

CASE NO. _____

IN THE SUPREME COURT OF THE UNITED STATES

DOUGLAS COLEY, Petitioner,

vs.

STATE OF OHIO, Respondent.

On Petition for Writ of Certiorari to the Ohio
Court of Appeals for the Sixth Appellate District

**APPENDIX TO
PETITION FOR WRIT OF CERTIORARI**

FILED

The Supreme Court of Ohio

MAY 12 2021
CLERK OF COURT
SUPREME COURT OF OHIO

State of Ohio

v.

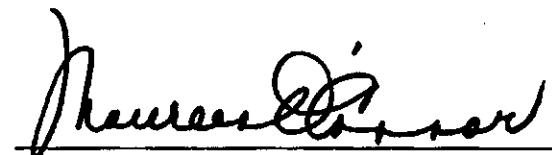
Douglas Coley

Case No. 1998-1474

ENTRY

This cause came on for further consideration upon the filing of appellant's motion for relief. It is ordered by the court that the motion is denied.

(Lucas County Court of Common Pleas; No. CR971449)



Maureen O'Connor
Chief Justice

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

FILED
The Supreme Court of Ohio

MAY 12 2020

CLERK OF COURT
SUPREME COURT OF OHIO

State of Ohio

v.

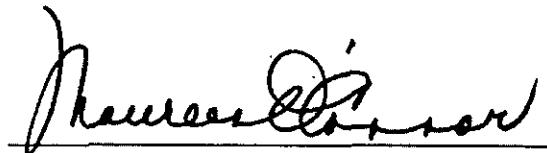
Douglas Coley

Case No. 2020-0080

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).

(Lucas County Court of Appeals; No. L-19-1004)



Maureen O'Connor
Chief Justice

FILED
IN THE COURT OF COMMON PLEAS OF LUCAS COUNTY, OHIO

STATE OF OHIO

AUG 18 12 50 PM Case No. CR971449

Plaintiff/Petitioner

COURT
CLERK
RECEIVINGS
* * * * *

vs.

DOUGLAS COLEY

Defendant/Petitioner

MOTION TO APPOINT COUNSEL
PURSUANT TO OHIO REVISED CODE SECTION 2953.21(I)(1)

Now comes the Petitioner, Douglas Coley, and petitions this Honorable Court for the appointment of counsel to pursue post-conviction relief pursuant to Ohio Revised Code Section 2953.21(I)(1).

Sub. S.B. 258 as passed by the House and Senate and effective July 1, 1996, requires the appointment of counsel for persons under a sentence of death who intend to pursue and litigate a Petition for Post Conviction Relief pursuant to R.C. 2953.21, *et seq.*

(I)(1) If a person who has received the death penalty intends to file a petition under this section the court shall appoint counsel to represent the person upon a finding that the person is indigent . . . The court may decline to appoint, counsel, for the person only upon a finding . . . that the person rejects the appointment of counsel and understands the legal consequences of that decision or upon a finding that the person is not indigent.

Id. (emphasis added).

This Court sentenced Petitioner to death on June 8, 1998. In his capital trial before this Court, Petitioner was found to be indigent and was represented by appointed counsel. Further, due to Petitioner's indigent status, Petitioner has received appointed counsel for his appeal of his capital conviction and death sentence.

ORIGINAL

Thus, there is no question that Petitioner has been, and continues to be, indigent. See also Exhibit A.

Therefore, Petitioner is an indigent person sentenced to death in Ohio, who intends to pursue and litigate a petition for post conviction relief, and is thus entitled to the appointment of counsel to represent him pursuant to Ohio Revised Code Section 2953.21(I)(1).

WHEREFORE, Petitioner respectfully request that this honorable Court appoint undersigned counsel to represent him in his petition for post conviction relief.

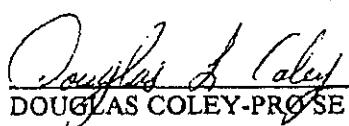
Respectfully submitted,



DOUGLAS COLEY-PRO SE
#36144
Mansfield Correctional Institution
P.O. Box 788
Mansfield, Ohio 44901

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing MOTION FOR APPOINTMENT OF COUNSEL was forwarded by regular U.S. Mail to the Lucas County Prosecutor's Office, 700 Adams Street, Toledo, Ohio 43624 on this 10th day of August 1998.


