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Nov 14 2022

S.C. SUPREME COURT

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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\* CAPITAL CASE \*  
Appeal from Horry County  
The Honorable Robert E. Hood, Circuit Court Judge

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THE STATE,

Respondent,

v.

JEROME JENKINS, JR.,

Petitioner.

Appellate Case No. 2019-001280

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RETURN TO MOTION FOR A STAY OF EXECUTION AND FOR APPOINTMENT OF A  
POST-CONVICTION RELIEF JUDGE

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Respondent hereby makes a Return to Petitioner's motion for a stay of execution and for appointment of a post-conviction relief judge. Based on the representations in the motion, it appears that Petitioner can meet the conditions for the granting of a stay as outlined *In Re Stays of Execution In Capital Cases*, 321 S.C. 544, 471 S.E.2d 140 (1996). Therefore, Respondent does not oppose the motion. Further, Respondent does not oppose the assignment of a judge. In support of this position, Respondent would respectfully show the Court:

I.

*In Re Stays of Execution In Capital Cases* sets out the circumstances under which such a stay would be appropriate. The Court will generally grant a motion for stay requested “within ten (10) days of the date of the issuance of the execution notice” that “set[s] forth the issues intended to be raised in the application for post-conviction relief ....” *Id.* at 546, 471 S.E.2d at 141.<sup>1</sup> The

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<sup>1</sup> The relevant portion is quoted below with the addition of the bracketed phrase which is not included in the Westlaw copy, but is part of the original Order:

Court will also “assign a circuit judge to the case” who shall hold a hearing not more than thirty (30) days from the stay of execution to “determine the defendant's desires regarding counsel and issue an order” regarding appointment of counsel. *Id.*

## II.

While the execution notice has not yet been issued, the direct appeal concluded when the Supreme Court of the United States denied Petitioner's petition for writ of certiorari on November 7, 2022. (Motion, p. 2 and Exhibit A to Motion). Petitioner does not have any further step available for direct appeal review. However, he does have post-conviction remedies available should he elect to pursue them, and he has offered three potential issues of ineffective assistance of trial counsel in his motion that he asserts will be raised in an application for Post-Conviction Relief. (Motion, pp. 2-3). Generally, these types of claims are appropriate for post-conviction relief actions under the Uniform Post-Conviction Relief Act. *See, e.g., Al-Shabazz v. State*, 338 S.C. 354, 367, 527 S.E.2d 742, 749 (2000) (discussing jurisdiction pursuant to S.C. Code § 17-27-20(a) and finding “[a] typical PCR claim of ineffective assistance of counsel falls into this category ....”). Because Petitioner has generally met the requirements for a stay as set forth in *In re Stays*,

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If the defendant desires a stay to pursue state post-conviction relief, the defendant must, within ten (10) days of the date of the issuance of the execution notice, file a motion to stay with this Court, setting forth the issues intended to be raised in the application for post-conviction relief. **[If the general nature of the issues are appropriate for post-conviction relief]**, this Court will assign a circuit judge to the case and issue a stay of execution. Within thirty (30) days of the date of the stay order, the judge shall determine the defendant's desires regarding counsel and issue an order which either sets forth the name of the counsel that the defendant has retained, appoints counsel for the defendant if he or she is indigent, or determines that the defendant will be allowed to proceed *pro se* based on a knowing and intelligent waiver of the right to counsel after being warned of the dangers and disadvantages of proceeding *pro se* ....

*Id.* at 546, 471 S.E.2d at 141.

Respondent does not oppose his motion for a stay of execution.

**III.**

Moreover, as *In re Stays* provides for the appointment of a post-conviction relief judge, Respondent likewise does not oppose this portion of Petitioner's motion.

Therefore, Respondent does not oppose the requested stay of execution and appointment of a post-conviction relief judge for the forgoing reasons.

Respectfully submitted,

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Attorney General

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Deputy Attorney General

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BY: s/ William Edgar Salter, III  
WILLIAM EDGAR SALTER, III  
ATTORNEYS FOR RESPONDENT

November 14, 2022.

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**CERTIFICATE OF SERVICE**

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I, Angela Brown, as an employee of the Respondent, hereby certify that as per the March 20, 2020 Order of the Chief Justice, the *Return to Motion for a Stay of Execution and for Appointment of a Post-Conviction Relief Judge* and *Certificate of Service* have been forwarded to Appellant's counsel, Robert M. Dudek, Esq. via email today, November 14, 2022 to [RDudek@sccid.sc.gov](mailto:RDudek@sccid.sc.gov), and to his assistant, [lmattthews@sccid.sc.gov](mailto:lmattthews@sccid.sc.gov); and to Kathrine H. Hudgins, Esq. at [KHudgins@sccid.sc.gov](mailto:KHudgins@sccid.sc.gov), and to her assistant at [cstock@sccid.sc.gov](mailto:cstock@sccid.sc.gov).

I further certify that all parties required by Rule to be served have been served.

This 14th day of November 2022.

*s/ Angela Brown*

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Angela Brown,  
Legal Assistant to William Edgar Salter, III  
Senior Assistant Attorney General