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S.C. SUPREME COURT

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

Andres Antonio Torres,)
)
Petitioner,)
)
v.)
)
Bryan P. Stirling, *Director, South Carolina*)
Department of Corrections, and Lydell)
Chestnut, Deputy Warden of Broad River)
*Correctional Secure Facility,*¹)
)
Respondents.)
)

Case No.: 6:23-mc-00571-BHH-KFM

**ORDER GRANTING STAY
OF EXECUTION**

Andres Antonio Torres (“Petitioner”) is a state prisoner sentenced to death. He has moved this Court to stay his execution while he seeks a federal writ of habeas corpus pursuant to 28 U.S.C. § 2254.² (See ECF No. 1.) The parties have fully briefed the motion, and it is ready for resolution. (See ECF Nos. 9, 11.)

A federal court has jurisdiction to stay state court proceedings when a state prisoner sentenced to death applies for appointment of counsel pursuant to 18 U.S.C. § 3599. See 28 U.S.C. § 2251(a)(3); *McFarland v. Scott*, 512 U.S. 849, 858 (1994) (“[O]nce a capital defendant invokes his right to appointed counsel, a federal court also has jurisdiction under § 2251 to enter a stay of execution.”). Under 28 U.S.C. § 2251(a)(3), the stay “shall terminate” not more than ninety days after the appointment of counsel. Section 2251(a)(1) grants a federal court additional authority to stay a state action while a federal habeas corpus proceeding is pending. These provisions work in

¹ By the parties’ consent, Lydell Chestnut is substituted for Kenneth Nelson as the proper Respondent in this action.

² Petitioner also has moved for the appointment of counsel and to proceed in forma pauperis. (ECF Nos. 1, 4.) The assigned United States Magistrate Judge granted those motions in a separate order on September 5, 2023. (ECF No. 13.)

tandem to provide Petitioner 90 days from the date he is appointed counsel to file a preliminary habeas petition, at which point the Court deems Petitioner's habeas action "pending" and he may move for an indefinite stay under § 2251(a)(1).

Here, counsel was appointed by order dated September 5, 2023. (*See* ECF No. 13.) After review, the Court hereby GRANTS Petitioner's motion to stay (ECF No. 1) and stays Petitioner's execution until December 4, 2023. The Court further orders that the Clerk of Court assign a civil action number to this case and that this matter remain referred to the assigned United States Magistrate Judge for all other preliminary proceedings.

IT IS SO ORDERED.

/s/Bruce H. Hendricks
United States District Judge

September 15, 2023
Charleston, South Carolina