein."

[3] Crim.R. 29(C) states in pertinent part: "If a jury returns a verdict of guilty or is discharged without having returned a verdict, a motion for judgment of acquittal may be made or renewed within fourteen days after the jury is discharged or within such further time as the court may fix during the fourteen day period. * * *

[4] *Ross* ultimately concluded that, although not a jurisdictional bar, "the strict time limitations in Crim.R. 29 and 45(B) * * * do not permit a defendant to renew, outside Crim.R.29(C)'s limited time frame, [a motion] for acquittal when the motion has been

{¶ 9} In reaching this conclusion, the supreme court discussed and relied upon *Eberhart v. United States*, 546 U.S. 12, 126 S.Ct. 403, 163 L.Ed.2d 14 (2005). In that case, Eberhart filed a supplemental memorandum in support of a pending motion for a new trial under Fed.R.Crim.P. 33. The supplemental memorandum raised new grounds for the relief sought; thus, the supplemental memorandum constituted a new but untimely motion as to the newly raised grounds. The government did not object to the newly asserted grounds for a new trial as being untimely, but, instead, contested these grounds on the merits. The district court granted a new trial in part upon the basis of the untimely asserted grounds for relief. The Seventh Circuit reversed, concluding that the district court was without jurisdiction to consider the untimely asserted grounds for a new trial. The Supreme Court then reversed the Seventh Circuit's judgment, stating:

> Rule 33, like Rule 29 * * *, is a claim-processing rule -- one that is admittedly inflexible because of [Fed.R.Crim.P.] 45(b)'s insistent demand for a definite end to proceedings. These claim-processing rules thus assure relief to a party properly raising them, but do not compel the same result if the party forfeits them. Here, where the Government failed to raise a defense of untimeliness until after the District Court had reached the merits, it forfeited the defense.

Eberhart at ¶ 19.

{¶ 10} Consistent with *State v. Ross*, we conclude that Crim.R. 33(B) and Crim.R. 45(B) do not impose a jurisdictional bar that absolutely prevents a court from considering an untimely motion for a new trial. Instead, Crim.R. 33(B) and Crim.R. 45(B) create a

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previously denied." *Id.* at ¶ 40.

"rigid claim-processing rule" that must be enforced if properly raised. *Ross,* 128 Ohio St.3d 283, 2010-Ohio-6282, 943 N.E.2d 992, at ¶ 30.

{¶ 11} Given this conclusion, the trial court had jurisdiction to consider Short's motion for a new mitigation trial. The issue, then, is whether the State properly raised the defense that Short's motion was not timely filed. We conclude, under the unique circumstances of this case, that the defense was not raised and, as such, was waived.

{¶ 12} We reach this conclusion based upon the following language from the Joint Motion requesting the trial court to rule on Short's motion:

> Without waiving any defenses on behalf of either party as to the timeliness of the filing of Short's Motion for New Mitigation Trial or to the merits of the Motion for New Mitigation Trial or otherwise, the undersigned Assistant State Public Defenders, Kim Rigby and Erika LaHote, along with the undersigned Assistant Prosecuting Attorneys, Leon J. Daidone and Andrew T. French, jointly request that this Court rule on the Motion for New Mitigation Trial. The parties request that this Court rule on the Motion for New Mitigation Trial without affording further briefing to either party. All counsel also stipulates that the Ohio Supreme Court's decision in *State v. Mason*, 153 Ohio St.3d 476, 2018-Ohio-1462 controls this case.

This language requests a ruling on the merits, recognizing, however, that the trial court had to overrule the motion based upon Ohio Supreme Court case law. We recognize that the joint motion includes the statement that timeliness defenses were not being waived. But the State did not assert a timeliness objection, and this, in conjunction with the joint request for a ruling on the merits, leads to our waiver conclusion. Thus, the trial

court was not precluded by the rigid claims-processing rule from addressing the merits of Short's new trial motion.

Merits Discussion

{¶ 13} Although the trial court concluded that it was without jurisdiction to consider Short's motion, it noted that the motion was substantively without merit based upon *State v. Mason*, 153 Ohio St.3d 476, 2018-Ohio-1462, 108 N.E.3d 56. The trial court's assessment was correct.

{¶ 14} Short claims a right to a new mitigation trial under the authority of *Hurst v. Florida,* 577 U.S. 92 136 S.Ct. 616, 193 L.Ed.2d 504, which found that Florida's capital sentencing structure violated the Sixth Amendment. The United States Supreme Court "determined that Florida's death penalty scheme violated the Sixth Amendment [right to a jury] because it required the trial judge, not the jury, to find an aggravating circumstance that made [the] defendant death penalty eligible; thus, the jury was removed from the critical finding necessary for imposition of the death penalty." *State v. Chinn*, 2d Dist. Montgomery No. 28345, 2020-Ohio-43, ¶ 14, citing *Hurst* at 622.

{¶ 15} In *Mason*, the Ohio Supreme Court concluded that Ohio's death penalty scheme does not suffer from the problem present in *Hurst* because, in Ohio, the jury is required to find the defendant guilty of the aggravating circumstance specification necessary for death penalty eligibility. *Mason* at ¶ 20. Given this, Short was not entitled to a new mitigation trial under the authority of *Hurst*. The trial court's result was correct, albeit for a different reason.

Conclusion

{¶ 16} For the discussed reasons, the trial court's judgment is affirmed.

. . . . . .

FROELICH, J. and HALL, J., concur.

