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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

MARION BOWMAN, Jr.Petitioner,

v.

STATE OF SOUTH CAROLINA.....Respondent.

Appellate Case No. 2002-023546 (Direct Appeal)

RETURN TO MOTION TO STAY THE SETTING OF AN EXECUTION DATE

On May 22, 2023, the State advised by letter addressed to the Clerk of Court that Petitioner had concluded his ordinarily available state and federal remedies. On the following day, May 23, 2023, Petitioner moved for an order restraining the Clerk of Court from issuing an execution notice due to the “ongoing litigation challenging the constitutionality of South Carolina’s methods of execution” and the amended statute. (Motion at p.1). See generally S.C. Code § 17-25-370 (clerk must issue the notice after judgment is affirmed and the prison official’s receipt of the notice prompts setting of the date).

The State submits, consistent with the prior positions taken, Bowman’s request to restrain the Clerk from issuing the notice is contrary to the ministerial nature of the act. Bowman’s argument depends on ongoing litigation in *Owens v. Stirling*, Appellate Case No. 2022-001280. However, Bowman is not a party to that action, and there here is no certainty as to timing in that litigation.¹ Therefore, the State maintains opposition to any delay or departure from the ordinary

¹ Bowman notes that on May 17, 2023, a stay was requested to extend the prior stay until August 31, 2023. (Motion at p. 3). The docket shows that as of May 25, 2023, no order had been issued.

set process, but recognizes this Court's recent order of February 9, 2023, in *Mahdi v. State of South Carolina*, Appellate Case No. 2014-002131, which provided:

While we recognize the duty of the Clerk of this Court to issue an execution notice is ministerial, [FN 1] due to the pendency of *Owens* and in order to conserve judicial, attorney, and Department of Corrections resources, we direct the Clerk of Court not to issue a notice of execution until this Court issues its decision in *Owens*.

[FN 1] See *Roberts v. Moore*, 332 S.C. 488, 488, 505 S.E.2d 593, 593 (1998) (holding it is a ministerial duty of the Clerk of the Supreme Court to issue an execution notice pursuant to S.C. Code Ann. § 17-25-370 (2014)).

Bowman, on page 4 of his motion, loosely references "judicial resources." To that extent, his argument appears consistent with the *Mahdi* order. This Court could choose to follow the *Mahdi* order which both recognized such a request is not consistent with the ministerial nature of the issuance and resolved to prohibit further steps in the execution process in the unique circumstances presented. For the reasons set forth herein, Bowman's motion should be denied.

ARGUMENT

On February 17, 2001, as victim Kandee Martin begged for her life, Bowman murdered her in an execution-style shooting while on Nursery Road in Dorchester County. He then hid her body in the woods, returned hours later with Victim's car, put Victim's body in the trunk, and set the car ablaze. *State v. Bowman*, 366 S.C. 485, 491, 623 S.E.2d 378, 381 (2005). The State presented eyewitnesses to the murder and subsequent disposal of the body, along with a myriad of other evidence against Bowman. Petitioner, Marion Bowman, Jr., was found guilty by the jury on May 20, 2002, and he was sentenced to death on May 23, 2002, for the murder of victim Kandee Martin.

Bowman pursued a direct appeal, post-conviction relief, a post-conviction relief appeal, and federal habeas review but failed to show any relief was due. See generally *State v. Bowman*,

supra; *Bowman v. Stirling*, No. 9:18-CV-00287-TLW, 2020 WL 1466005 (D.S.C. Mar. 26, 2020); *appeal dismissed Bowman v. Stirling*, 45 F.4th 740 (4th Cir. 2022); *cert. denied Bowman v. Stirling*, 2023 WL 3571540 (U.S. May 22, 2023).

Ministerial Duty Should Not Be Converted to a Discretionary Act

Consistent with its prior position, which the Court acknowledged was correct in the *Mahdi* order, the State maintains that the issuance is ministerial. Therefore, it is not appropriate to ask for the issuance to be converted into a discretionary act. Indeed, the duty is ministerial because it is prompted by “fixed and designated facts” and does not provide any “discretion in determining how or whether the act shall be done or the course pursued.” *See Wilson v. Preston*, 378 S.C. 348, 354, 662 S.E.2d 580, 583 (2008) (defining ministerial duty). Bowman’s sentence has not been overturned and he has now exhausted his remedies. Thus, the provision of the statute should apply.

Owens v. Stirling Litigation

Bowman concedes that at this point, after so many levels of review without relief, he must show “exceptional circumstances warranting the issuance of [a] stay” of execution. *In re Stays*, at 548, 471 S.E.2d at 142. (Motion at p. 2). Bowman depends upon *Owens* as his exceptional circumstance.² (Motion at p. 3). Like *Mahdi*, Bowman is not a party to that action, and he has not separately challenged the statute. He likewise has not yet elected a method of execution. S.C. Code Ann. § 24-3-530 (A) (election of method “must be made in writing fourteen days before each execution date or it is waived”). Selection of a method though, will “waive[] any objection he might have to it.” *Stewart v. LaGrand*, 526 U.S. 115, 119 (1999). Further, election of one method renders moot complaints as to other methods that will not be used. *See, e.g., Stanford v. Parker*,

² Based upon similar arguments, a Motion for Stay of Execution is also pending before this Court in the matter of *State v. Bixby*, 388 S.C. 528, 539, 698 S.E.2d 572, 578 (2010).

266 F.3d 442, 462 (6th Cir. 2001) (“Because Stanford is given the option of electrocution and lethal injection, we need not evaluate the constitutionality of electrocution.”).

Whether the Court will follow *Mahdi* is a decision for this Court based on unique circumstances presently existing – an anomaly in general South Carolina procedure in this area. In this return, the State seeks to preserve the statutory procedure and the narrow basis for a stay generally, limiting impact of “preservation of resources” arguments apart from these discrete circumstances. But for these unique circumstances, Bowman’s motion should not be considered at all.

Respectfully Submitted,

ALAN WILSON
Attorney General of South Carolina

DONALD J. ZELENKA
Deputy Attorney General

MELODY J. BROWN
Senior Assistant Deputy Attorney General

W. JOSEPH MAYE
Assistant Attorney General

s/W. Joseph Maye

BY: _____.

S.C. Bar No. 100851

Post Office Box 11549
Columbia, South Carolina 29211
(803) 734-6305

June 2, 2023

ATTORNEYS FOR RESPONDENT

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PROOF OF SERVICE

I, **Donna D'Alessio**, an employee of the Respondent and legal assistant to W. Joseph Maye, of counsel for the Respondent, hereby certify that as per the March 20, 2020 Order of the Chief Justice, the Return to Motion to Stay the Setting of an Execution Date has been forwarded to Petitioner's counsel, Lindsey S. Vann, Esq., via email today, June 2, 2023 to lindsey@justice360sc.org, and to Teresa L. Norris, Esq. to teresa_norris@fd.org, as well as via regular mail.

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

This 2nd day of June, 2023.

s/ Donna D'Alessio
Donna D'Alessio, Legal Assistant to
W. Joseph Maye
Assistant Attorney General
Office of the Attorney General
Post Office Box 11549
Columbia, South Carolina 29211-1549
(803) 734-6305