

24S-SD-222

IN THE
INDIANA SUPREME COURT

No. 02S00-0508-PD-350

JOSEPH E. CORCORAN,
Appellant-Defendant,

v.

STATE OF INDIANA,
Appellee-Plaintiff.

Appeal from the
Allen Superior Court 4,

No. 02D04-9707-CF-465

The Honorable Frances C. Gull,
Judge.

STATE'S VERIFIED MOTION TO SET EXECUTION DATE

The State of Indiana respectfully requests that this Court set an execution date for Joseph E. Corcoran. In support, the State asserts:

1. In July 1997, Corcoran shot and killed his brother James Corcoran, his sister's fiancé Robert Scott Turner, and two of their friends: Timothy Bricker and Douglas Stillwell. In 1999, a jury found Corcoran guilty of four counts of murder and recommended a death sentence. Following the jury's recommendation, the trial court sentenced Corcoran to death.

2. Corcoran has completed state and federal review of his convictions and sentence.

- On direct appeal, Corcoran did not challenge—nor has he ever—“the guilt phase proceedings or his resulting convictions.” *Corcoran v. State*, 739 N.E.2d 649 (Ind. 2000). This Court affirmed the trial court’s judgment but remanded to the trial court to issue a new sentencing statement. *Id.*
- On remand, the trial court complied and issued a new sentencing order, which this Court affirmed. *Corcoran v. State*, 774 N.E.2d 495 (Ind. 2002), *reh’g denied* (2003).

- After Corcoran chose to waive post-conviction review and refused to sign petitions prepared by his counsel, the post-conviction court conducted hearings to determine if Corcoran was competent to make that decision and found Corcoran competent to waive further review. This Court affirmed that conclusion. *Corcoran v. State*, 820 N.E.2d 655 (Ind. 2005), *aff'd on reh'g*, 827 N.E.2d 542 (Ind. 2005).
- While the appeal of his earlier decision to waive post-conviction review was pending, Corcoran decided to file a petition for post-conviction relief. The post-conviction court dismissed that petition because it had been filed after a court-ordered deadline; this Court affirmed that decision. *Corcoran v. State*, 845 N.E.2d 1019 (Ind. 2006).
- Corcoran then filed a federal petition for a writ of habeas corpus raising numerous claims. The U.S. District Court for the Northern District of Indiana found one claim, raised under the Sixth Amendment to the U.S. Constitution, meritorious and granted relief without addressing Corcoran's remaining claims. *Corcoran v. Buss*, 483 F.Supp.2d 709 (N.D. Ind. Apr. 9, 2007).
- The U.S. Court of Appeals for the Seventh Circuit reversed the grant of habeas relief on Corcoran's Sixth Amendment claim but also did not address the other claims raised in Corcoran's petition. *Corcoran v. Buss*, 551 F.3d 703 (7th Cir. 2008), *reh'g* and *reh'g en banc denied* (2009). In its opinion, the Seventh Circuit wrote that "the State of Indiana is at liberty to reinstate the death penalty." *Id.* at 714.
- Corcoran petitioned for a writ of certiorari, and the Supreme Court of the United States granted the petition, vacating the Seventh Circuit's judgment. The Court held that the Seventh Circuit erred in failing to address claims raised in Corcoran's habeas petition other than the Sixth Amendment claim. It ordered remand for consideration of those other claims. *Corcoran v. Levenhagen*, 558 U.S. 1 (2009) (per curiam).

- On remand, leaving in place its previous resolution of Corcoran's Sixth Amendment claim, the Seventh Circuit addressed the previously unresolved claims in Corcoran's habeas petition, found one of them meritorious, and remanded for a new sentencing determination by the state trial court. *Corcoran v. Levenhagen*, 593 F.3d 547 (7th Cir. 2010), *reh'g* and *reh'g en banc denied* (2010).
- The State petitioned for a writ of certiorari from this grant of relief. The Supreme Court of the United States granted the State's petition, vacated the Seventh Circuit's grant of relief, and remanded for further proceedings. *Wilson v. Corcoran*, 562 U.S. 1 (2010) (per curiam).
- On remand, the Seventh Circuit reinstated its opinion in *Corcoran v. Buss*, 551 F.3d 703 (7th Cir. 2008), and remanded the matter back to the district court to consider Corcoran's remaining claims. *Corcoran v. Wilson*, 651 F.3d 611 (7th Cir. 2011).
- On remand, the district court considered those remaining claims and denied Corcoran's habeas petition in full. *Corcoran v. Buss*, No. 3:05-cv-389-JD (N.D. Ind. Mar. 27, 2013).
- The Seventh Circuit affirmed this denial. *Corcoran v. Neal*, 783 F.3d 676 (7th Cir. 2015), *cert. denied*, 577 U.S. 1237 (2016).

3. Now that the federal courts have denied Corcoran's federal habeas petition, no further grounds for review of the validity of his convictions or sentence are available. The State is unaware, as of the filing of this motion, of any pending requests for further review of his convictions and sentence.

4. No active stay preventing Corcoran's execution is pending.

5. This Court has the exclusive jurisdiction to stay the execution of a death sentence as well as the duty to order a new execution date when the stay is

lifted. *See* Ind. Code § 35-50-2-9(h); Ind. Crim. Rule 6.1(G)(1). Because no active stay is pending, Corcoran is eligible for this Court to order a new execution date.

The State respectfully requests that this Court set the date for Corcoran's execution.

Respectfully submitted,

THEODORE E. ROKITA
Indiana Attorney General
Attorney No. 18857-49

/s/ Tyler Banks
Tyler Banks
Supervising Deputy Attorney General
Attorney No. 30514-36

VERIFICATION

I affirm, under the penalties for perjury, that the foregoing statements of fact are true and accurate to the best of my knowledge and belief.

/s/ Tyler Banks
Tyler Banks
Supervising Deputy Attorney General

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on June 26, 2024, I electronically filed the foregoing document using the Indiana E-Filing System (“IEFS”). I also certify that the foregoing document was served June 26, 2024, upon opposing counsel via IEFS:

Amy Karozos

Joanna Green

Laura Volk

/s/ Tyler Banks

Tyler Banks

Supervising Deputy Attorney General

OFFICE OF INDIANA ATTORNEY GENERAL TODD ROKITA

Indiana Government Center South, 5th Floor

302 West Washington Street

Indianapolis, IN 46204-2770

Telephone: (317) 234-7016

Email: Tyler.Banks@atg.in.gov