Copies sent to:

Mathias H. Heck, Jr.
Andrew T. French
Kimberly S. Rigby
Erika M. LaHote
Hon. Mary Katherine Huffman

IN THE COMMON PLEAS COURT OF MONTGOMERY COUNTY, OHIO
CRIMINAL DIVISION

STATE OF OHIO,	CASE NO. 2004 CR 02635
Plaintiff,	JUDGE MARY KATHERINE HUFFMAN
-vs-	DECISION, ORDER AND ENTRY FINDING THE COURT LACKS JURISDICTION TO CONSIDER DEFENDANT'S UNTIMELY MOTION FOR NEW MITIGATION TRIAL AND, IN THE ALTERNATIVE, OVERRULING DEFENDANT'S MOTION FOR NEW MITIGATION TRIAL
DUANE ALLEN SHORT,	
Defendant	

This matter is before the court on the Joint Motion for Ruling on Motion for New Mitigation Trial filed herein on December 20, 2019. In that Joint Motion, Defendant, Duane Short, through counsel, and the State of Ohio submitted for determination, without further briefing, whether Defendant had timely filed a Motion for New Mitigation Trial following this court's decision on January 10, 2017, granting him leave to file said Motion, and on the substance of the Motion for New Mitigation Trial.

The procedural and substantive history of this case is detailed in prior decisions of this court and will not be repeated herein.

Pursuant to Crim. R. 33(B), a motion for new trial must be filed within seven days after a defendant is granted leave to file said motion. Still further, Crim. R. 45 provides "[t]he court may not extend the time for taking any action under Rule 23, Rule 29, Rule 33, and Rule 34, except to

the extent and under the conditions stated in them." "Once a motion for leave has been granted, the trial court has not discretion to change the time in which the motion for new trial must be filed." *State v. McConnell,* 2011-Ohio-5555. This court granted Short leave to file his Motion for New Mitigation trial on January 10, 2017. At no time thereafter did Short file said Motion. While counsel argues that Short filed a copy of a proposed Motion for New Mitigation Trial with his Motion for Leave filed on January 10, 2017, Crim. R. 33(B) specifically requires that any motion for new trial be filed within seven days *after* a defendant is granted leave to file said motion. The court finds that Short failed to file any motion for new trial *after* the court granted him leave, and as such, there is no timely motion for a new mitigation trial before this court, and the court lacks jurisdiction to consider an untimely motion for a new mitigation trial.

Even if the court were to assume that Short timely filed his Motion for New Mitigation Trial, the court finds that Short has failed to meet his burden for a new trial. Criminal Rule 33 sets forth the standard for a new trial. Crim. R. 33(A)(1)-(6) provides:

> (A) Grounds. A new trial may be granted on motion of the defendant for any of the following causes affecting materially his substantial rights:
>
> (1) Irregularity in the proceedings, or in any order or ruling of the court, or abuse of discretion by the court, because of which the defendant was prevented from having a fair trial;
>
> (2) Misconduct of the jury, prosecuting attorney, or the witnesses for the state;
>
> (3) Accident or surprise which ordinary prudence could not have guarded against;
>
> (4) That the verdict is not sustained by sufficient evidence or is contrary to law....;

(5) Error of law occurring at the trial;

(6) When new evidence material to the defense is discovered, which the defendant could not with reasonable diligence have discovered and produced at trial…

As grounds for his Motion for New Mitigation Trial, as contained within his Motion for Leave, Short argues that there were irregularities in the proceedings, the verdict is not sustained by sufficient evidence, and the death sentence in this case is the result of an error of law. Short's Motion is premised exclusively on the United States Supreme Court decision in *Hurst v. Florida,* 577 U.S. ___, 136 S. Ct. 616 (2016), wherein the Court found that Florida's death penalty procedures violated the Sixth and Fourteenth Amendments to the United States Constitution. However, as stipulated by the parties in their Joint Motion for Ruling on Motion for New Mitigation Trial filed herein on December 20, 2019, the Ohio Supreme Court decision in *State v. Mason,* 153 Ohio St. 3d 476, 2018-Ohio-1462, is the controlling precedent in this case. In *Mason*, the Ohio Supreme Court found that because Ohio's death penalty scheme satisfies the Sixth Amendment, and, thus, the *Hurst* decision does not support a basis for a new trial.

For the reasons stated above, the court finds that Defendant failed to timely file his motion for new trial after the court granted him leave to do so. Still further, when considering the merits of any motion for a new mitigation trial, the court finds that the sole basis for Defendant's request for a new mitigation trial, the decision in *Hurst*, has been found to be inapplicable to Ohio's death penalty scheme. As such, Short has failed to provide support as required by law for his motion for a new mitigation trial and the same is **OVERRULED**.

SO ORDERED:
JUDGE MARY KATHERINE HUFFMAN

THIS IS A FINAL APPEALABLE ORDER, AND THERE IS NOT JUST CAUSE FOR DELAY FOR PURPOSES OF CIV. R. 54. PURSUANT TO APP. R. 4, THE PARTIES SHALL FILE A NOTICE OF APPEAL WITHIN THIRTY (30) DAYS.

SO ORDERED.
JUDGE MARY KATHERINE HUFFMAN

To the Clerk of Courts:
Please serve the attorney for each party and each party not represented by counsel with Notice of Judgment and its date of entry upon the journal.

JUDGE MARY KATHERINE HUFFMAN

This document is electronically filed by using the Clerk of Courts e-Filing system. The system will post a record of the filing to the e-Filing account "Notifications" tab of the following case participants:

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Montgomery County Common Pleas Court
41 N. Perry Street, Dayton, Ohio 45422

Case Number:
2004 CR 02635

Case Title:
STATE OF OHIO vs DUANE ALLEN SHORT

Type:
Decision

So Ordered,

Electronically signed by mhuffman on 12/30/2019 02:06:09 PM Page 5 of 5

IN THE COMMON PLEAS COURT OF MONTGOMERY COUNTY, OHIO

STATE OF OHIO,

Plaintiff,

v.

