

FILED

MAY 25 2018

CLERK
NEBRASKA SUPREME COURT
COURT APPEALS

IN THE NEBRASKA SUPREME COURT

STATE OF NEBRASKA,)
)
Appellee,)
)
v.)
)
CAREY DEAN MOORE,)
)
Appellant.)
)

No. S-95-485

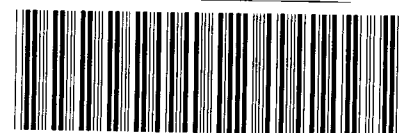
MOTION TO EXPEDITE
CONSIDERATION OF MOTION
FOR
EXECUTION WARRANT

The appellee State of Nebraska moves this Court to expedite its consideration of the State’s Motion for Execution Warrant, filed on April 3, 2018, and further requests this Court to *set an execution date for July 10, 2018, or alternatively for a date in mid-July 2018* for the following reasons:

1. The statutory duty of § 29-2543 for the Supreme Court to issue execution warrants provides for the Supreme Court to establish a date for execution, which “date of execution shall be set *no later than* sixty days following the issuance of the warrant.” (Emphasis added.) The statute provides for and allows the Court to set an execution date which is sooner than sixty days following the issuance of an execution warrant.

2. The attached affidavit of the Director of the Nebraska Department of Correctional Services shows that the Department and its Execution Team will be ready and able to carry out the requested execution within 30 days after this Court issues an execution warrant.

3. The Director’s affidavit further shows that one of the drugs to be used in the execution will expire by the end of August, 2018.



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4. The State's Motion for Execution Warrant has been pending with this Court for over seven weeks since April 3, 2018. The appellant's death sentences have been final for 21 years. There have been four previous execution warrants issued by this Court, all of which were later stayed or withdrawn for various reasons. All subsequent collateral attacks and other various postponements have been exhausted. No stays of execution have been issued by any federal court.

5. The State's Response to Order to Show Cause on April 26, 2018, the Attorney's General's Statement and Supplemental Statements, the Public Advocacy's Commission's Response filed on May 24, 2018, and the Appellant's Motion to Dismiss Appointed Counsel and Sworn Statement filed on May 24, 2018, have all sufficiently responded to this Court's orders entered after the State's filed its Motion for Execution Warrant.

6. There is no cause or just reason to further delay issuing the requested execution warrant and setting an execution date on a date when the appellant's final sentences can be carried out while the Department of Correctional Services possesses the drugs and ability to carry out the appellant's final sentences.

The attached affidavit of the Director of the Nebraska Department of Correctional Services is incorporated by reference.

BY Douglas J. Peterson, 18146
Nebraska Attorney General
BY /s/ James D. Smith, 15476
Solicitor General
2115 State Capitol
Lincoln, NE 68509-8920
Tel: (402) 471-2682
Attorneys for State of Nebraska

Certificate of Service

On May 25, 2018, a copy of the above Motion was delivered to the appellant Carey Dean Moore by staff for the Nebraska Department of Correctional Services, a copy was served on Jeffrey A. Pickens of Commission for Public Advocacy as counsel for the appellant by electronic delivery by the E-Filing Justice System, and a copy was also sent by undersigned counsel emailing a copy to Jeffrey A. Pickens at his designated email address as follows: jpickens@ncpa.ne.gov.

/s/ James D. Smith

IN THE NEBRASKA SUPREME COURT

STATE OF NEBRASKA,)	Case No. 95-485
)	
Appellee,)	
)	
v.)	AFFIDAVIT OF
)	SCOTT R. FRAKES
CAREY DEAN MOORE,)	
)	
Appellant.)	


State of Nebraska)
) ss
County of Lancaster)

Scott R. Frakes, being first duly sworn under oath, depose and state as follows:

1. This Affidavit is based upon my personal knowledge and upon review of relevant documents.
2. I am the Director of the Nebraska Department of Correctional Services, which position I have held since December, 2015.
3. The Execution Team and the Department will be ready and able to carry out the execution within 30 days of this Court's issuance of an execution warrant.
4. My determination of the substances and quantities to be used, as stated in the attached January 19, 2018, notice of substances that was delivered to Carey Dean Moore on that date, was based upon my reliance upon the


expert opinions of qualified pharmacological and medical anesthesiology experts after also obtaining legal advice from Nebraska Assistant Attorneys General.

5. The Nebraska Department of Correctional Services has possession of the substances to be administered for execution by lethal injection, all of which have expiration dates as follows:
 - a. Diazepam, expiration date of September 1, 2019;
 - b. Fentanyl Citrate, expiration date of August 31, 2019;
 - c. Cisatracurium Besylate, expiration date of October 31, 2018; and
 - d. Potassium Chloride, expiration date of *August 31, 2018*.
6. The substances were obtained from a licensed pharmacy in the United States, and have been chemically analyzed and verified as required by 69 Neb. Admin. Code, ch. 11, § 008.
7. The Execution Team has been appointed, satisfies the qualifications of 69 Neb. Admin. Code, ch. 11, § 004, and has trained as required by 69 Neb. Admin. Code, ch. 11, § 006.

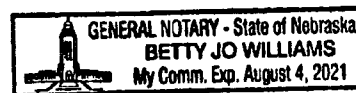


Scott R. Frakes, Affiant

Subscribed in my presence and sworn to before me on May 24, 2018.



Notary Public



The Nebraska Department of Correctional Services
P.O. Box 94661
Lincoln, NE 68509

January 19, 2018

Carey D. Moore #32947
Tecumseh State Correctional Institution
P.O. Box 900
Tecumseh, NE 68450

Re: Notice of substances to be employed in an execution by lethal injection.

Mr. Moore,

In accordance with Nebraska law, you are hereby notified that the director of the Nebraska Department of Correctional Services has determined that the following substances, quantity, and sequence will be administered for execution by lethal injection to carry out and enforce the final court judgments that have sentenced you to death:

1. **Diazepam:** An initial dose of 2 (two) milligrams of diazepam per kilogram of body weight, to be followed by additional identical doses of diazepam if unconsciousness is not achieved after each successive dose. A 50cc saline flush will be administered following each injection of diazepam.
2. **Fentanyl Citrate:** 25 (twenty-five) micrograms of fentanyl citrate per kilogram of body weight. A 50cc saline flush will be administered following the injection of fentanyl citrate.
3. **Cisatracurium Besylate:** 1.6 (one and six-tenths) milligrams of cisatracurium besylate per kilogram of body weight. A 50cc saline flush will be administered following the injection of cisatracurium besylate.
4. **Potassium Chloride:** 240 (two hundred forty) milliequivalents of potassium chloride. A 50cc saline flush will be administered following the injection of potassium chloride.

The Nebraska Supreme Court has not issued an execution warrant. Thus, no date has been set for carrying out your death sentences by lethal injection.

BY:



Scott R. Frakes, Director

Copy: Douglas J. Peterson, Attorney General