

Jun 14 2022

S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Horry County
The Honorable Robert E. Hood, Circuit Court Judge

THE STATE,

RESPONDENT,

v.

JEROME JENKINS, JR.,

PETITIONER.

Appellate Case No. 2019-001280

RETURN IN OPPOSITION TO PETITION
FOR STAY OF EXECUTION

On April 6, 2022, this Court filed a published opinion affirming Petitioner’s Horry County conviction and death sentence for murder, as well as his convictions and sentence for attempted murder and armed robbery. *State v. Jerome Jenkins, Jr.*, Op. No. 28089, 2022 WL 1022581 (S.C. S.Ct., Apr. 6, 2022) (Howard’s Adv. Sh. No. 12 at 46-71). Petitioner filed a Petition for Rehearing on April 20, 2022, and, at this Court’s direction, Respondent filed a Return to Petition for Rehearing on May 2, 2022. The Court denied rehearing on June 7, 2022.

I

Also, Petitioner filed the above-styled motion on June 7th. Pursuant to *In re: Stays of Execution in Capital Cases*, 321 S.C. 544, 471 S.E.2d 140 (1996), a stay following this Court’s

resolution of the direct appeal should be granted if at least one federal question was preserved under state law.

II.

Although Respondent does not believe that the claim warrants reversal of his death sentence for the reasons previously found by this Court, Petitioner has preserved his claim that S.C. Code Ann. § 16-3-20(B) (2019) is unconstitutional under *Ring v Arizona*, 536 U.S. 584 (2002), and *Hurst v. Florida*, 577 U.S. 92 (2016), because it requires a defendant to plead not guilty if he wishes to be sentenced by a jury in a capital case.

III.

However, his allegation raised for the first time in the petition for rehearing - asking the Court to expand the definition of an “arbitrary factor” in S.C. Code § 16-3-25(C)(1) (2015) to include matters of which the sentencer is completely unaware and which had no bearing on the sentence imposed - does not state a federal constitutional claim. Rather, it is a state law issue. Further, that issue is procedurally barred because it had never been previously asserted at trial or on appeal. Because it is a procedurally barred, state law issue, the United States Supreme Court lacks jurisdiction to hear it. *Coleman v. Thompson*, 501 U.S. 722, 729 (1991) (“This Court will not review a question of federal law decided by a state court if the decision of that court rests on a state law ground that is independent of the federal question and adequate to support the judgment. This rule applies whether the state law ground is substantive or procedural. In the context of direct review of a state court judgment, the independent and adequate state ground doctrine is jurisdictional”) (citations omitted). See also *Lambrix v. Singletary*, 520 U.S. 518, 523 (1997) (“Since the state-law determination is sufficient to sustain the decree, any opinion of this Court on the federal

question would be purely advisory”).

IV.

Because his first issue satisfies the requirements of *In re: Stays of Execution in Capital Cases*, Respondent takes no position at this time on the second and third claims in the Petition, apart from stating that they are frivolous.

THEREFORE, Respondent has no objection to the granting of a ninety-day stay from January 20th, 2005, so that Petitioner can file a petition for writ of certiorari in the United States Supreme Court on the first issue set forth in his Petition.

Respectfully Submitted,


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