

IN THE
INDIANA SUPREME COURT

No. 49S00-0409-PD-420

BENJAMIN RITCHIE,
Appellant-Defendant,

v.

STATE OF INDIANA,
Appellee-Plaintiff.

Appeal from the
Marion Superior Court,

No. 49G04-0010-CF-172900

The Honorable Patricia Gifford,
Judge.

STATE'S VERIFIED MOTION TO SET EXECUTION DATE

The State of Indiana respectfully requests that this Court set an execution date for Benjamin Ritchie. In support of its motion, the State says:

1. On September 29, 2000, Ritchie and two others stole a van from a gas station. The van was reported stolen, and, a few hours later, an officer found the stolen van and initiated a pursuit. The van stopped in the yard of a house. Ritchie and the others fled the car and ran in opposite directions. Officer William Toney pursued Ritchie. Ritchie turned and fired four shots, killing Officer Toney. *Ritchie v. State*, 809 N.E.2d 258, 261 (Ind. 2004), *reh'g denied* (2004), *cert. denied*, 546 U.S. 828 (2005).

2. Ritchie was convicted of murder, and the jury unanimously recommended a death sentence, which the trial court imposed on October 15, 2002.

3. On direct appeal, Ritchie raised 10 claims: (1) the death penalty violated Article 1, Section 18 of the Indiana Constitution; (2) death by lethal injection violated the Eighth Amendment; (3) the death penalty violated both state

and federal constitutions because it is not a deterrent to crime; (4) the death penalty statute violated Article 1, Section 12 of the Indiana Constitution and the Due Process Clause of the U.S. Constitution; (5) a change in the death-penalty statute, which made the jury's recommendation binding on the trial court, violated the ex post facto clause; (6) the jury was improperly instructed how to weigh aggravating and mitigating circumstances; (7) Trial Rule 59(J)(7) conflicted with a statute requiring the judge to sentence the defendant in accordance with the jury's recommendation; (8) the prosecutor committed misconduct; (9) there was insufficient evidence of Ritchie's mens rea; and (10) a juror's poor view of Ritchie's counsel created juror bias. This Court rejected all of these claims and affirmed Ritchie's convictions and sentence. *Ritchie v. State*, 809 N.E.2d 258 (Ind. 2004), *reh'g denied* (2004), *cert. denied*, 546 U.S. 828 (2005).

4. After the Marion Superior Court denied Ritchie post-conviction relief, he appealed to this Court and raised 11 claims. This Court found that Ritchie had waived three of those claims. The remaining claims included seven claims of ineffective assistance of counsel: (1) trial counsel were ineffective for failing to retain an appropriate expert; (2) trial counsel were ineffective for failing to suppress statements Ritchie made to the media; (3) trial counsel were ineffective at the penalty phase for failing to present evidence from teachers and school personnel; (4) trial counsel were ineffective for failing to direct the mitigation specialist to prepare a social-history report; (5) trial counsel were ineffective for failing to present testimony of a psychiatrist that treated Ritchie and for not hiring other

psychological experts; (6) appellate counsel was ineffective for not raising a claim that Ritchie's sentence was inappropriate; and (7) appellate counsel was ineffective for failing to challenge the exclusion of a juror on direct appeal. Ritchie also argued that he was denied a full and fair post-conviction hearing. This Court denied all of his claims and affirmed the denial of post-conviction relief. *Ritchie v. State*, 875 N.E.2d 706 (Ind. 2007), *reh'g denied* (2008).

5. Then, in federal court, Ritchie raised nine claims in a petition for a writ of habeas corpus: (1) trial counsel were ineffective for not hiring an expert; (2) trial counsel were ineffective for failing to suppress Ritchie's interviews with media; (3) trial counsel were ineffective because they failed to present evidence from teachers and school personnel in the mitigation phase; (4) trial counsel were ineffective because they did not prepare a social-history report; (5) trial counsel were ineffective because they did not obtain and present appropriate psychological experts; (6) appellate counsel was ineffective for failing to raise the exclusion of a juror; (7) a change in Indiana's death-penalty sentencing process violated ex post facto laws; (8) the trial court did not properly instruct the jury on weighing mitigating and aggravating factors; and (9) the prosecutor committed misconduct. The district court denied relief. *Ritchie v. Wilson*, No. 1:08-cv-503-RLY-MJD, Doc. 32 (S.D. Ind. May 23, 2014). Ritchie then moved to set aside the judgment and also for a certificate of appealability. The district court denied both motions, finding, when it denied a certificate of appealability, that Ritchie had "not made the required substantial showing of the denial of a constitutional right to justify" the

issuance of a certificate. *Ritchie*, Doc. 48. The U.S. Court of Appeals for the Seventh Circuit also denied a motion for a certificate of appealability. *Ritchie v. Neal*, No. 15-1925 (7th Cir. Feb. 24, 2016), *reh'g denied* (2016), *cert. denied*, 581 U.S. 920 (2017).

6. Ritchie has never alleged he suffers from a mental disease or defect that prevents him from understanding court proceedings, assisting his counsel, or apprehending the justification for his sentence.

7. No active stay preventing Ritchie's execution is pending.

8. 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 any stay is lifted. *See* Ind. Code § 35-50-2-9(h); Ind. Crim. Rule 6.1(G)(1). Because no active stay is pending, this Court should order a new execution date. *See Corcoran v. State*, Order, No. 24S-SD-222, slip op. at 2 (Ind. Sept. 11, 2024) (holding that the State's motion to set an execution date was "the only thing properly before" the Court).

9. The State requests that this Court set Ritchie's execution for 30 days from the issuance of its order granting this motion.

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

Respectfully submitted,

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

VERIFICATION

I hereby 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 September 27, 2024, I electronically filed the foregoing document using the Indiana E-Filing System ("IEFS"). I also certify that the foregoing document was served September 27, 2024, upon opposing counsel via IEFS:

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