

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Case No. 2024-001373

Brad Keith Sigmon, Mikal D. Mahdi,
Marion Bowman, Jr., and Steven V. Bixby
Movants,

v.

STATE OF SOUTH CAROLINA,
Respondent.

MOTION TO MODIFY SCHEDULE FOR ISSUANCE OF EXECUTION NOTICES

Come now Marion Bowman, Jr., Brad Keith Sigmon, Mikal D. Mahdi, and Steven V. Bixby, (“movants”), South Carolina prisoners whose death sentences were affirmed through federal habeas corpus proceedings and are eligible to receive a date for execution. Movants ask this Court not to issue, or to stay the issuance of, any further execution dates until Friday, January 3, 2025. Movants seek this short respite from six seriatim executions to avoid the pendency of warrants throughout the winter holidays and to ensure that all parties can best fulfill their constitutional responsibilities. In support of this motion, Movants show as follows:

This Court previously issued an order addressing execution notices for death row prisoners who exhausted their appeals and were eligible to receive a date for execution. The Court “recognize[d] that a reasonable interval between the issuance of death notices is warranted” and accordingly directed the Clerk to issue death notices “in a manner to ensure an interval of at least thirty-five days between notices.” The Court also established a sequence for the issuance of execution dates following the execution of Freddie Owens on September 20,

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2024: (1) Richard Moore, (2) Marion Bowman, (3) Brad Sigmon, (4) Mikal Mahdi, and (5) Steven Bixby. *See Moore, Owens, Mahdi, and Bowman v. State*, Appellate Case No. 2024-001373 (order issued August 30, 2024).

Following Mr. Owens’s execution on September 20, 2024, the State executed Richard Moore on November 1, 2024. If this Court issues further execution dates in accordance with its order, an execution notice will issue for Mr. Bowman this Friday—November 8, 2024—with his execution scheduled for December 6, 2024. An execution date would then issue for Mr. Sigmon on December 13, 2024, with his execution scheduled for January 10, 2025.

In the wake of these recent events, movants respectfully request that the Court modify its prior order by directing the Clerk to refrain from issuing additional execution notices at least until Friday, January 3, 2025.

In support of this request, movants first note that two prisoners have now been executed in close succession after a hiatus in South Carolina executions of more than a decade. If execution notices issue as contemplated by this Court’s order, movants’ counsel,¹ the State, and the courts will be engaged in end-stage litigation, court proceedings, and—unless these executions are stayed—both the preparations for and the carrying out of executions throughout the winter holidays. Six consecutive executions with virtually no respite will take a substantial toll on all involved, particularly during a time of year that is so important to families.

A brief pause in executions before possibly conducting the next four executions is also reasonable in order to give all interested parties an opportunity to review the recent proceedings for any relevant or best practices that may be employed moving forward.

¹ Attorneys from the Capital Habeas Unit for the Fourth Circuit represented Freddie Owens through warrant litigation and clemency and represent all four movants.

All parties share an interest in ensuring that execution processes are conducted with the utmost care and concern for reliability. *See Moore v. Stirling*, 436 S.C. 207, 230-231 (2022) (Hearn, J., dissenting) (“a death sentence demands the highest protections afforded by law due to its obvious severity and finality.”); *Ford v. Wainwright*, 477 U.S. 399, 411 (1986) (“execution is the most irremediable and unfathomable of penalties . . . death is different”); *Woodson v. North Carolina*, 428 U.S. 280, 305 (1976) (recognizing a heightened “need for reliability in the determination that death is the appropriate punishment”).

The issues that movants’ counsel will raise on their clients’ behalf are aimed, at least in part, on safeguarding the fairness and reliability of the state justice system and the manner in which punishments are imposed. While reasonable minds will certainly differ on the proper resolution of these efforts, the undersigned believe the litigation furthers a common interest in the integrity of the justice system that is shared by all parties to these matters. Ensuring the ability of all involved to litigate and adjudicate these matters in a deliberate and thorough fashion is an area where the interests of the defense, State, and judicial system are aligned. *See, e.g., Berger v. United States*, 295 U.S. 78, 88 (1935) (“The United States Attorney is the representative not of an ordinary party to a controversy, but of a sovereignty whose obligation to govern impartially is as compelling as its obligation to govern at all; and whose interest, therefore, in a criminal prosecution is not that it shall win a case, but that justice shall be done.”).

Similarly, the state of South Carolina certainly has an interest in executions occurring in a fashion that is as minimally error prone as possible. *See Baze v. Rees*, 553 U.S. 35, 62 (2008) (“Our society has . . . steadily moved to more humane methods of carrying out capital punishment.”); *Bucklew v. Precythe*, 587 U.S. 119, 133 (2019) (“Far from seeking to superadd terror, pain, or disgrace to their executions, the States have often sought more nearly the

opposite [I]n the 1970s, [states continued] the search for less painful modes of execution”). Even in the best of circumstances, there is always a risk attached to executions of error, serious harm, and even torture. *See Owens v. Stirling*, 443 S.C. 246, 279-80, 904 S.E.2d 580, 597-98 (2024) (“Any human endeavor carries with it the risk that it will not go as planned Accidents happen [during executions] for which no man is to blame.”) (internal citation omitted). By adjusting those circumstances to provide a brief respite, the Court can help preserve the capacity of corrections staff and minimize the risks of such errors.

Movants are not asking the Court to modify the previously established 35-day interval for execution notices, nor are they asking for an open-ended pause on executions. Movants only seek a temporary, finite pause in light of the winter holidays and to ensure that the litigation and processes relating to upcoming execution warrants remains as sound and reliable as possible.

Thus, movants believe the Court can safeguard constitutional rights, the integrity and reliability of the justice system, and the ability and fortitude of all personnel involved in this succession of cases by exercising its discretion, in the interest of justice, to refrain from issuing additional execution notices until January 3, 2025.

Submitted on November 5, 2024.

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