

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

IN THE ORIGINAL JURISDICTION
CASE NO. 2024-001397

FREDDIE EUGENE OWENS
Petitioner,

v.

BRYAN STIRLING, DIRECTOR OF THE SOUTH CAROLINA DEPARTMENT OF
CORRECTIONS, AND
THE SOUTH CAROLINA DEPARTMENT OF CORRECTIONS,
Respondents.

EMERGENCY MOTION TO RECONSIDER DENIAL OF STAY OF EXECUTION, POST-
CONVICTION RELIEF, AND HABEAS CORPUS

Steven Golden, Freddie Eugene Owens’s co-defendant, signed an affidavit today attesting that “Freddie Owens is not the person who shot Irene Graves at the Speedway on November 1, 1997,” and that “Freddie was not present when I robbed the Speedway that day.” Exhibit A. Given this evidence of Mr. Owens’s innocence of the crime for which he was sentenced to death, “there are exceptional circumstances warranting the issuance of the stay” of his execution, scheduled for this Friday, September 20, 2024. *In re Stays of Execution in Capital Cases*, 321 S.C. 544, 548, 471 S.E.2d 140, 142 (1996). Mr. Owens accordingly moves this Court to reconsider its order of September 12, 2024, denying him a stay of execution, so that he can pursue post-conviction relief—including a motion for new trial—and a writ of habeas corpus in this Court’s original jurisdiction.

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This new evidence meets this Court’s standard for a new trial based on actual innocence. In *Johnson v. Catoe*, this Court granted a stay of execution to consider whether the petitioner should be granted leave to move for a new trial based on after-discovered evidence. 345 S.C. 389, 393, 548 S.E.2d 587, 589 (2001). In that case, as here, the after-discovered evidence was a statement given by the petitioner’s co-defendant mere days before the scheduled execution that—contrary to the co-defendant’s testimony at petitioner’s trial—petitioner had not killed the victims. *Id.* After granting the stay, this Court appointed a referee to take evidence, consider the competency and credibility of the new evidence, and apply the standard outlined in *State v. Spann*, 334 S.C. 618, 619–20, 513 S.E.2d 98, 99 (1999), governing whether a new trial should be granted.¹ *Id.*

Besides being appropriate grounds for a motion for a new trial, Golden’s statement also has direct and perhaps dispositive relevance for the claims of constitutional error that Mr. Owens has presented to this Court, and which this Court denied in its September 12 order. It therefore demonstrates that Mr. Owens’s execution before a court has the opportunity to consider Golden’s statement would “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, 84 A.2d 459 (1951)). “Because the instant case has been brought in the Court’s original jurisdiction, it is within the province of this Court to make findings of fact and conclusions of law regarding the issues[.]” *Sanford v. S.C. State Ethics*

¹ A petitioner is entitled to a retrial if newly presented evidence: “(1) is such that it would probably change the result if a new trial were granted; (2) has been discovered since the trial; (3) could not in the exercise of due diligence have been discovered prior to trial; (4) is material; (5) is not merely cumulative or impeaching.” *Johnson v. Catoe*, 345 S.C. 389, 399, 548 S.E.2d 587, 592 (2001).

Comm'n, 385 S.C. 483, 497, 685 S.E.2d 600, 607, *opinion clarified*, 386 S.C. 274, 688 S.E.2d 120 (2009).

This new evidence of Owens's innocence also requires reconsideration of his motion to stay his execution to allow litigation of the successive petition for post-conviction relief he filed on August 30. As this Court acknowledged in its Order, "the facts in [a] PCR application must be accepted as true and must be viewed in the light most favorable to Owens." Order at 1. That standard requires this Court to accept as true Golden's statement that Owens was not the person who shot Irene Graves on November 1, 1997, and in fact was not even present that day. Exhibit A. Given Golden's refusal until two days before Owens's scheduled execution to reveal that Owens was not present in the Speedway on the night of the crime, Owens has demonstrated that he could not have discovered this critical evidence in time to include in his 2009 PCR, and he is therefore entitled to a hearing on his PCR application. *See McCoy v. State*, 401 S.C. 363, 737 S.E.2d 623. The "unique" combination of facts now present in this case warrant allowing Mr. Owens's successive application for post-conviction review to proceed. *Case v. State*, 277 S.C. 474, 289 S.E.2d 413 (1982).

Mr. Owens is scheduled for execution in just over 48 hours. If this Court does not grant a stay, he will die for a crime that he did not commit. As Mr. Golden attests, "I'm coming forward now because I know Freddie's execution date is September 20 and I don't want Freddie to be executed for something he didn't do....I want to have a clear conscience." We should all want the same.

This Court should reconsider its September 12, 2024 order, grant Mr. Owens a stay of execution and afford him the opportunity to file a motion for new trial and to pursue post-conviction relief by amending his pending PCR application.

Respectfully submitted on this, the 18th day of September, 2024,

s/ Gerald W. King, Jr.

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