

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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Aug 26 2024

APPEAL FROM GREENVILLE COUNTY
Court of General Sessions

S.C. SUPREME COURT

Appellate Case No. 1999-011364

THE STATE.....Respondent,

v.

FREDDIE EUGENE OWENSAppellant.

EXPEDITED PETITION TO CONSTRUE OR CLARIFY

Pursuant to S.C. Code Ann. § 62-8-116(a)(9) and Rule 240, SCACR, Director Bryan P. Stirling (Director Stirling), in his official capacity as the Director of the South Carolina Department of Corrections (Department), respectfully petitions this Court to construe or clarify the accompanying Durable Power of Attorney, dated August 14, 2024, in which Freddie Eugene Owens (a/k/a Khalil Divine Black Sun Allah) purportedly seeks to authorize one of his attorneys “to elect a method of execution” on his behalf for purposes of S.C. Code Ann. § 24-3-530.

In accordance with S.C. Code Ann. § 62-8-116(a)(9), Director Stirling seeks a judicial determination regarding the validity of the Power of Attorney in this context and, if or to the extent valid, instruction regarding service of the Election Form for Freddie Eugene Owens’s execution, which is scheduled for September 20, 2024.

On August 23, 2024, the Clerk of this Court issued an Execution Notice for Owens under the above referenced Appellate Case Number. Within hours of the Clerk issuing that Notice, Owens’s counsel provided to the Department a Durable Power of Attorney that Owens executed. *See Ex. A.* That Power of Attorney provides that Owens’s “Agent is fully authorized and empowered to perform any acts and to execute any documents, instruments, certificates and papers necessary or appropriate to exercise the authority [he] ha[s] granted to [his agent].” *Id.* at 1. That specifically includes, Owens stated, “signing the election form on [his] behalf and election the manner of execution in writing fourteen days before any execution date, as set forth in S.C. Code § 24-3-530.” *Id.*

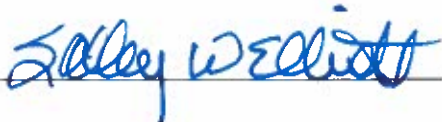
As this Court knows, Director Stirling is required to “determine and certify by affidavit under penalty of perjury to the Supreme Court whether the methods provided in subsection (A)— electrocution, the firing squad, and lethal injection— “are available” for carrying out Owens’s execution. S.C. Code Ann. § 24-3-530(B). This certification is due by August 28, 2024. *See Owens v. Stirling*, No. 2022-001280, 2024 WL 3590797, at *20 n.23 (S.C. July 31, 2024).

After Director Stirling files this certification, an Election Form must be provided for Owens to make an election, if he chooses to do so, “in writing fourteen days before the execution date.” S.C. Code Ann. § 24-3-530(C). Section 24-3-530 does not specifically address whether this election may be delegated by “the convicted person” to an agent, and this Court noted multiple times that a condemned inmate had a right to elect a method of execution (if more than one method was available) in *Owens*.

To ensure that the Department may prepare for Owens's execution with certainty, Director Stirling respectfully petitions the Court to direct him whether the Power of Attorney is valid for purposes of electing a method of execution under section 24-3-530 such that the Election Form should be served on Owens's attorney-in-fact or whether the Power of Attorney is invalid for purposes of electing a method of execution under section 24-3-530 such that the Election Form should be served on Owens.

Respectfully submitted,

Salley W. Elliott
Deputy Director of Legal and Compliance

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August 26, 2024