

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

ANTHONY CIOFFI, #332-078,
Petitioner,

v.

DAVID BOBBY, Warden,
Respondent.

: Case No. 4:04 CV 1836
:
:
: Judge Economus
: Magistrate Judge Gallas
:
: (HABEAS CORPUS)
:

RESPONDENT BOBBY'S SUPPLEMENT TO HIS MOTION TO DISMISS

The respondent hereby supplements his previously filed Motion to Dismiss (see Doc. 12, Motion to Dismiss, Preamble, at p. 3) so as to update the Court as to the status of petitioner's companion habeas case, N.D. Ohio Case No. 4:04CV1837.

As indicated in the previously filed Motion to Dismiss, at p. 3, this Court denied on April 7, 2005, in 4:04CV1837 Cioffi's motion to alter and amend judgment, and also denied a certificate of appealability.

Thereafter, on January 18, 2006, the Sixth Circuit denied a certificate of appealability from the judgment in 4:04CV1837, specifically finding that no reasonable jurist would question whether that action was time-barred in habeas, and that equitable tolling was not demonstrated by Cioffi. See attached Exhibit A, Order, Sixth Circuit Case No. 05-3721. The determination in 4:04CV1837 is significant because respondent has argued in the instant Motion to Dismiss that the instant action is similarly time-barred.

Respectfully submitted,

JIM PETRO (0022096)
Ohio Attorney General

/s/GREGORY T. HARTKE

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Attorney for Respondent

CERTIFICATE OF SERVICE

I hereby certify that this Supplement was filed electronically with the Court on January 20, 2006. A copy of same is available to opposing counsel via the Court's electronic notification of filing.

/s/GREGORY T. HARTKE
GREGORY T. HARTKE (0024781)
Assistant Attorney General

INDEX TO EXHIBITS

Exhibit A, Order, *Cioffi v. Bobby*, Sixth Circuit Case No. 05-3721.