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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

APPELLATE CASE NO. 2019-001008

Opinion No. 28145 (S.C.Sup.Ct. filed March 29, 2023) (Re-filed July 19, 2023)

\*CAPITAL CASE\*

THE STATE.....RESPONDENT,

v.

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

RETURN TO MOTION FOR A STAY OF EXECUTION AND  
FOR APPOINTMENT OF A POST-CONVICTION RELIEF JUDGE

On March 5, 2024, Petitioner, through appellate counsel, filed a motion for a stay of execution and for the appointment of a post-conviction relief judge. Based on the representations in the motion, it appears that Petitioner can meet the conditions for the granting of a stay as outlined in *In Re Stays of Execution in Capital Cases*, 321 S.C. 544, 471 S.E.2d 140 (1996). Therefore, Respondent does not oppose the motion. Further, Respondent does not oppose the assignment of a judge for a post-conviction relief action. In support of this position, Respondent would respectfully show the Court:

1. Under *In re Stays*, this Court will generally grant a timely motion for a stay of execution for a capital defendant to pursue available post-conviction relief remedies. The motion

must be made “within ten (10) days of the issuance of the execution notice,” and “set[] forth the issues intended to be raised in the application for post-conviction relief...” *Id.*, at 546, 471 S.E.2d at 141. If the offered issues appear generally cognizable, the stay is not only granted, “this Court will [also] assign a circuit judge” for the anticipated action. *Id.*<sup>1</sup> “Within thirty (30) days of the date of the stay order, the judge shall determine the defendant’s desires regarding counsel and issue an order which either sets forth the name of the counsel that the defendant has retained, appoints counsel for the defendant if he or she is indigent, or determines that the defendant will be allowed to proceed *pro se* based on a knowing and intelligent waiver of the right to counsel after being warned of the dangers and disadvantages of proceeding *pro se.*” *Id.* The stay will continue through the pendency of the action as long as Petitioner files a timely action “within sixty (60) days of the date of the order regarding counsel,” and files sixty (60) day status reports reflecting circumstances that the Court deems sufficient to continue the stay.<sup>2</sup> *Id.*

2. While the execution notice has not yet been issued, Petitioner’s direct appeal concluded on February 26, 2024, when the Supreme Court of the United States denied his petition for writ of certiorari. *Jones v. South Carolina*, No. 23-6078, 2024 WL 759837, at \*1 (U.S.S.C. Feb. 26, 2024). Petitioner does not have any further step available for direct appeal review. However, he does have post-conviction remedies presently available should he elect to timely

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<sup>1</sup> The relevant portion is quoted below with the addition of the bracketed phrase which does not appear in the Westlaw copy, but is part of the original Order:

If the defendant desires a stay to pursue state post-conviction relief, the defendant must, within ten (10) days of the date of the issuance of the execution notice, file a motion to stay with this Court, setting forth the issues intended to be raised in the application for post-conviction relief. **[If the general nature of the issues are appropriate for post-conviction relief]**, this Court will assign a circuit judge to the case and issue a stay of execution. ...

*Id.*, at 546, 471 S.E.2d at 141.

<sup>2</sup> “If the Court determines that this letter fails to show that the defendant is diligently pursuing the post-conviction relief action, the Court may issue an order dissolving the stay or setting forth additional requirements the defendant must meet to maintain the stay.” *In re Stays*, at 546, 471 S.E.2d at 141.

pursue an action. He offers two generally cognizable claims of ineffective assistance of trial counsel that may be raised. (See Motion at 2). See also *Al-Shabazz v. State*, 338 S.C. 354, 367, 527 S.E.2d 742, 749 (2000) (discussing limitations of S.C. Code § 17-27-20(a) jurisdiction and finding “[a] typical PCR claim of ineffective assistance of counsel falls into this category....”). Because Petitioner has generally met the *In re Stays* requirements, Respondent does not oppose his motion.

THEREFORE, based on the foregoing, Respondent does not oppose the requested stay of execution and appointment of a post-conviction relief judge.

Respectfully Submitted,

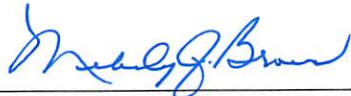
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March 8, 2024