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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

APPEAL FROM LEXINGTON COUNTY
The Honorable Eugene C. Griffith, Circuit Court Judge

Opinion No. 28145 (S.C. Sup.Ct. re-filed July 19, 2023)

THE STATE,.....RESPONDENT

v.

TIMOTHY RAY JONES, JR.,.....PETITIONER.

APPELLATE CASE NO. 2019-001008

RETURN TO PETITION FOR STAY OF EXECUTION

On July 20, 2023, Petitioner, through counsel, filed a petition for a stay of execution asserting that he intends to file a petition for writ of certiorari in the Supreme Court of the United States. In light of the provisions of *In re: Stays of Execution in Capital Cases*, 321 S.C. 544, 471 S.E.2d 140 (1996), and in consideration of at least one of the claims Petitioner’s asserts he intends to raise in a petition to the Supreme Court, Respondent does not oppose the petition for a stay of execution in order to timely file such petition. In support of its position, Respondent submits:

1. This Court first affirmed Petitioner’s murder conviction and death sentence in its opinion issued on March 29, 2023. After granting rehearing on Issue I of the petition for rehearing, but denying rehearing on Issues II through VI, this Court re-filed the opinion on July 19, 2023, and again affirmed Petitioner’s murder convictions and death sentence. *State v. Jones*, Op. No. 28145 (S.C.Sup.Ct. filed July 19, 2023) (Howard Adv.Sh. No. 28 at 14-16).

2. This Court has found that a stay of execution in order to timely seek review from the Supreme Court of the United States following resolution of the direct appeal in a capital case shall be granted “[a]s long as one of the federal questions” the petition alleges will be “asserted has been adequately preserved under state law so that it can be reviewed” *In re Stays*, 321 S.C. at 545, 471 S.E.2d at 141. Petitioner asserts that he intends “to raise one or more” claims which he frames as presenting “federal constitutional issues” appropriate for review. (Pet. at 2). As to the listed claims, Respondent submits:

Petitioner’s proposed claim regarding *voir dire* and/or jury instruction on the consequences of a potential NGRI verdict was denied on the merits based on state law, (Op. at 12-13), with Petitioner’s alternative argument based on federal law also rejected, (Op. at 13-14);

Petitioner’s proposed claim regarding the motion to suppress evidence from the checkpoint was denied on the merits based upon federal law, (Op. at 14-16);

Petitioner’s proposed claim regarding exclusion of his mother’s videotaped testimony in the sentencing phase was based upon ordinary application of state rules of evidence, (Op. at 29-31).

3. Given that at least one of the claims Petitioner preliminarily proposes to be presented in a petition filed in the Supreme Court was preserved and ruled upon solely on the basis of federal law, that proposed claim alone will satisfy the requirements of *In re: Stays of Execution in Capital Cases*. As such, Respondent does not object to a stay of execution. Respondent maintains, however, that none of the proposed claims warrant any relief.

THEREFORE, based on the foregoing, Respondent has no objection to the granting of a ninety-day stay of execution (from July 19, 2023, the date of the opinion),¹ so that Petitioner may file a petition for writ of certiorari in the Supreme Court.

Respectfully Submitted,

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July 31, 2023.

¹ If the stay is so granted, *In re Stays* already provides for extension or satisfaction of the stay as follows: “If a stay is granted and the defendant fails to timely file the petition for a writ of certiorari, the Clerk of this Court shall issue an execution notice. If the petition is timely filed, the stay will continue until the matter is fully concluded before the United States Supreme Court, to include any petition for rehearing following the denial or dismissal of the petition or the issuance of an opinion. If the action of the United States Supreme Court does not invalidate the sentence of death, the Clerk of this Court shall issue an execution notice.” 321 S.C. at 545, 471 S.E.2d at 141.