DUANE SHORT,

Defendant.

CASE NO. 2004 CR 02635

JUDGE MARY KATHERINE HUFFMAN

OPINION OF TRIAL JUDGE
(O.R.C. §2929.03)

This matter came on to be heard pursuant to Ohio Revised Code Section 2929.03(F). On September 20, 2004, the Grand Jury of Montgomery County, Ohio returned an Indictment charging the Defendant, Duane Allen Short with, among other crimes, the Aggravated Murders of Donnie R. Sweeney and Rhonda M. Short. The Grand Jury also charged two aggravating circumstances for each of the three charges of aggravated murder.

The Defendant entered a plea of not guilty and the matter proceeded to trial commencing on April 17, 2006. On May 5, 2006 the jury returned unanimous verdicts of guilty as to Counts Two, Four and Five of the Indictment for the Aggravated Murder involving the deaths of Donnie R. Sweeney and Rhonda M. Short. In addition, the jury convicted the Defendant of the two aggravating circumstances which were attached to Counts Two, Four and Five of the Indictment.

The two aggravating circumstances, or death specifications, which were appended to Counts Two, Four and Five are: (1) that the offenses were part of a course of conduct involving the purposeful killing of two or more persons, and (2) the offenses were committed while the Defendant was committing, attempting to commit, or fleeing immediately after committing or

attempting to commit the offense of aggravated burglary, and the Defendant was the principal offender in the commission of the aggravated murder.

Each of the aggravating circumstances must be considered with the count to which it is appended, and each count must be considered separately. Pursuant thereto, the court makes the following findings regarding the aggravating circumstances:

1. The testimony at trial was that the Defendant, Duane Allen Short, purposefully killed Donnie R. Sweeney and Rhonda M. Short on July 22, 2004. Short's wife, Rhonda M. Short had separated from him on approximately July 15, 2004. She had left a note for Duane Short with their son, Justin Short, who gave the note to his father the same day that his mother left. Rhonda Short took the two younger Short children, Tiffany and Jesse, with her when she left the home of the parties located in Middletown, Ohio. Short searched for his wife over the course of several days, going to several different churches, looking for his wife as well as praying.

On July 22, 2004, Short contacted DP&L and learned through subterfuge where his wife was residing. Short then traveled with his son, Justin, to Huber Heights, to locate the property address he had been provided by DP&L, the property being located at 5035 Pepper Drive, Huber Heights, Ohio. Short stopped at a local real estate office and was given directions to the home. Short and Justin then returned to their home in Middletown where Short attempted to buy a gun from a friend, Brandon Fletcher. Fletcher knew that Short and his wife had recently separated. He refused to sell Short the gun. Short also called his employer, Robert McGee, and asked if he could borrow McGee's truck to move some furniture to Miamisburg. McGee consented and Short exchanged his own truck for that owned by McGee. Later that evening Short and his son traveled in McGee's truck to Miamisburg, Ohio, where Short purchased a shotgun at Dick's Sporting Goods. Prior to leaving his residence in Middletown, Short took hats, a long black coat,

gloves, a towel and shotgun shells and put them in McGee's truck. Short told his son that he wanted to go hunting and he was buying a gun to hunt. After purchasing the gun Short and his son, Justin, traveled approximately two miles to a Meijer store and purchased a hacksaw. They then traveled to Huber Heights and drove past the home located at 5035 Pepper Drive where Short and Justin observed Rhonda Short walking outside the home and also observed Donnie Sweeney's automobile at the residence. Prior to driving past the home at 5035 Pepper Drive, Short told Justin to put on a hat so that his mother would not recognize them. Short and Justin then checked into a motel in Huber Heights where Short, after turning the television on loud and putting a "do not disturb" sign on the door, proceeded to have his son sit on the butt of the gun while he sawed off the barrel.

The evidence further indicates that Defendant entered the property located at 5035 Pepper Drive, Huber Heights, Ohio, at about 10:30PM on July 22, 2004, and went around the home to the back yard, where he entered the yard and shot Donnie R. Sweeney one time in the chest from a relatively close range. Some noise in the backyard attracted two of Defendant's children, Tiffany and Jesse, who had been in the home at 5035 Pepper Drive, watching television in the living room. When Tiffany and Jesse heard the noise they went to the back window of the home, but could see nothing outside. Jesse then began opening the door to see what was going on outside, when both Tiffany and Jesse observed their father, Duane Allen Short, enter into the home, without permission, with a gun in his hand. Tiffany and/or Jesse called out to their father, but he did not respond to them. Instead, Defendant proceeded into the home at 5035 Pepper Drive. Tiffany and Jesse then ran out of the home.

Defendant then proceeded to kick open the door to the bathroom located in the hallway of the residence at 5035 Pepper Drive and shoot his wife, Rhonda M. Short. Shortly thereafter

Defendant was apprehended on the back porch of the residence at 5035 Pepper Drive by officers from the Huber Heights Police Department. Rhonda Short was still alive when paramedics arrived. She stated to Adam Blake and David Develbiss, both firefighter/paramedics with the Huber Heights Fire Department, words to the effect that "he shot me." Rhonda Short was also shot at relatively close range. At the scene, David Develbiss removed shotgun wadding from the wound that had been inflicted to Rhonda Short's upper right chest. Rhonda M. Short died at approximately 4:38AM the following morning, approximately six hours after the shooting as a result of a shotgun wound to the right chest. Donnie Sweeney was dead at the scene. His cause of death was a shotgun wound to the left chest.

