

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION

Bobby Wayne Stone,)	
)	Case No. 2:17-cv-1221-MGL-MGB
Petitioner,)	
)	
v.)	
)	ORDER
Bryan P. Stirling, Commissioner,)	
South Carolina Department of Corrections;)	
Willie D. Davis, Warden of Kirkland)	
Correctional Institution,)	
)	
Respondents.)	
_____)	

Petitioner Bobby Wayne Stone is a state prisoner sentenced to death. On November 20, 2017, Petitioner filed an initial petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. (Dkt No. 51.) On March 26, 2018, and March 29, 2018, Petitioner filed an amended petition and a supplement thereto. (Dkt. Nos. 73; 74.) On July 10, 2018, Respondents filed an answer to the petition, along with a motion for summary judgment. (Dkt. Nos. 89; 90.) Then, on August 21, 2018, Petitioner filed a motion to stay the instant action pending the exhaustion of his state court remedies. (Dkt. No. 98.) Respondents filed a response in opposition to the motion on August 29, 2018, (Dkt. No. 100), to which Petitioner replied on September 3, 2018 (Dkt. No. 101).

In January 1997, Petitioner was convicted of murder, first degree burglary, and possession of a weapon during a violent crime, and he was sentenced to death. On direct appeal, Petitioner’s convictions were affirmed, as were his sentences for burglary and possession of a weapon. *State v. Stone*, 567 S.E.2d 244, 249 (S.C. 2002). However, his death sentence was reversed, and the matter was remanded for resentencing. *Id.*

Following a sentencing proceeding before a jury in February 2005, Petitioner was again sentenced to death. His sentence was affirmed on direct appeal. *State v. Stone*, 655 S.E.2d 487 (S.C. 2007).

Petitioner subsequently filed an application for post-conviction relief (“PCR”) and was represented in an evidentiary hearing by PCR counsel. On May 2, 2013, the PCR court filed an order denying the application. Following motions to alter or amend by both sides and a hearing on the motions, the PCR court filed an amended order denying the PCR application on August 14, 2013. The PCR court’s order was affirmed on appeal. *Stone v. State*, 798 S.E.2d 561 (S.C. 2017).

Petitioner initiated the instant action by filing a motion for stay of execution and a motion to appoint counsel on March 31, 2017. As set forth above, he has now filed a petition for habeas corpus pursuant to 28 U.S.C. § 2254. His petition comprises five grounds previously raised in state court and three *Martinez*¹ grounds. (See Dkt. Nos. 73; 74.)

According to his motion to stay and the attached documents, on June 5, 2018, Petitioner filed a PCR application in state court asserting multiple claims, including the following claim that he is intellectually disabled:

Applicant’s death sentence violates the Eighth Amendment to the United States Constitution and the corresponding provisions of the South Carolina Constitution due to the fact that he is intellectually disabled. Because Applicant has significantly subaverage intellectual functioning, existing concurrently with deficits in adaptive functioning, both of which began before he was eighteen years old, he is ineligible for capital punishment. *Moore v. Texas*, 137 S. Ct. 1039 (2017), *Hall v. Florida*, 134 S. Ct. 1986 (2014), *Atkins v. Virginia*, 536 U.S. 306 (2002); *Franklin v. Maynard*, 356 S.C. 276, 588 S.E.2d 604 (2003).

(Dkt. No. 98-1 at 2.) As Petitioner points out, and Respondents acknowledge, there is some precedent for such freestanding *Atkins* claims going forward in state court, despite such claims

¹ *Martinez v. Ryan*, 566 U.S. 1 (2012).

having been raised in second PCR applications. (See Dkt. Nos. 98 at 8–9; 100 at 9–10.) For example, based on the information provided by the parties, second PCR actions of capital applicants Bayan Aleksey and Stephen Corey Bryant are currently pending in state court and are moving forward on the merits of the *Atkins* claims raised in those actions. See e.g., *Stone v. State*, 2018-CP-43-1025, Order Denying State’s Motion to Dismiss, Dkt. No. 98-4 at 152–59 (finding it appropriate for the court to address Bryant’s *Atkins* claim, in part, because “holding that an *Atkins* claim is subject to procedural default would result in an unnecessary waste of judicial time and resources and, based on an incorrectly applied technicality, the wrongful execution of a person who is Constitutionally ineligible for the death penalty”). The corresponding federal habeas corpus actions have been stayed pending the resolution of those PCR actions.² However, Respondents argue that this case differs from both *Aleksey* and *Bryant* in that Petitioner has not raised a freestanding *Atkins* claim in his petition and has only argued that trial counsel were ineffective for failing to assert an *Atkins* claim at trial.

This Court has considered the parties’ submissions and the applicable law, and notwithstanding the difference noted by Respondents, the Court finds that this case should be stayed based on the facts and circumstances of this case at this time. See, e.g., *Dietz v. Bouldin*, 136 S. Ct. 1885, 1892 (2016) (recognizing “that district courts have the inherent authority to manage their dockets and courtrooms with a view toward the efficient and expedient resolution of cases”).

² The Court notes that the habeas actions of Aleksey and Bryant were stayed prior to the South Carolina Supreme Court’s decision in *State v. Robertson*, 795 S.E.2d 29 (S.C. 2016). See *Aleksey v. Stirling*, 5:14-cv-3016-JMC-KDW, Dkt. No. 83; *Bryant v. Stirling*, 9:16-cv-1423, Dkt. No. 52. In granting the stay in this case, the Court relies on different reasoning than the reasoning relied upon in *Aleksey* and *Bryant*.

Accordingly, it is hereby **ORDERED** that Petitioner's motion to stay is granted. Petitioner shall notify the Court within five (5) days of the disposition of Petitioner's currently pending PCR application in state court. The parties shall also submit joint status reports to the Court every sixty (60) days advising the Court of the status of the state PCR action. Additionally, the parties are hereby notified that the Court may lift the stay should the Court determine that resuming Petitioner's federal habeas action is the best course for the efficient and expedient resolution of this matter.

IT IS SO ORDERED.

Signed this 4th day of September, 2018, in Columbia, South Carolina.

s/ Mary Geiger Lewis
MARY GEIGER LEWIS
UNITED STATES DISTRICT JUDGE