

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

MARION BOWMAN, Jr.
Petitioner,

v.

STATE OF SOUTH CAROLINA,
Respondent.

Case No. 2012-213468 (PCR Appeal)
Case No. 2002-023546 (Direct Appeal)

RECEIVED

May 23 2023

S.C. SUPREME COURT

MOTION TO STAY THE SETTING OF AN EXECUTION DATE

Petitioner Marion Bowman, Jr., 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.

Bowman was convicted of murder and related offenses in Dorchester County and was sentenced to death for crimes occurring in February 2001. This Court affirmed on direct appeal. *State v. Bowman*, 366 S.C. 485, 623 S.E.2d 378 (2005). Following the denial of state post-conviction review (PCR), relief was denied by this Court. *Bowman v. State*, 422 S.C. 19, 809 S.E.2d 232 (2018).

On January 28, 2018, the United States District Court for the District of South Carolina stayed Bowman’s execution to allow federal habeas matters to proceed. *Bowman v. Stirling*, No. 9:18-mc-00016-TLW-BM, ECF No. 6. The U.S. Court of Appeals for the Fourth Circuit subsequently affirmed the district court’s denial of relief. *Bowman v. Stirling*, 45 F.4th 740 (4th

Cir. 2022). On May 22, 2023, the U.S. Supreme Court denied certiorari review in *Bowman v. Stirling*, No. 22-6672.

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. *In re Stays of Execution in Capital Cases*, 321 S.C. 544, 548, 471 S.E.2d 140, 142 (1996). However, there are currently exceptional circumstances that should lead the Court to stay Bowman's execution by ordering the Clerk to refrain from issuing a notice of execution. *Id.*, 321 S.C. at 548, 471 S.E.2d at 142 (motion to stay an execution following denial of review by the United States 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 South Carolina 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, and SCDC certified it could carry out executions by both firing squad and electrocution, the Court set new execution dates for plaintiffs Moore and Sigmon before staying those executions, and ordering the Clerk not to issue a new execution notice for Owens, pending the conclusion of the *Owens v. Stirling* civil suit regarding the State's methods of execution and statute to proceed.

In September 2022, following a bench trial, Richland County Circuit Court Judge Jocelyn Newman issued an order in *Owens, et al. v. Stirling*, Civil Action No. 2021-CP-40-02306, holding that electrocution, the firing squad, and South Carolina's methods of execution statute itself are unconstitutional, and enjoining SCDC from executing the plaintiffs. The State appealed. On January 26, 2023, this Court reversed, in part, and remanded for discovery of information relating to lethal injection and its availability in South Carolina, holding the remainder of the appeal in abeyance. *Owens v. Stirling*, 438 S.C. 352, 882 S.E.2d 858 (2023).

In March 2023, this Court stayed the circuit court discovery proceedings while the legislature considered a secrecy bill to protect the identities of manufacturers of lethal injection drugs, 2023 S.C. Acts 16, which was signed by the Governor on May 12, 2023, amending S.C. Code § 24-3-580 with immediate effect. And, on May 17, 2023, the State asked this Court to continue to stay the appeal until August 31, 2023 to allow SCDC to attempt to obtain lethal injection drugs.¹

In light of these exceptional circumstances, the Court should order the Clerk to refrain from setting an execution date for Bowman 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 certified 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

¹ This motion remains pending.

Bowman, 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, in other cases, the Court found an order preventing the setting of an execution date is the appropriate way of addressing the present situation. At the same time the Court stayed the Moore and Sigmon executions pending the resolution of *Owens*, the Court also addressed Owens’s case, in which an execution notice had not yet been issued, stating: 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 *Mikal Mahdi v. State*, 2014-002131, the Court issued a stay order pending the resolution of the methods litigation. The Order in *Mahdi*, dated February 9, 2023, explicitly directs that the Clerk of Court hold “a notice of execution until this Court issues its decision in *Owens*.” The Court should issue the same preemptive order in Bowman’s case that it employed with respect to *Owens* and *Mahdi*.²

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 clear that it has no intention of permitting any executions to proceed during the pendency of its review of the methods of execution matter.

² This Court also has pending before it a Motion for Stay filed in *Steven Bixby v. State*, 2007-054161, on May 16, 2023.

The more efficient and straightforward course would be for the Court to ensure that no execution date is set at all until its decision in *Owens*.

In view of the foregoing, Bowman 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,

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