In the weeks prior to her mother's death, Tiffany Short heard her parents arguing and heard her father, Duane Short, tell her mother, Rhonda Short, more than one time, "if you ever leave I'll kill you." Approximately one to two months before Rhonda Short's death, Amy Spurlock, a friend of Rhonda Short, and a relative of her mother's boyfriend, heard Duane Short ask Rhonda to read a newspaper article about a man who had killed his wife. Rhonda did not want to do so, but Duane was described by Amy as being "angry, upset and mad." Duane then said to Rhonda, "if you ever leave me or cheat on me I'll kill you, the kids and myself." Bob Thomas, a co-worker with the Defendant in the meat department at McGee's IGA, also heard Short make a similar statement. A few months prior to the shooting, Short told Thomas "if my wife ever leaves me for another man, I'll kill both of them and myself." On July 21, 2004, the day prior to the shootings, Duane Short approached a relative of his father, Loren Taylor, at the Abundant Life Tabernacle. Loren was on the pulpit directing a music practice when he was approached by Short, who stated that he was looking for his parents. Short told Loren that Rhonda had left him and stated "I think she left me for another man, I just thought about going

over there and killing him." The court finds the aforementioned testimony is sufficient to find that said killings were purposeful and involved the killing of two persons.

2. The evidence disclosed that the Defendant and Rhonda M. Short had separated on approximately July 15, 2004, at the will of Rhonda Short. Rhonda and the children, Tiffany and Jesse, moved from hotel to hotel for several nights. Rhonda and her friend, Brenda Barrion, who was Donnie Sweeney's mother, rented the home located at 5035 Pepper Drive for Rhonda and her children on July 17, 2004. Rhonda and the children moved into the home on July 20, 2004. Brenda Barrion had attempted to rent furniture for Rhonda's use in the home but because she was afraid of leaving a paper trail, she and Rhonda chose not to rent the furniture. Rhonda had put the utilities at the residence in her maiden name. Brenda Barrion testified that she was the person who had rented the home located at 5035 Pepper Drive, Huber Heights, Montgomery County, Ohio, and that at no time had she given Duane Short permission to enter the premises. Tiffany Short testified that no one gave her father permission to enter the residence. Jesse Short also testified that his father shoved open the door to the house and entered. There is no evidence that Rhonda Short, nor anyone authorized to do so, gave Duane Short permission to enter upon the premises located at 5035 Pepper Drive, Huber Heights, Ohio, on July 22, 2004.

The court finds that no open permission was granted for Defendant to enter upon the premises at 5035 Pepper Drive. Rhonda Short was clearly attempting to hide her whereabouts from Defendant. The court further finds the entrance upon the property at 5035 Pepper Drive by Defendant was unwarranted and a trespass, and he lacked privilege or permission to enter upon the land. Further, the Defendant, after gaining entrance committed a violent felony against the person of Rhonda M. Short, who had authority to grant or revoke any privilege to enter upon the land. The court finds that the evidence was legally sufficient to establish that Duane M. Short

committed the aggravated murders of Donnie R. Sweeney and Rhonda M. Short while he was committing, attempting to commit, or fleeing immediately after committing or attempting to commit aggravated burglary. The court further finds that the evidence was legally sufficient to establish that Defendant was the sole perpetrator of the killings of Donnie R. Sweeney and Rhonda M. Short.

During the trial phase of these proceedings, there was some evidence submitted by the Defendant which was mitigating in nature, such as Defendant was employed, was the father of three children, and that he attended church. There was also some evidence that Defendant was dependable when it came to his employment and he was a hard-worker.

The sentencing phase of the case began on May 8, 2006. Prior to proceeding in the presence of the jury, Defendant's counsel advised the court that Defendant did not intend to present any additional mitigation evidence, other than that which was presented during the trial phase. The court then conducted a detailed inquiry of the Defendant, pursuant to *State of Ohio v. Ashworth*, 85 Ohio St. 3d 56 (1999). Defendant specifically stated, on the record, outside of the presence of the jury, after being advised of his rights pursuant to *Ashworth*, that he was well aware of his right to present mitigation evidence, that he knew the purpose of mitigation evidence, that he had given the matter considerable thought, that he had discussed the matter with his counsel and any other person that he considered to be important to his decision, that it was his choice not to present any additional mitigation evidence and, further, that he understood that by failing to present any additional mitigation evidence that the jury, more than likely, may impose the death penalty. The court then found Defendant competent to waive any additional mitigation evidence. The court also advised Defendant of his right to make either a sworn or unsworn statement, and the Defendant acknowledged to the court that he understood his right

and he was waiving his right to make a statement in the presence of the jury.

The court then proceeded to instruct the jury on the law and procedures to be followed in the sentencing phase of the case. Counsel for the State and the Defendant both waived opening statements. The State proffered all the evidence it had produced in the trial phase, as did the Defendant. The State relied upon the jury's three verdicts of Aggravated Murder along with the second and third specifications, or aggravating circumstances, attached to each count of Aggravated Murder. The Defendant did not present any additional evidence in mitigation.

At the conclusion of the evidence, counsel argued their positions to the jury and the court instructed the jury on the law. Part of those instructions set forth the aggravating circumstances that the jury should weigh and some of the mitigating factors they could consider. The jury was informed that each count was to be considered separately.

The jury deliberated on May 8 and May 9, 2006. On May 9, 2006, the jury announced its verdicts and found beyond a reasonable doubt that the aggravating circumstances which the Defendant was found guilty of committing in the aggravated murders as set forth in Counts 2, 4 and 5 outweighed the mitigating factors in this case and they, therefore, recommended the Defendant be sentenced to death as to Counts 2, 4 and 5.

