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S.C. SUPREME COURT

ALAN WILSON
ATTORNEY GENERAL

November 2, 2022

The Honorable Patricia A. Howard
Clerk, Supreme Court of South Carolina
P.O. Box 11330
Columbia, South Carolina 29211

Re: John Richard Wood, SCDC No. 6005;
Death-sentenced inmate, exhaustion of ordinary remedies.

Dear Ms. Howard:

On October 31, 2022, the Supreme Court of the United States filed an Order denying Mr. Wood's Petition for Writ of Certiorari in his federal habeas proceedings. (Attached, page 4, Case No. 22-5476). This concludes Mr. Wood's federal habeas corpus proceedings. The State is not aware of any stay in place to prevent the issuance of the execution notice. The federal court stay issued December 14, 2012 pursuant to 28 U.S.C. § 2251 only continued while the habeas corpus proceeding was pending.

By letter filed that same day, Mr. Wood's counsel advised this Court of the filing of a PCR application challenging Mr. Wood's competency to be executed. In the letter, counsel suggests that you not comply with the ministerial duty to issue the execution notice pursuant to S.C. Code § 17-25-370; *Roberts v. Moore*, 332 S.C. 488, 488, 505 S.E.2d 593 (1998) ("it is a ministerial duty of the Clerk of this Court to issue an execution notice pursuant to § 17-25-370"). Respondent objects as the issuance is ministerial and not subject to discretion. *Id.* Further, issuance is actually expected to timely contest competency to be executed. *Singleton v. State*, 313 S.C. 75, 87, 437 S.E.2d 53, 60 (1993) ("Upon the issuance of an Order for Execution by this Court, the defendant or his/her guardian may apply for subsequent Post Conviction Relief on the basis of competency").

Further, Mr. Wood should be required to file a motion to seek a stay and the assignment of a circuit court judge to pursue additional capital PCR proceedings. *See In re Stays of Execution in Cap. Cases*, 321 S.C. 544, 548, 471 S.E.2d 140, 142 (1996) (to obtain a stay for additional capital PCR proceedings, the death-sentenced inmate must "demonstrate that there are exceptional circumstances warranting the issuance of the stay."). Respondent submits not only that Mr. Wood has not yet done so, but also that he has failed to provide any current information to suggest that a stay for an evaluation is warranted at this time.

While there is little doubt that a claim an inmate is incompetent to be executed may warrant a stay and evaluation, in this case, Mr. Wood has only offered stale information (primarily from 2016 and 2017), and a recent letter from a psychologist expressing a “concern” based on prior interaction and a review of records going only through October 2017. In contrast, the publically available information reflected on the South Carolina Department of Corrections website shows Mr. Wood is currently on Death Row at the Broad River Secure Facility and has been since March 19, 2021, apart from one, one-day, outside medical visit on July 3, 2022. (*See Attached*). There is no indication from this public record that he is, or has been at any recent time, in the Department’s psychiatric facility. Further, the mere assertion of a psychiatric/mental health condition, even if true, does not standing alone support a competency concern. *See Madison v. Alabama*, 203 L. Ed. 2d 103, 139 S. Ct. 718, 728 (2019) (proper inquiry is limited “not [to] the diagnosis of such illness, but a consequence—to wit, the prisoner’s inability to rationally understand his punishment”); *see also Singleton v. State*, 313 S.C. 75, 84, 437 S.E.2d 53, 58 (1993) (setting test as [1] “whether a convicted defendant can understand the nature of the proceedings, what he or she was tried for, the reason for the punishment, or the nature of the punishment” and [2] “whether the convicted defendant possesses sufficient capacity or ability to rationally communicate with counsel”).

Critically, Mr. Wood has not offered any recent (or identified as recent) any evaluation or contact note from the Department’s mental professionals that would express a concern at this time, though he most assuredly has access to his own medical records.¹ In sum, his present allegations do not touch on current conditions or complaints related to rational understanding of the punishment, thus, appear insufficient to warrant a stay and additional proceedings. *Panetti v. Quarterman*, 551 U.S. 930, 934–35 (2007) (“Under *Ford* [*v. Wainwright*, 477 U.S. 399, 409-410 (1986)], once a prisoner makes ***the requisite preliminary showing*** that his ***current mental state*** would bar his execution, the Eighth Amendment ... entitles him to an adjudication to determine his condition”) (emphasis added). Nothing, however, that Respondent is aware of, would prevent Mr. Wood from offering this Court current information in a formal motion for stay. At this time, though, Respondent submits the allegations are insufficient to warrant additional proceedings.

¹ The Department of Corrections declines to release medical/psychiatric information absent either subpoena or order. If Mr. Wood declines to present his present medical records, this Court may order him to do so, or order the Department of Corrections to provide medical and psychological records for the last six months so that the Court will have the necessary information to critically and fairly evaluate whether Mr. Wood will be able to meet the *In re Stays* exceptional circumstance requirement.

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Even so, should this Court accept Mr. Wood’s letter as a motion for a stay of execution; and should the Court accept the current allegations as sufficient to warrant a competency proceeding; Respondent would respectfully request the Court expedite those proceedings to avoid unnecessary delay in the lower court and allow this matter’s timely return to this Court. *See generally State v. Motts*, 391 S.C. 635, 653–54, 707 S.E.2d 804, 813 (2011) (“If the PCR court finds the applicant incompetent, and this Court agrees, a stay of execution would be issued.”).

Lastly, to the extent that Mr. Wood also references the ongoing civil litigation appeal of the action challenging the methods of execution, Respondent agrees that such action is pending. However, that action has been expedited and may very well be resolved quickly. Consequently, it is incumbent of the parties to continue to timely pursue remedies, stays, etc., so that death penalty litigation does not come to a halt and create unnecessary delay. And again, reference to that separate litigation may be a basis for a motion for a stay, but Mr. Wood has not yet filed such a motion to properly request a stay from this Court.

For all the above reasons, Respondent State of South Carolina objects to the suggestion that the Clerk should exercise discretion over the ministerial act of issuing the notice. *Roberts, supra*. Respondent does not object to an order for expedited response to a motion for this Court to consider a stay of execution under *In re Stays* and also to consider whether Mr. Wood has made “the requisite preliminary showing” to allow evaluation, *Panetti, supra, Motts, supra*.

Sincerely,

s/ Melody J. Brown

Melody J. Brown
Senior Assistant Deputy Attorney General

Enclosures

cc: Lindsey S. Vann, Esquire (w/enclosures);
Barton J. Vincent, Esquire (w/enclosures);
The Honorable W. Walter Wilkins, Solicitor,
Thirteenth Judicial Circuit (w/enclosures);
Trisha Allen, Victim Services (w/enclosures).