DOUGLAS COLEY-PRO SE

IN THE COURT OF COMMON PLEAS
LUCAS COUNTY, OHIO

STATE OF OHIO,

Respondent, : Trial Court No. 97-1449
vs. :
DOUGLAS COLEY, : DECISION AND JUDGMENT ENTRY
Petitioner, : Decided:

* * * * *

This matter is before the court on Petitioner Coley's motion for appointment of counsel to assist in the preparation and filing of Petitioner Coley's petition for post-conviction relief.

Upon due consideration, Petitioner Coley's motion is found well-taken. Counsel will be appointed by this Court, through a separate Entry.

JUDGE RUTH ANN FRANKS

FILED
LUCAS COUNTY

ORIGINAL

FEB 2 IN THE COURT OF COMMON PLEAS
LUCAS COUNTY, OHIO

Tidde
Jurd Mott
2-24-99

STATE OF OHIO, COMMON PLEAS COURT
HARRY BARLOS
CLERK OF COURTS

Respondent, : Case No. 97-1449
-vs- : JUDGE FRANKS

DOUGLAS COLEY,

Petitioner. : THIS IS A DEATH PENALTY CASE

MOTION FOR APPOINTMENT OF COUNSEL

Now comes the Petitioner, Douglas Coley, pro se, and petitions this Honorable Court for the appointment of counsel. Counsel is necessary so that Petitioner Coley can pursue his statutory right to post-conviction relief.

The United States Supreme Court, in Gideon v. Wainwright, 372 U.S. 335 (1963), held that the Sixth Amendment right to counsel was "so fundamental and essential to a fair trial, and to due process of law, that it is made obligatory upon the States by the Fourteenth Amendment." Id., 372 U.S., at 340, quoting Betts v. Brady, 316 U.S. 455, 465, (1942). The decision in Gideon rested on the "obvious truth" that lawyers are "necessities, not luxuries" in our adversarial system of criminal justice. 372 U.S., at 344, 96. "The very premise of our adversary system of criminal justice is that partisan advocacy on both sides of a case will best promote the ultimate objective that the guilty be convicted and the innocent go free." Herring v. New York, 422 U.S. 853, 862 (1975). The defendant's liberty depends on his ability to present his case in the face of "the intricacies of the law and the advocacy of the public prosecutor," United States v. Ash, 413 U.S.

300, 309 (1973). This same analysis should be applied in assessing Petitioner Coley's request for appointment of post-conviction counsel to represent him before this Court.

Further, pursuant to R. C. 2953.21, Ohio's post-conviction statute, Petitioner is entitled to the appointment of counsel to assist him in pursuing his right to post-conviction relief. Sub. S.B. 258 as passed by the House and Senate and effective July 1, 1996, requires the appointment of counsel for persons **under a sentence of death** who intend to pursue and litigate a Petition for Post Conviction Relief pursuant to R.C. 2953.21, *et. seq.*:

(I)(1) If a person who has received the death penalty intends to file a petition under this section the court **shall** appoint counsel to represent the person upon a finding that the person is indigent ... The court may decline to appoint counsel, for the person **only** upon a finding ... that the person rejects the appointment of counsel and understands the legal consequences of that decision or upon a finding that the person is not indigent.

Id. (emphasis added).

In his capital trial before this Court Petitioner was found to be indigent and was represented by appointed counsel. Petitioner has been incarcerated on Ohio's Death Row since he was convicted and sentenced to death. Thus, there is no question that Petitioner has been, and continues to be, indigent.¹

Petitioner Coley, through this Motion, gives notice of his intention to pursue post-conviction relief pursuant to Ohio Revised Code Section 2953.21(I)(1). He is therefore entitled to the appointment of counsel.

Section 2953.21(I) (2) provides:

The court shall not appoint as counsel under division (I)(1) of this section an attorney who represented the petitioner at trial in the case to which the petition relates unless the person and the attorney expressly request the appointment. The court shall appoint as counsel under division (I)(1) of this section only an attorney who is certified under Rule 20 of the Rules of Superintendence for Courts of Common Pleas to represent indigent defendants charged with or

¹ Attached as Exhibit A to this Motion is Petitioner Coley's affidavit of indigency.

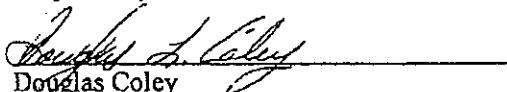
convicted of an offense for which the death penalty can be or has been imposed. The ineffectiveness or incompetence of counsel during proceedings under this section does not constitute grounds for relief in a proceeding under this section, in an appeal of any action under this section, or in an application to reopen a direct appeal.

