

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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**S.C. SUPREME COURT**

MIKAL D. MAHDI,  
*Petitioner,*

v.

STATE OF SOUTH CAROLINA,  
*Respondent.*

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Case No. 2014-002131

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**MOTION TO STAY THE SETTING OF AN EXECUTION DATE**

For the reasons below, Petitioner Mikal D. Mahdi requests that the Court issue an order directing the Clerk of this Court to refrain from setting—and thus staying—any execution date pending final resolution of *Owens, et al. v. Stirling*, No. 2022-001280, the ongoing litigation challenging the constitutionality of South Carolina’s methods of execution and the statute authorizing those methods.

Mr. Mahdi pleaded guilty to murder and related offenses in Calhoun County Circuit Court and was sentenced to death for crimes occurring in 2004. This Court affirmed on direct appeal. *Mahdi v. State*, 383 S.C. 135, 678 S.E.2d 807 (2009). Relief was denied on state post-conviction review; in the above-captioned case, this Court denied certiorari review in 2016.

Following the appointment of counsel in U.S. District Court for the District of South Carolina, that court stayed Mr. Mahdi’s execution to allow federal habeas matters to proceed. *Mahdi v. Stirling*, No. 8:16-cv-03911-TMC. The U.S. Court of Appeals for the Fourth Circuit subsequently affirmed the district court’s denial of relief. *Mahdi v. Stirling*, 20 F.4th 846 (4th

Cir. 2021). On January 9, 2023, the U.S. Supreme Court denied certiorari review in *Mahdi v. Stirling*, No. 22-5536.

In the normal course, the conclusion of federal habeas review would trigger the Clerk of this Court's ministerial duty to issue an execution notice pursuant to S.C. Code § 17-25-370. However, there are currently exceptional circumstances in place which should lead the Court to stay Mr. Mahdi's execution by ordering the Clerk to refrain from issuing a notice of execution. *See In re Stays of Executions in Capital Cases*, 321 S.C. 544, 548, 471 S.E.2d 140, 142 (1996) (motion to stay an execution following denial of review by the U.S. Supreme Court "must demonstrate that there are exceptional circumstances warranting the issuance of the stay.").

The exceptional circumstance that calls for a stay is the pendency before this Court of *Owens, et al. v. Stirling*, No. 2022-001280, a civil suit filed in May 2021 challenging the constitutionality of South Carolina's newly adopted execution statute. At the outset of the litigation, this Court issued stays of execution for plaintiffs Owens and Sigmon because it determined that the execution statute required the S.C. Department of Corrections (SCDC) to provide inmates with at least two methods of execution from which they may choose. Order, *State v. Sigmon & Sigmon v. State*, Nos. 2002-024388, 2021-000584 (S.C. June 16, 2021); Order, *State v. Owens*, No. 2006-038802 (June 16, 2021). After SCDC developed a firing squad execution protocol, which provided the required alternative to electrocution, the Court set new execution dates for plaintiffs Moore and Sigmon before staying those executions as well to allow the plaintiffs' civil suit against the State's methods of execution and statute to proceed.<sup>1</sup>

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<sup>1</sup> Although these stays of execution were related to the civil methods of execution lawsuit, they were sought and issued under the dockets of the plaintiffs' post-conviction review cases. *State v. Owens*, No. 2006-038802; *State v. Sigmon*, No. 2002-024388; *State v. Moore*, No. 2001-021895.

In September 2022, following a bench trial, Richland County Circuit Court Judge Jocelyn Newman issued an order in *Owens, et al. v. Stirling*, holding that electrocution, the firing squad, and South Carolina’s methods of execution statute itself are unconstitutional, and enjoining SCDC from executing the plaintiffs. Following an appeal from Judge Newman’s order, this Court held oral argument on the matter on January 5, 2023.

In light of these exceptional circumstances, the Court should order the Clerk to refrain from setting an execution date for Mr. Mahdi during the pendency of *Owens, et al. v. Stirling*. This is warranted for several reasons.

