RECEIVED
Jun 06 2023
S.C. SUPREME COURT

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)

REPLY IN SUPPORT OF
MOTION TO STAY THE SETTING OF AN EXECUTION DATE

The State opposes Bowman's stay request simply because Bowman is "not a party" to *Owens v. Stirling*¸ No. 2022-001280, a declaratory judgment action concerning the constitutionality of all three of the potential methods of execution set forth in S.C. Code § 24-3-530 and the legality of the statute itself. Return at 1. In *Owens*, the lower court enjoined both electrocution and the firing squad as unconstitutional methods of execution under state law. On January 26, 2023, this Court held review of those findings in abeyance and remanded for additional discovery on the availability of execution by lethal injection. The State has requested a stay in those proceedings in order to determine whether the South Carolina Department of Corrections (SCDC) can obtain drugs to be used in lethal injection following the amendment of S.C. Code § 24-3-580, which creates increased secrecy surrounding procurement of lethal injection drugs.

Remarkably, the State concedes that this Court granted a stay in *Mahdi v. State*, No. 2014-002131, to bar the setting of an execution date for Mikal Madhi, another death-sentenced inmate who is similarly situated to Bowman in having completed the normal course of appellate review and being a non-party in *Owens*. Return at 2. Nonetheless, the State still opposes Bowman's request for a stay

arguing the execution order should issue because it is a ministerial duty required by statute, S.C. Code § 17-25-370, and Bowman should be forced to elect a method of execution under S.C. Code § 24-3-530. Return at 3-4.

The State simply elevates form over substance. In essence, what the State asks for is to set an execution date in order to force Bowman to choose between two methods that a lower court has enjoined as unconstitutional (electrocution and firing squad) and one method that SCDC's director has repeatedly certified is unavailable as an option in South Carolina because no drugs are available (lethal injection). Thus, without a ruling from this Court in *Owens*, SCDC could not carry out the execution even if an execution order was issued.

Moreover, the State's suggestion that Bowman might somehow obviate the relevance of *Owens v. Stirling* by electing, and thereby waiving any objection to, a particular method of execution, ignores the fact that this Court is currently reviewing the lower court's ruling that the enabling statute itself is both unconstitutionally vague and violates non-delegation doctrine. Neither of those issues have any bearing on Bowman's theoretical election.

At bottom, Bowman's motion is straightforward and reasonable. South Carolina is currently the only state in the country where prison officials are attempting to force execution by the antiquated methods of electrocution and firing squad because they say they are wholly unable to obtain lethal injection drugs. It is one of two states that authorize the firing squad. A lower court has declared all presently available methods of execution unconstitutional, and this Court is in the process of sorting through these important legal questions. Meanwhile, the Court has stayed the executions of all prisoners who would otherwise be eligible to have their sentences carried out while these matters are addressed in an orderly fashion, including those who are not parties to *Owens v. Stirling*. All Bowman asks is that the Court take the same action in his case without the needless procedural complications and elevation of form over substance that the State seeks.

Respectfully submitted,

s/ Lindsey S. Vann

Lindsey S. Vann
Justice 360
900 Elmwood Ave, Suite 200
Columbia, SC 29201
(803) 765-1044
lindsey@justice360sc.org

Teresa L. Norris
Capital Habeas Unit for the Fourth Circuit
129 West Trade Street, Suite 300
Charlotte, NC 28202
teresa_norris@fd.org

Counsel for Marion Bowman, Jr.

June 6, 2023.