The Defendant was given a further opportunity to allocute on May 30, 2006, at which time Defendant made a length statement, which the court has considered.

The court must now conduct its own independent review of the evidence and determination of whether the aggravating circumstances outweigh the mitigating evidence beyond a reasonable doubt, pursuant to O.R.C. §2929.03. The court is required to weigh the two aggravating circumstances for which the Defendant was found guilty against any mitigating factors the court may find in its independent search of the entire record.

The court notes that the nature and circumstances of the offense are only to be considered as a mitigating factor, and never as an aggravating circumstance. In fact, the court is confined to considering the aggravating circumstances attached to each count, as detailed above. As a result of Defendant's waiver of the presentation of any additional mitigation evidence, this court is required to search the record for evidence in favor of mitigation. The court is cognizant of the fact that the absence of a mitigating factor does not add to existing aggravating circumstances.

The court also acknowledges its duty to assess the penalty for each individual count when a defendant is convicted of more than one count of aggravated murder with aggravating circumstances. The court further acknowledges that only the aggravating circumstances related to a given count may be considered in assessing the penalty for that count.

The court has reviewed the entire record for evidence of mitigation.

The court now shall consider the mitigating factors as they relate to Counts 2, 4, and 5. O.R.C. §2929.04(B) lists seven specific mitigating factors, all of which will be addressed by the court. The court must determine whether the State has proved beyond a reasonable doubt that the aggravating circumstances, for which Defendant was found guilty, outweigh the mitigating factors. If the State has met this burden of proof, the death penalty shall be imposed. The court must also consider, as set forth in O.R.C. §2929.04(B), the nature and circumstances of the offense and the history, character and background of the offender.

When considering the nature and circumstances of the offense, and the history, character and background of the Defendant, the court has search the entire record for evidence. There is very little evidence in the record regarding the history, character and background of the Defendant. Defendant was married and had three children, for whom he provided. The evidence, including a letter from Justin Short to his father, reveals that Defendant's children love

him, despite the events of July 22, 2004. Defendant was employed at the time of the offense. The court has also reviewed the psychological evaluations made part of the record herein. Specifically, the court has reviewed and considered the Competency to Stand Trial Report prepared by Dr. Scott Kidd, and dated January 6, 2005, and the Competency Evaluation Report prepared by Dr. Kim Stookey, and dated February 21, 2005. The defendant reported that he had a good relationship with his family, he frequently attended church and that he is a high school graduate. He reported having some social adjustment issues and that his mother was very strict while he was growing up. Short did not report any incidents of abuse during his childhood. He reported a head injury resulting from a motorcycle accident in 1997. As a result of injuries sustained in that accident, Short reported that he developed a dependency to prescription drugs. He also reported a history of drug and alcohol abuse. The statements contained in the psychological evaluations were somewhat conflicting, as the information reveals that Defendant last abused prescription drugs in 1999 and in 2002. The court gives little weight to these issues.

The court will now address the seven statutorily delineated mitigating factors.

1. Whether the victim of the offense induced or facilitated it. Defense counsel argued that the details of the crime evidenced a man who was upset or despondent over the loss of his wife and his perception that she had left him for another man. The court finds that there is no evidence that the victims of the offense, Donnie R. Sweeney or Rhonda M. Short, facilitated the offense. While Defendant argued that his wife leaving him and another man, Donnie Sweeney, being at her home, facilitated the offense and induced him to commit the aggravated murders, there is nothing about the conduct of the victims that induced or facilitated Defendant's actions. Donnie Sweeney was in the backyard of the home at 5035 Pepper Drive

when he was set upon and shot at close range by Defendant. Rhonda Short was in the bathroom, apparently just having showered, when Defendant kicked in the door and shot her at close range. There is no evidence to indicate that either victim committed any act toward Defendant. While the defendant clearly was upset that his wife had left him, the fact that his wife was at a home that she had rented while another man was in the backyard grilling dinner, is not sufficient to give any weight to the mitigating factor that the victims of the offense induced or facilitated the offense.

2. Whether it is unlikely the offense would have been committed, but for the fact that the Defendant was under duress, coercion, or strong provocation. The only evidence of duress, coercion, or strong provocation is that he was upset that his wife had left him, and that he believed she had left him for another man. Defendant's emotions relating to the loss of his wife or family does not equate to duress, coercion or strong provocation. As stated above, Donnie Sweeney was grilling in the backyard when he was shot at close range by the Defendant, who was on the property without the permission of anyone who was entitled to grant him permission. Defendant then proceeded, without privilege to do so, into the residence at 5035 Pepper Drive and kicked in the bathroom door and shot his wife. There is no evidence of duress, coercion or strong provocation sufficient to mitigate the consequences of Defendant's behavior. The court gives little weight to this factor.

3. Whether, at the time of committing the offense, the offender, because of mental disease or defect, lacked substantial capacity to appreciate the criminality of the

offender's conduct or to conform the offender's conduct to the requirements of the law. There was no testimony relating to this factor, expect possibly for evidence that the Defendant was upset that his wife had left him, presumably for another man. Justin Short testified that, in the week preceding the deaths of Donnie Sweeney and Rhonda Short, his father was sad, angry and upset. Bob Thomas, Short's co-worker, testified that in the days prior to July 22, 2004, Short was "down" and "wanted to die." However, following the shootings at 5035 Pepper Drive, Short was supervised while in a holding cell and then transported to the jail by Officer Brad Reaman of the Huber Heights Police Department. Reaman described Short as being calm and in command of his faculties. Short reported in the court-ordered psychological evaluations that he has been treated for some time for depression and anxiety and for sleep difficulties. He also reported having been diagnosed with Bipolar Disorder in 2002, said diagnosis having been unconfirmed in the medical records provided to the evaluating psychologist. Short reported that he went to the hospital and was treated for several hours after his wife left him, as he was despondent. The psychological evaluations made part of the record also reveal that Short's treating physicians made repeated recommendations that he seek treatment and psychological counseling, but he failed to do so. Based upon the evaluations, Short was diagnosed with a thought disorder. However, the planning and calculation that preceded the offenses belie mental disease or defect, or lack of substantial capacity to appreciate the criminality of his conduct or to conform his conduct to the requirements of the law. The court notes that Defendant offered no other

testimony, including no expert testimony, that he suffered from a mental disease or defect, that he lacked substantial capacity to appreciate the criminality of his conduct or to conform his conduct to the requirements of the law. The court gives little weight to this factor.