First, the Court has already stayed executions for the civil plaintiffs in order to resolve the constitutionality of South Carolina’s execution statute and the methods it authorizes. Moreover, the most recent court decision under review in the civil case found the statute and both of the methods of execution that SCDC has deemed available are unconstitutional. It would be extraordinarily arbitrary to stay the executions of the civil plaintiffs to address such weighty questions, and to ensure they are not put to death in unconstitutional circumstances, but to allow Mr. Mahdi, who is identically situated, to receive an execution date. *See Godfrey v. Georgia*, 446 U.S. 420, 428 (1980) (“[I]f a State wishes to authorize capital punishment it has a constitutional responsibility to tailor and apply its law in a manner that avoids the arbitrary and capricious infliction of the death penalty.”).

Second, the Court has indicated that issuing an order preventing the setting of an execution date is an appropriate way of addressing the present situation. In the methods of execution case, the Court issued an administrative order that prior stays of execution for plaintiffs Sigmon, Moore, and Terry should remain in effect, and that the “Clerk of the Supreme Court is directed not to issue a notice of execution for Freddie Eugene Owens prior to the

resolution of this action.” *Owens, et al. v. Stirling*, Civil Action No. 2021-CP-40-02306 (May 5, 2022). Similarly, in *State v. John Wood*, No. 2002-022661, the Court issued an order on November 17, 2022, “recogniz[ing] the duty of the Clerk of this Court to issue an execution notice” but nonetheless “direct[ing] the Clerk of Court not to issue a notice of execution” in light of Wood’s filing of a second PCR application alleging incompetence to be executed.<sup>2</sup> The Court should issue the same preemptive order in Mr. Mahdi’s case that it employed with respect to both *Owens* and *Wood*.

Third, this Court has inherent authority to manage its own docket and judicial resources efficiently. It would be manifestly inefficient, and would generate needless uncertainty, for the Court to allow the Clerk to issue an execution notice, thereby creating a public appearance of a potential execution, when the Court has already made fairly clear that it has no intention of permitting any executions to proceed during the pendency of its review of the methods of execution matter. The more efficient and straightforward course would be for the Court to ensure that no execution date is set at all at the present time.

Similarly, the issuance of an execution warrant has instant and significant consequences for this Court, SCDC and state attorneys, defense attorneys, SCDC security officers, and inmates. Once SCDC receives an execution warrant, it immediately places the condemned inmate on “execution status,” which requires his assignment to Level III (normally reserved for those deemed a serious security risk) and confinement in a different wing of the prison, in an isolation cell with constant video surveillance and lights that cannot be turned off. He is not permitted to speak with other inmates. Security officers must make a physical visit to his cell

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<sup>2</sup> Wood’s request for this order was also premised on the pendency of the methods of execution lawsuit, but the Court’s order relied solely on the second PCR application and did not comment on the effect of the methods suit on Mr. Wood.

every 15 minutes. In addition, SCDC must place the entire death row unit on lock down, eliminating all recreation and prohibiting inmate interaction until a stay is entered or the inmate is executed; during that time, the death row psychologist must conduct a mental health evaluation of each inmate. Additionally, SCDC must initiate its other execution procedures, which include scheduling the inmate's final visits with family and spiritual advisors, planning for disposal of the inmate's property, and, with the inmate's family, determining the disposition of the inmate's corpse and any funeral arrangements. These superadded processes place substantial stress and anxiety on both SCDC staff and inmates—an unnecessary toll when the execution could not be carried out.

Furthermore, so long as a warrant is in place, undersigned counsel cannot assume that the execution will not go forward. We must treat any execution date as “real” and initiate any litigation necessary to obtain information about SCDC's intended method and means of execution and other ancillary matters. The Attorney General's Office and counsel for SCDC will have to respond to those actions, and the courts will have to adjudicate them—an unnecessary expenditure of resources by counsel and the courts. Thus, considerations of efficiency and preservation of resources weigh heavily in favor of staying ahead of time an execution notice that is very likely a temporary formality.

Finally, the State has indicated that the ongoing civil litigation may form a proper basis for the Court to prevent the Clerk from issuing an execution date. In *State v. Wood*, No. 2002-022661 (the same matter noted above), the State filed a letter with the Court on November 2, 2022, noting “that separate [methods of execution] litigation may be a basis for a motion for a stay . . . .”

In view of the foregoing, Mr. Mahdi respectfully requests that the Court issue an order directing the Clerk of Court not to issue a notice of execution in his case prior to the final resolution of *Owens, et al. v. Stirling*, No. 2022-001280.

Respectfully submitted,

/s/ E. Charles Grose Jr.

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