

CASE NO. _____

IN THE SUPREME COURT OF THE UNITED STATES

AUSTIN MYERS, Petitioner,

vs.

STATE OF OHIO, Respondent.

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

**PETITIONER'S MOTION FOR LEAVE
TO PROCEED *IN FORMA PAUPERIS***

(CAPITAL CASE: NO EXECUTION DATE SET)

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*COUNSEL OF RECORD

Counsel for Petitioner Austin Myers

PETITIONER'S MOTION FOR LEAVE TO PROCEED *IN FORMA PAUPERIS*

Petitioner Austin Myers, through counsel, respectfully requests leave to file his Petition for Writ of Certiorari to the Supreme Court of Ohio without the pre-payment of costs or fees and to proceed *in forma pauperis* pursuant to Rule 39.1 of the Supreme Court Rules.

This is a death penalty case in which the Petitioner was sentenced to death in Ohio, after a jury trial conducted in 2014, and that death sentence was affirmed on his direct appeal to the Supreme Court of Ohio. As relevant to the instant Petition, the Supreme Court of Ohio, on August 17, 2021, denied discretionary review of Petitioner's timely appeal from the lower Ohio appellate court's affirmance in part of the dismissal without discovery or a hearing of Petitioner's postconviction petition which challenged his conviction and death sentence.

Petitioner proceeded *in forma pauperis* in the trial court for the proceedings in his trial, in his direct appeal in the Supreme Court of Ohio, in his postconviction proceedings in the lower Ohio appellate court, and in his Appeal and Memorandum in Support of Jurisdiction in the Supreme Court of Ohio, which is the subject of this Petition. The entry of the Supreme Court of Ohio finding the Petitioner indigent and appointing counsel for his appeal to the Supreme Court of Ohio is attached, as is the entry of the lower Ohio appellate court appointing counsel to represent Petitioner in that court for his appeal of the dismissal of his petition for postconviction relief.

Petitioner respectfully requests that his motion for leave to proceed *in forma pauperis* be granted.

Respectfully Submitted,

/s/ Timothy F. Sweeney

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Counsel for Petitioner Austin Myers

FILED

The Supreme Court of Ohio

APR 13 2021

CLERK OF COURT
SUPREME COURT OF OHIO

State of Ohio

v.

Austin Gregory Myers

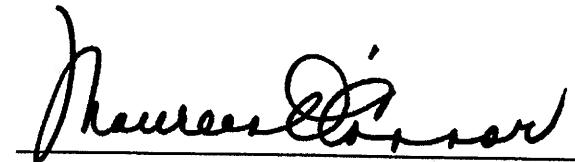
Case No. 2021-0390

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This cause is pending before the court as a jurisdictional appeal.

Upon consideration of appellant's motion for stay of lower court proceedings and judgment pending appeal and motion to continue the appointments of his current postconviction counsel for the postconviction appeal in this court, it is ordered by the court that the motions are granted.

(Warren County Court of Appeals; No. CA2019-07-074)



Maureen O'Connor
Chief Justice

IN THE COURT OF APPEALS OF WARREN COUNTY, OHIO

STATE OF OHIO,

Appellee,

vs.

AUSTIN GREGORY MYERS,

Appellant.

COURT OF APPEALS
WARREN COUNTY

FILED:

JAN 15 2020

CASE NO. CA2019-07-074
REGULAR CALENDAR

James L. Speeth, Clerk
LEBANON OHIO

ENTRY GRANTING MOTION
FOR APPOINTMENT OF COUNSEL
GRANTING MOTION FOR
EXPANDED BRIEFING IN PART
AND STRIKING BRIEF FILED ON
BEHALF OF APPELLANT ON
DECEMBER 5, 2019

The above cause is before the court pursuant to a motion for appointment of counsel filed by attorneys John P. Parker and Timothy F. Sweeney on October 23, 2019; a motion for expanded briefing filed by Parker and Sweeney on October 4, 2019; and a supplemental motion for expanded briefing filed on October 14, 2019. Also before the court is a merit brief 141 pages in length filed on behalf of appellant on December 5, 2019.

The appellant in this action, Austin G. Myers, was sentenced to death for aggravated murder and related offenses on October 16, 2014 by the Warren County Court of Common Pleas. The Supreme Court of Ohio affirmed appellant's convictions on direct appeal. *State v. Myers*, 154 Ohio St.3d 405, 2018-Ohio-1903.

On November 10, 2016 appellant filed a post-conviction relief petition in the Warren County Court of Common Pleas seeking to vacate or set aside judgment and/or sentence. The petition was dismissed by the Warren County Court of Common Pleas on June 27, 2019, and the present appeal was filed.

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Appellant was represented by the Ohio Public Defender's Office when his initial PCR petition was filed. Both attorneys representing appellant then left the public defender's office for other employment. As a result, the public defender contracted with attorneys Parker and Sweeney to continue representing appellant in the PCR proceedings in common pleas court.

On August 1, 2019 attorneys Parker and Sweeney filed a motion in this court seeking appointment to represent appellant in an appeal from the decision denying his PCR petition. On September 5, 2019 this court denied the motion on the basis that, pursuant to local rule, motions for appointment of counsel must be made in the first instance in the trial court. See 12th Dist. Loc. App.R. 9(C). On September 11, 2019 Sweeney and Parker filed a motion for appointment of counsel in the Warren County Court of Common Pleas, which was denied on October 16, 2019.

Parker and Sweeney have now returned to this court, again requesting appointment at public expense to represent appellant in an appeal of the denial of his PCR petition. Although they have yet to be appointed by this court or any other court to handle this appeal, Parker and Sweeney filed a motion for expanded briefing on October 4, 2019, a supplemental motion for expanded briefing on October 14, 2019, a motion for extension of time to file the appellant's brief on November 12, 2019, and a 141 page brief on behalf of appellant on December 5, 2019.

Upon consideration of the foregoing, the motion for appointment of counsel is hereby GRANTED as follows: attorneys Parker and Sweeney are hereby appointed to represent appellant in the appeal of the denial of his petition for post-conviction relief. They shall be compensated at the rate currently in effect in Warren County, Ohio. The

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brief filed by counsel on behalf of appellant on December 5, 2019 is STRICKEN.

Appellant may file a brief no longer than 50 pages in length within 30 days of the date of this entry or on or before **February 10, 2020**.

IT IS SO ORDERED.



Mike Powell, Administrative Judge