4. The youth of the offender. The record reveals that the Defendant was 36 years old at the time of the offense. Therefore, this mitigating factor is inapplicable.

5. The offender's lack of a significant history of prior criminal convictions and delinquency adjudications. There is some conflicting evidence in the psychological evaluations, the information for which was provided by Defendant himself, that Short was charged with domestic violence in the past, relating either to his first wife or his first wife's father. That information was conflicting and confusing. There is no other evidence in the record that Defendant has any criminal history, whether as a juvenile or as an adult. However, given the multiple deaths associated with Defendant's conduct and the multiple other felonies for which the jury found the Defendant guilty, and the fact that the Defendant was the only offender, the court gives little weight to this factor.

6. If the offender was a participant in the offense but not the principal offender, the degree of the offender's participation in the offense and the degree of the offender's participation in the acts that led to the death of the victim. Defendant, Duane Allen Short was the only offender in the offenses at issue. Therefore, the court gives no weight to this factor.

7. Any other factors that are relevant to the issue of whether the offender should be sentenced to death. The testimony offered at trial raised several factors which

could be deemed and are so offered and considered in mitigation of the offense.

A. The impact on Justin, Tiffany and Jesse Short. The impact on Short's children has been considered. The evidence before the court is that the Defendant loved his children and that sentiment was reciprocated. It would be pure speculation for the court to consider the impact on the Short children; however, one would assume that the impact of their present circumstance is overwhelming. The court gives little weight to this factor, however, in light of the fact that Defendant's conduct resulted in the circumstances that his children now face.

B. Support from Defendant's family and friends. There was some evidence in the record that Defendant's family members continue to love and support him, and who have visited him in the jail during his incarceration. The court assigns little weight to this factor.

C. Assistance and cooperation with police. Short's assistance and cooperation with the police is found to be a mitigating factor. He cooperated after submitting to arrest without resistence. He did acknowledge his involvement in the offenses. However, the court assigns little weight to this mitigating factor.

D. Employment. The evidence was undisputed that Defendant had been employed and was supporting his family. The court finds that this factor is of little weight.

E. Remorse. Defendant made an expression of remorse in his statement to the court. However, the court gives little weight to his expression of

remorse, as it was tempered by his lengthy statement placing blame on other for his conduct, including the family of Donnie Sweeney. The court assigns very little weight, if any, to this factor.

The jury in Counts 2, 4 and 5 found the aggravating circumstances outweighed the mitigating factors beyond a reasonable doubt. The court, having conducted the same process, and having weighed the aggravating circumstances and the mitigating factors or evidence, agrees with the jury's verdict. The aggravating circumstances outweigh the mitigating factors beyond a reasonable doubt and the State, therefore, has sustained its burden as to Counts 2, 4 and 5. The court finds the mitigating factors pale in significance when considering the aggravating circumstances. The court, thus, agrees with the verdict of the jury as to Counts 2, 4 and 5.

After searching and reviewing the record, this court has found beyond a reasonable doubt that the following aggravating circumstances: (1) the aggravated murders of Donnie R. Sweeney and Rhonda M. Short were part of a course of conduct involving the purposeful killing of two or more persons; and (2) Defendant committed the aggravated murders of Donnie R. Sweeney and Rhonda M. Short while committing, attempting to commit, or fleeing immediately after committing or attempting to commit aggravated burglary, and Defendant was the principal offender in the aggravated murders, outweigh the mitigating factors and evidence.

The Defendant, Duane Allen Short, having been convicted of the Aggravated Murders of Donnie R. Sweeney and Rhonda M. Short, and the jury having determined the aggravating circumstances outweigh the mitigating factors beyond a reasonable doubt, as to Counts 2, 4 and 5 of the indictment, and the court having independently reviewed and weighed the evidence in the record, finds the aggravating circumstances outweigh the mitigating factors beyond a reasonable doubt, and the sentence of death shall be imposed upon the Defendant.

Consistent with the court's pronouncement of sentence on May 30, 2006, the prosecutor's office is directed to prepare a Termination Entry reflecting the court's sentence for the court's review and filing.

IT IS SO ORDERED.

JUDGE MARY KATHERINE HUFFMAN

Copies of the above were sent to all parties listed below by ordinary mail this date of filing.

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§ 2929.03. Imposing sentence for aggravated murder

(A) If the indictment or count in the indictment charging aggravated murder does not contain one or more specifications of aggravating circumstances listed in division (A) of *section 2929.04 of the Revised Code*, then, following a verdict of guilty of the charge of aggravated murder, the trial court shall impose sentence on the offender as follows:

(1) Except as provided in division (A)(2) of this section, the trial court shall impose a sentence of life imprisonment with parole eligibility after serving twenty years of imprisonment on the offender.