Petitioner is therefore entitled to counsel who is certified under Rule 20 of the Rules of Superintendence for Courts of Common Pleas to represent him in his post-conviction proceeding.

In sum, the appointment of counsel is necessary to ensure the protection of Petitioner's rights under the Fourteenth Amendment. As the United States Supreme Court has stated, when a state opts to act in a field where its action has significant discretionary elements, it must nonetheless act in accord with the dictates of the Constitution—and, in particular, in accord with the Due Process Clause. Evitts v. Lucey, 469 U.S. 387, 401 (1985).

WHEREFORE, Petitioner respectfully requests that this honorable Court appoint counsel certified under Rule 20, to represent him in his post conviction relief proceeding before this Court.

Respectfully Submitted,


Douglas Coley
Pro Se

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing MOTION FOR APPOINTMENT OF COUNSEL was forwarded by regular U.S. Mail to Julia Bates, Lucas County Prosecutor, 700 Adams Street, Toledo, Ohio 43264-1680, on this 24 day of January, 1999.


Douglas Coley
Pro Se

FILED
LUCAS COUNTY

FEB 24 10 45 AM '99

COMMON PLEAS COURT
HARRY BARLOS
CLERK OF COURTS

IN THE COURT OF COMMON PLEAS OF LUCAS COUNTY, OHIO

State of Ohio, * CASE NO. 97-1449

Plaintiff *

vs. * JUDGEMENT ENTRY

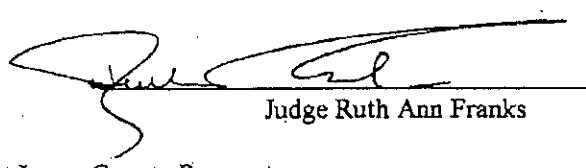
Douglas Coley, *

Defendant. *

This cause is before the Court on the defendant's motion for post conviction relief. The record in this matter reflects that on September 28, 1998, this Court appointed Attorney Joseph Anthony Benavides, pursuant to O.R.C. 2953.21 (I)(1) to pursue post conviction relief on behalf of the defendant.

Based upon the foregoing, the Court finds said motion moot.

February 24, 1999


Judge Ruth Ann Franks

cc: Dean Mandross, Assistant Lucas County Prosecutor
Joseph Anthony Benavides, Attorney at Law
Douglas Coley, Defendant

JOURNALIZED

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FEB 24 1999

Cassette 150
PG. 1

A-8

County of Richland

; ss.

STATE OF OHIO

PAGE 1

I am Douglas L. Coley. I have personal knowledge of the information contained in this Affidavit.

① APPROXIMATELY, 2 months AFTER I ARRIVED AT DEATH ROW I RECEIVED A LETTER FROM ATTORNEY JOSEPH BENAVIDEZ. THE LETTER TOLD ME THAT MR. BENAVIDEZ AND ATTORNEY VANDEILEN HAD BEEN APPOINTED TO REPRESENT ME ON APPEAL. THE LETTER ALSO CONTAINED AN AFFIDAVIT OF INDIGENCY. I SIGNED THE AFFIDAVIT, GOT IT NOTARIZED AND MAILED IT BACK TO MR. BENAVIDEZ. THIS LETTER WAS THE ONLY TIME I EVER GOT

PAGE 2

ANYTHING IN THE MAIL FROM MR. BENAVIDEZ.

② THE NEXT TIME I HEARD FROM MR. BENAVIDEZ IS WHEN I CALLED HIM AROUND JANUARY 2000. I ASKED HIM ABOUT POST CONVICTION RELIEF. MR. BENAVIDEZ TOLD ME THAT HE HAD FILED FOR POST CONVICTION RELIEF. I ASKED MR. BENAVIDEZ ABOUT MR. VONDEILEN. MR. BENAVIDEZ TOLD ME THAT HE HAD NOT TALKED TO MR. VONDEILEN BUT WAS GOING TO SCHEDULE A MEETING. HE ALSO TOLD ME THAT HE IS TAKING CARE OF MY APPEAL.

HTC

PAGE 3

③ IN MAY OF 2000, I FOUND OUT THAT MR. BENAVIDEZ DID NOT FILE FOR POST CONVICTION RELIEF. AT THAT TIME I CONTACTED THE OHIO PUBLIC DEFENDER'S OFFICE. MR. BODIKER VISITED ME AND TOLD ME THAT HIS OFFICE COULD NOT REPRESENT ME SINCE THEY ALREADY REPRESENTED JOSEPH GREEN.

