

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

FREDDIE EUGENE OWENS,
Petitioner,

v.

STATE OF SOUTH CAROLINA
Appellants.

Case No. 1999-011364

Original Jurisdiction Case No. _____

SECOND MOTION FOR A STAY OF EXECUTION

Khalil-Divine Black Sun-Allah, also known as Freddie Owens, an indigent prisoner under sentence of death, respectfully requests that this Court stay his execution, currently scheduled for September 20, 2024, pursuant to *In re Stays of Execution in Capital Cases*, 321 S.C. 544, 741 S.E.2d 140 (1996). On September 5, 2024, contemporaneously with this stay motion, Owens filed a Petition for a Writ of Habeas Corpus in this Court’s original jurisdiction. A stay is necessary while this Court considers that Petition to prevent his execution for a death sentence that was imposed despite constitutional violations that constitute “a denial of fundamental fairness shocking to the universal sense of justice.” *Butler v. State*, 302 S.C. 466, 468, 397 S.E.2d 87, 88 (1990) (quoting *State v. Miller*, 16 N.J. Super. 251, 258, 84 A.2d 459, 463 (1951)).

Relevant Procedural History

In February 1999, Owens was convicted and sentenced to death for the 1997 armed-robbery of a Speedway convenience store in Greenville that resulted in the death of Irene Graves, its cashier. At the time of the crime, Mr. Owens was nineteen years old. This Court twice

reversed Owens’s death sentences, *State v. Owens*, 346 S.C. 637, 552 S.E.2d 745 (2001); *State v. Owens*, 362 S.C. 175, 607 S.E.2d 78 (2004), before affirming his third sentence, *State v. Owens*, 378 S.C. 636, 664 S.E.2d 80 (2008).

On August 23, 2024, this Court issued an execution notice directing the South Carolina Department of Corrections to set Owens’s execution date for September 20, 2024. Execution Notice, *State v. Owens*, No. 1999-011364 (Aug. 23, 2024).

On August 30, 2024, Owens filed a motion to vacate the August 23 execution notice and direct the Clerk of Court not to issue another execution notice while Owens’s Application for Post-Conviction Relief remains pending. Motion for Stay of Execution, *State v. Owens*, No. 1999-011364 (Aug. 23, 2024). That stay motion remains pending.

Reasons to Enter a Temporary Stay of Execution

A stay of execution is necessary to allow this Court to: (1) conduct its statutorily mandated comparative proportionality review under the standard announced in *Moore v. Stirling*, 436 S.C. 207, 871 S.E.2d 423 (2022); and (2) consider, in its original jurisdiction, whether two other constitutional violations present at Owens’s trial constitute “a denial of fundamental fairness shocking to the universal sense of justice.” *Butler*, 302 S.C. at 468, 397 S.E.2d at 88.

In *Moore v. Stirling*, this Court reconsidered its long-held view that South Carolina’s proportionality statute limits the pool of cases for comparison to only those in which the death penalty was actually imposed. 436 S.C. at 211, 871 S.E.2d at 425. In doing so, it noted its “concern that restricting [the] statutorily-mandated proportionality review to only similar cases where death was actually imposed is largely a self-fulfilling prophecy as simply examining similar cases where the defendant was sentenced to death will almost always lead to the conclusion that the death sentence under review is proportional.” *Id.* at 217, 871 S.E.2d at 428 (quoting *State v. Dickerson*, 395 S.C. 101, 125 n.8, 716 S.E.2d 895, 908 n.8 (2011)). This Court

ultimately concluded that the pool of comparison cases should include death-eligible cases that did not result in a death sentence, such as where “the State elected to seek only a life or lesser sentence, as well as cases where a jury considered but ultimately declined to impose a death sentence.” *Id.* at 226, 871 S.E.2d at 433. It noted that “the failure to adequately provide this mandated review for an individual defendant to prevent the wrongful deprivation of life implicates that defendant’s right to due process and, therefore, presents a constitutional issue.” *Id.* at 223, 871 S.E.2d at 432.

Owens’s direct appeal was decided on July 14, 2008, *State v. Owens*, 378 S.C. 636, 664 S.E.2d 80 (2008), and he therefore did not benefit from the *Moore* decision. On direct appeal, this Court concluded that Owens’s sentence was neither excessive nor disproportionate, citing two other cases in which the defendants were sentenced to death. For the reasons discussed in *Moore*, to allow Owens to be executed without undertaking adequate comparative proportionality review violates Owens’s statutory and constitutional rights.

Aside from comparative proportionality review under *Moore*, Owens’s petition also presents two other constitutional violations “which in the setting, constitute[] a denial of fundamental fairness shocking to the universal sense of justice.” *Butler*, 302 S.C. at 468, 397 S.E.2d at 88. First, Owens’s guilt-phase trial court included in the jury charge a mandatory presumption instructing the jury to infer malice from the commission of a felony, in violation of Owens’s state and federal constitutional rights. This Court has described a nearly identical instruction as “patent constitutional error.” *Lowry v. State*, 376 S.C. 499, 506 657 S.E.2d 760, 764 (2008). This shifting of the burden of proof for the malice element of murder was “a denial of fundamental fairness shocking to the universal sense of justice.” *Butler*, 302 S.C. at 468, 397 S.E.2d at 88.

Second, under state and federal constitutional law, a death sentence is inherently disproportionate for a defendant who did not kill, intend to kill, or display reckless indifference to human life. *Enmund v. Florida*, 458 U.S. 782, 801, 102 S. Ct. 3368, 3378–79 (1982); *Tison v. Arizona*, 481 U.S. 137, 158, 107 S. Ct. 1676, 1688 (1986). Owens was convicted on an accomplice theory of felony murder, and the jury that sentenced him to death was not asked to determine who shot Irene Graves or whether Owens had the required level of culpability for his death sentence to comport with the Eighth Amendment under *Enmund* and *Tison*, in violation of Owens’s constitutional rights.

Conclusion

For the reasons set forth above and in the accompanying Petition, “there are exceptional circumstances warranting the issuance of a stay.” See *In re Stays of Execution*, 321 S.C. at 548, 471 S.E.2d at 142, and Owens requests that the Court enter a stay pending the resolution of his petition for a writ of habeas corpus.

Respectfully submitted on this, the 5th day of September, 2024,

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