(2) If the offender also is convicted of or pleads guilty to a sexual motivation specification and a sexually violent predator specification that are included in the indictment, count in the indictment, or information that charged the aggravated murder, the trial court shall impose upon the offender a sentence of life imprisonment without parole that shall be served pursuant to *section 2971.03 of the Revised Code*.

(B) If the indictment or count in the indictment charging aggravated murder contains one or more specifications of aggravating circumstances listed in division (A) of *section 2929.04 of the Revised Code*, the verdict shall separately state whether the accused is found guilty or not guilty of the principal charge and, if guilty of the principal charge, whether the offender was eighteen years of age or older at the time of the commission of the offense, if the matter of age was raised by the offender pursuant to *section 2929.023 [2929.02.3] of the Revised Code*, and whether the offender is guilty or not guilty of each specification. The jury shall be instructed on its duties in this regard. The instruction to the jury shall include an instruction that a specification shall be proved beyond a reasonable doubt in order to support a guilty verdict on the specification, but the instruction shall not mention the penalty that may be the consequence of a guilty or not guilty verdict on any charge or specification.

(C)(1) If the indictment or count in the indictment charging aggravated murder contains one or more specifications of aggravating circumstances listed in division (A) of *section 2929.04 of the Revised Code*, then, following a verdict of guilty of the charge but not guilty of each of the specifications, and regardless of whether the offender raised the matter of age pursuant to *section 2929.023 [2929.02.3] of the Revised Code*, the trial court shall impose sentence on the offender as follows:

(a) Except as provided in division (C)(1)(b) of this section, the trial court shall impose a sentence of life imprisonment with parole eligibility after serving twenty years of imprisonment on the offender.

(b) If the offender also is convicted of or pleads guilty to a sexual motivation specification and a sexually violent predator specification that are included in the indictment, count in the indictment, or information that charged the aggravated murder, the trial court shall impose upon the offender a sentence of life imprisonment without parole that shall be served pursuant to *section 2971.03 of the Revised Code*.

(2)(a) If the indictment or count in the indictment contains one or more specifications of aggravating circumstances listed in division (A) of *section 2929.04 of the Revised Code* and if the offender is found guilty of both the charge and one or more of the specifications, the penalty to be imposed on the offender shall be one of the following:

(i) Except as provided in division (C)(2)(a)(ii) of this section, the penalty to be imposed on the offender shall be death, life imprisonment without parole, life imprisonment with parole eligibility after serving twenty-five* full years of imprisonment, or life imprisonment with parole eligibility after serving thirty full years of imprisonment.

(ii) If the offender also is convicted of or pleads guilty to a sexual motivation specification and a sexually violent predator specification that are included in the indictment, count in the indictment, or information that charged the aggravated murder, the penalty to be imposed on the offender shall be death or life imprisonment without parole that shall be served pursuant to *section 2971.03 of the Revised Code*.

(b)A penalty imposed pursuant to division (C)(2)(a)(i) or (ii) of this section shall be determined pursuant to divisions (D) and (E) of this section and shall be determined by one of the following:

(i) By the panel of three judges that tried the offender upon the offender's waiver of the right to trial by jury;

(ii) By the trial jury and the trial judge, if the offender was tried by jury.

(D)(1) Death may not be imposed as a penalty for aggravated murder if the offender raised the matter of age at trial pursuant to *section 2929.023 [2929.02.3] of the Revised Code* and was not found at trial to have been eighteen years of age or older at the time of the commission of the offense. When death may be imposed as a penalty for aggravated murder, the court shall proceed under this division. When death may be imposed as a penalty, the court, upon the request of the defendant, shall require a pre-sentence investigation to be made and, upon the request of the defendant, shall require a mental examination to be made, and shall require reports of the investigation and of any mental examination submitted to the court, pursuant to *section 2947.06 of the Revised Code*. No statement made or information provided by a defendant in a mental examination or proceeding conducted pursuant to this division shall be disclosed to any person, except as provided in this division, or be used in evidence against the defendant on the issue of guilt in any retrial. A pre-sentence investigation or mental examination shall not be made except upon request of the defendant. Copies of any reports prepared under this division shall be furnished to the court, to the trial jury if the offender was tried by a jury, to the prosecutor, and to the offender or the offender's counsel for use under this division. The court, and the trial jury if the offender was tried by a jury, shall consider any report prepared pursuant to this division and furnished to it and any evidence raised at trial that is relevant to the aggravating circumstances the offender was found guilty of committing or to any factors in mitigation of the imposition of the sentence of death, shall hear testimony and other evidence that is relevant to the nature and circumstances of the aggravating circumstances the offender was found guilty of committing, the mitigating factors set forth in division (B) of *section 2929.04 of the Revised Code*, and any other factors in mitigation of the imposition of the sentence of death, and shall hear the statement, if any, of the offender, and the arguments, if any, of counsel for the defense and prosecution, that are relevant to the penalty that should be imposed on the offender. The defendant shall be given great latitude in the presentation of evidence of the mitigating factors set forth in division (B) of *section 2929.04 of the Revised Code* and of any other factors in mitigation of the imposition of the sentence of death. If the offender chooses to make a statement, the offender

is subject to cross-examination only if the offender consents to make the statement under oath or affirmation.

The defendant shall have the burden of going forward with the evidence of any factors in mitigation of the imposition of the sentence of death. The prosecution shall have the burden of proving, by proof beyond a reasonable doubt, that the aggravating circumstances the defendant was found guilty of committing are sufficient to outweigh the factors in mitigation of the imposition of the sentence of death.