④ I HAVE NEVER MET, TALKED TO OR RECEIVED MAIL FROM ATTORNEY VAN DELEN.

⑤ I HAVE NEVER BEEN VISITED BY ATTORNEY BENAVIDEZ.

⑥ I WAS NEVER ASKED BY MR. BENAVIDEZ ABOUT ANY ISSUES THAT COULD BE OR WERE RAISED IN POST CONVICTION OR AN APPEAL.

- ⑦ Mr. Benavidez NEVER MAILED ME ANY COPIES OF THE TRANSCRIPT, BRIEF OR OTHER PAPERS RELATED TO MY CASE.
- ⑧ Mr. Benavidez NEVER SENT ME A COPY OF THE DECISION FROM THE OHIO SUPREME COURT DENYING MY APPEAL.
- ⑨ I wanted to try to obtain Post Conviction RELIEF. I FILED A MOTION FOR APPOINTMENT OF COUNSEL TO REPRESENT ME IN POST CONVICTION. THE COURT SENT ME AN ORDER SAYING THAT JUDGE FRANKS' HAD ALREADY APPOINTED MR. BENAVIDEZ.
- ⑩ I HAVE NO MONEY TO HIRE LAWYERS OR INVESTIGATORS ^{A-12} TO REPRESENT ME ON

PAGE 5

APPEAL or in post conviction. I have no legal education. I relied on Mr. BENAVIDEZ to handle my case. Mr. BENAVIDEZ did not take care of my case. I FEEL HE LET ME down, big time and didn't do his job.

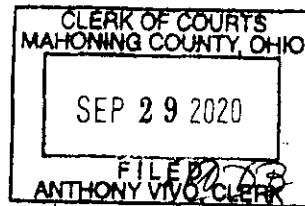
⑪ Dictated by ME and written down by Mr. YEAZEL.

Douglas L. Coley
Douglas L. COLEY

Sworn To and subscribed in my presence this 14th day of December 2001.

Yeazel

KEITH A. YEAZEL
ATTORNEY AT LAW
~~IN THIS CASE NO FEES WILL BE RECEIVED~~
[RE. 102]



IN THE COURT OF COMMON PLEAS
MAHONING COUNTY, OHIO

STATE OF OHIO,)
Plaintiff,) CASE NO. 2015-CR-1132
v.)
LANCE HUNDLEY,)
Defendant.) Death Penalty Case

**ORDER ON UNOPPOSED DEFENDANT'S MOTION FOR APPOINTMENT OF
COUNSEL FOR FIRST POST-CONVICTION REVIEW**

On motion and for good cause shown, the following attorneys are appointed to prosecute a first post-conviction petition on behalf of the defendant, Lance Hundley.

Attny 1: R. Cartwright-Jones Attny 2: John P. Laczko

Judge: W.W.

Date: 9.25.20

To the Clerk: Please send a copy of this order to all counsel and/or unrepresented parties by regular U.S. Mail forthwith.



2015 CR
01132
00036609799
CRJWD

00036609799 A-14
CB-IUD

Motion for Relief
Exhibit G-1



Fw: Doug Coley
Carol Wright to: kmcaffery, jgibbons4

04/15/2015 03:28 PM

Mr. Cafferky and Mr. Gibbons,

I called each of you again today. Mr. Cafferky your phone does not accept voice mail. Mr. Gibbons I left a second message today on your phone to please contact me regarding Doug Coley and left my direct office line.

At this point I feel that I have to respond to Mr. Coley's letter requesting help. I plan to set up a call with him if I have not heard from you by 4:00 p.m. Friday April 17, I will set up the call for next Monday or Tuesday depending on the prison staff and schedule. I will advise him that he needs to write to the court and that he should request advisory counsel to assist his current counsel with a clemency investigation and presentation. I will explain that his case is in the Northern District and that he should request the Capital Habeas Unit of the Northern District be appointed as advisory counsel to assist you both. I know the some judges have been willing to do that in the Northern District.

If you object to this plan, please let me know.