(2) Upon consideration of the relevant evidence raised at trial, the testimony, other evidence, statement of the offender, arguments of counsel, and, if applicable, the reports submitted pursuant to division (D)(1) of this section, the trial jury, if the offender was tried by a jury, shall determine whether the aggravating circumstances the offender was found guilty of committing are sufficient to outweigh the mitigating factors present in the case. If the trial jury unanimously finds, by proof beyond a reasonable doubt, that the aggravating circumstances the offender was found guilty of committing outweigh the mitigating factors, the trial jury shall recommend to the court that the sentence of death be imposed on the offender. Absent such a finding, the jury shall recommend that the offender be sentenced to one of the following:

(a) Except as provided in division (D)(2)(b) of this section, to life imprisonment without parole, life imprisonment with parole eligibility after serving twenty-five * full years of imprisonment, or life imprisonment with parole eligibility after serving thirty full years of imprisonment;

(b) If the offender also is convicted of or pleads guilty to a sexual motivation specification and a sexually violent predator specification that are included in the indictment, count in the indictment, or information that charged the aggravated murder, to life imprisonment without parole.

If the trial jury recommends that the offender be sentenced to life imprisonment without parole, life imprisonment with parole eligibility after serving twenty-five* full years of imprisonment, or life imprisonment with parole eligibility after serving thirty full years of imprisonment, the court shall impose the sentence recommended by the jury upon the offender. If the sentence is a sentence of life imprisonment without parole imposed under division (D)(2)(b) of this section, the sentence shall be served pursuant to *section 2971.03 of the Revised Code*. If the trial jury recommends that the sentence of death be imposed upon the offender, the court shall proceed to impose sentence pursuant to division (D)(3) of this section.

(3) Upon consideration of the relevant evidence raised at trial, the testimony, other evidence, statement of the offender, arguments of counsel, and, if applicable, the reports submitted to the court pursuant to division (D)(1) of this section, if, after receiving pursuant to division (D)(2) of this section the trial jury's recommendation that the sentence of death be imposed, the court finds, by proof beyond a reasonable doubt, or if the panel of three judges unanimously finds, by proof beyond a reasonable doubt, that the aggravating circumstances the offender was found guilty of committing outweigh the mitigating factors, it shall impose sentence of death on the offender. Absent such a finding by the court or panel, the court or the panel shall impose one of the following sentences on the offender:

(a) Except as provided in division (D)(3)(b) of this section, one of the following:

(i) Life imprisonment without parole;

(ii) Life imprisonment with parole eligibility after serving twenty-five* full years of imprisonment;

(iii) Life imprisonment with parole eligibility after serving thirty full years of imprisonment.

(b) If the offender also is convicted of or pleads guilty to a sexual motivation specification and a sexually violent predator specification that are included in the indictment, count in the indictment, or information that charged the aggravated murder, life imprisonment without parole that shall be served pursuant to *section 2971.03 of the Revised Code*.

(E) If the offender raised the matter of age at trial pursuant to *section 2929.023 [2929.02.3] of the Revised Code*, was convicted of aggravated murder and one or more specifications of an aggravating circumstance listed in division (A) of *section 2929.04 of the Revised Code*, and was not found at trial to have been eighteen years of age or older at the time of the commission of the offense, the court or the panel of three judges shall not impose a sentence of death on the offender. Instead, the court or panel shall impose one of the following sentences on the offender:

(1) Except as provided in division (E)(2) of this section, one of the following:

(a) Life imprisonment without parole;

(b) Life imprisonment with parole eligibility after serving twenty-five * full years of imprisonment;

(c) Life imprisonment with parole eligibility after serving thirty full years of imprisonment.

(2) If the offender also is convicted of or pleads guilty to a sexual motivation specification and a sexually violent predator specification that are included in the indictment, count in the indictment, or information that charged the aggravated murder, life imprisonment without parole that shall be served pursuant to *section 2971.03 of the Revised Code*.

(F) The court or the panel of three judges, when it imposes sentence of death, shall state in a separate opinion its specific findings as to the existence of any of the mitigating factors set forth in division (B) of *section 2929.04 of the Revised Code*, the existence of any other mitigating factors, the aggravating circumstances the offender was found guilty of committing, and the reasons why the aggravating circumstances the offender was found guilty of committing were sufficient to outweigh the mitigating factors. The court or panel, when it imposes life imprisonment under division (D) of this section, shall state in a separate opinion its specific findings of which of the mitigating factors set forth in division (B) of *section 2929.04 of the Revised Code* it found to exist, what other mitigating factors it found to exist, what aggravating circumstances the offender was found guilty of committing, and why it could not find that these aggravating circumstances were sufficient to outweigh the mitigating factors. For cases in which a sentence of death is imposed for an offense committed before January 1, 1995, the court or panel shall file the opinion required to be prepared by this division with the clerk of the appropriate court of appeals and with the clerk of the supreme court within fifteen days after the court or panel imposes sentence. For cases in which a sentence of death is imposed for an offense committed on or after January 1, 1995, the court or panel shall file the opinion required to be prepared by this division with the clerk of the supreme court within fifteen days after the court or panel imposes sentence. The judgment in a case in which a sentencing hearing is held pursuant to this section is not final until the opinion is filed.

(G)

(1) Whenever the court or a panel of three judges imposes a sentence of death for an offense committed before January 1, 1995, the clerk of the court in which the judgment is rendered shall deliver the entire record in the case to the appellate court.

(2) Whenever the court or a panel of three judges imposes a sentence of death for an offense committed on or after January 1, 1995, the clerk of the court in which the judgment is rendered shall deliver the entire record in the case to the supreme court.

History

134 v H 511 (Eff 1-1-74); 139 v S 1 (Eff 10-19-81); 146 v S 4 (Eff 9-21-95); 146 v S 2 (Eff 7-1-96); 146 v S 269 (Eff 7-1-96); 146 v H 180. Eff 1-1-97.

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