Carol

Carol Wright
Supervising Attorney
Capital Habeas Unit
Federal Public Defender, Southern Ohio
10 W. Broad Street, Suite 1020
Columbus, Ohio 43215
(614) 469-2999

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----- Forwarded by Carol Wright/OHSF/06/FDO on 04/15/2015 03:26 PM -----

From: Carol Wright/OHSF/06/FDO
To: kmcaffery@hotmail.com, jgibbons4@sbcglobal.net
Cc: Alan Rossman/OHNF/06/FDO@FDO
Date: 04/14/2015 11:04 AM
Subject: Fw: Doug Coley

Mr. Cafferkey and Mr. Gibbons,

I've called several times and not been able to reach you regarding this client Kevin, we spoke briefly but I have not been able to follow up with you in any way. Please contact

me so we can get something arranged for Mr. Coley. He has a pending request for execution date and the Ohio Supreme Court could set a date at any time. I feel like I need to get back to him on his request. It seems like *Martinez* would allow for additional litigation if investigation revealed something. My direct line is 614-469-4110 and my cell phone is 614-506-0283.

Carol

Carol Wright
Supervising Attorney
Capital Habeas Unit
Federal Public Defender, Southern Ohio
10 W. Broad Street, Suite 1020
Columbus, Ohio 43215
(614) 469-2999

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----- Forwarded by Carol Wright/OHSF/06/FDO on 04/14/2015 10:59 AM -----

From: Carol Wright/OHSF/06/FDO
To: kmcafferkey@hotmail.com, jgibbons4@sbcglobal.net
Cc: Alan Rossman/OHNF/06/FDO@FDO
Date: 03/30/2015 02:01 PM
Subject: Doug Coley

Mr. Cafferky and Mr. Gibbons,

I was contacted by your client Doug Coley. He explained what had occurred in his case. He had some questions related to *Martinez* and clemency procedures. I looked into his case and realized that he never had a post conviction filed on his behalf. I know that you two tried to argue that post conviction counsel's failure to file should be cause to permit additional grounds in federal court. Of course, your arguments were before *Martinez*. They may be much more viable now. Additionally, it seems like a full blown investigation needs to be done for clemency as well as any *Martinez* arguments. Because this is a Northern District Case, I contacted Alan Rossman for his advice. Alan took a look and believes his office has the resources to help with the clemency investigation and development of possible new legal issues. Could we perhaps set up a conference call with Alan, myself and both of you to discuss and how best to go about it? I have not responded to Mr. Coley and will wait to hear from you.

Sincerely,

Carol

Carol Wright
Supervising Attorney
Capital Habeas Unit
Federal Public Defender, Southern Ohio
10 W. Broad Street, Suite 1020
Columbus, Ohio 43215
(614) 469-2999

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JOHN B. GIBBONS
ATTORNEY AT LAW
2000 STANDARD BUILDING, 1370 ONTARIO STREET
CLEVELAND, OHIO 44113
(216) 363-6086
FAX: (216) 363-6075
jgibbons4@sbcglobal.net

April 16, 2015

Carol Wright
Supervising Attorney
Capital Habeas Unit
Federal Public Defender, Southern District Ohio
10 W. Broad Street, Suite 1020
Columbus, Ohio 43215

RE: Douglas L. Coley v. Norm Robinson, Warden
Case Nos.: 1:02-cv-04457
10-3469

Ms. Wright:

Mr. Cafferkey and I are in receipt of your various emails. Thank you for providing insight into the Martinez v. Ryan case.

Your office is an effective resource to supplement the efforts of CJA Appointed Counsel.

It always helps to have an Agency of the United States Government, such as your office, and government employed Attorneys, such as yourself, to provide assistance to private counsel in these types of cases.

You can be assured that myself and Mr. Cafferkey will carve out time within the next two weeks to travel to the Chillicothe Correctional Institute to visit with Mr. Coley to review his legal and personal options. In fact, arrangements are being made today for that visit. Therefore, and if appropriate, we will schedule a conference call with your office.

However, Mr. Cafferkey and I have both represented Mr. Coley for over ten years and the last time we checked, we remain Counsel of Record in his matters. Moreover, you claim to have had a communication from Mr. Coley. Perhaps you can find time to provide that communication, if it is in written form, to us, as we are still his Attorneys of record.

You can be assured that Mr. Cafferkey and I react badly to your "plan" to visit Mr. Coley. We also have reacted very badly to your statement that we must meet your deadlines. I did not know

that you feel that you exercise supervisory authority over us. We have also reacted badly to your "plan" to take over Mr. Coley's case.

In any event, we will contact you as needed.

Sincerely,



John B. Gibbons

JBG/ecg