

RECEIVED

Nov 26 2024

S.C. SUPREME COURT

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

---

STEVEN VERNON BIXBY,  
*Petitioner*

v.

STATE OF SOUTH CAROLINA,  
*Respondent*

---

Appellate Case No. 2007-054161

---

**MOTION TO STAY ISSUANCE OF EXECUTION NOTICE  
ON THE GROUND OF INCOMPETENCE TO BE EXECUTED**

Counsel for Steven Vernon Bixby request an order directing the Clerk to refrain from issuing an execution notice because Mr. Bixby is incompetent to be executed. In support of this motion, counsel submit the following.

1. On February 18, 2007, Mr. Bixby was convicted of two counts of murder, along with conspiracy to commit murder, kidnapping, possession of a firearm during the commission of a crime, and twelve counts of assault with intent to kill. On February 21, 2007, the trial court, following the recommendation of the jury, sentenced Mr. Bixby to death. This Court affirmed on August 16, 2010, with two justices dissenting, *see State v. Bixby*, 388 S.C. 528 (2010), and the United States Supreme Court denied certiorari on April 25, 2011. Mr. Bixby was denied state post-conviction relief, as well as federal habeas relief. *See Bixby v. Stirling*, 143 S. Ct. 2468 (May 15, 2023) (denying certiorari review of initial federal habeas proceedings); *Bixby v. Stirling*, No. 23-7641, 2024 WL 4426978 (U.S. Oct. 7, 2024) (denying certiorari review of post-judgment motion to re-open federal habeas litigation).

2. On August 30, 2024, this Court issued an order stating that Mr. Bixby was eligible for the issuance of an execution notice given that there was no “hold based on a pending collateral proceeding, a finding of incompetency, or otherwise.” *See Moore, Sigmon, Owens, Mahdi and Bowman v. State*, Appellate Case No. 2024-001373.

3. Counsel for Mr. Bixby now give this Court notice of the pendency of collateral proceedings, based on a finding by a defense-retained expert that Mr. Bixby is incompetent to be executed under *Singleton v. State*, 313 S.C. 75, 84, 437 S.E.2d 53, 58 (1993). Counsel for Mr. Bixby has mailed for filing a post-conviction application in the Abbeville County Court of Common Pleas. *See Exhibit 1 (PCR Application)*.

4. In *Ford v. Wainwright*, 477 U.S. 399 (1986), the United States Supreme Court held that the Eighth Amendment prohibits execution of a prisoner who is incompetent. This Court in *Singleton* subsequently held that the determination of competence includes a two-prong analysis:

The first prong is the cognitive prong which can be defined as: whether a convicted defendant can understand the nature of the proceedings, what he or she was tried for, the reason for the punishment, or the nature of the punishment. The second prong is the assistance prong which can be defined as: whether the convicted defendant possesses sufficient capacity or ability to rationally communicate with counsel.

*Singleton*, 313 S.C. at 84, 437 S.E.2d at 58. “Failure of either prong of the test is sufficient to warrant a stay” of execution. *Id.*

5. Dr. Richart DeMier, a clinical psychologist who spent more than twenty years working at the United States Medical Center for Federal Prisoners conducting competency, sanity, and civil commitment evaluations, examined Mr. Bixby for more than fifteen hours on February 13 and 14, 2024, at Broad River Correctional Complex, and via Zoom on April 8, 2024. *See Exhibit 2 (Report of Richart DeMier, Ph.D.)*. After examining Mr. Bixby and

reviewing records provided to him by counsel, Dr. DeMier has found to a reasonable degree of medical certainty that Mr. Bixby is not presently competent to be executed under standards set forth in *Singleton*. Dr. DeMier reports:

Mr. Bixby has significant deficits in his ability to properly assist his counsel, for two reasons. First, he is unable to understand the nature of the proceedings. Second, he does not possess sufficient capacity or ability to rationally communicate with counsel.

*Id.* at p. 28. Dr. DeMier further explains that “Mr. Bixby’s bizarre beliefs have apparently rendered him totally unable to understand the most basic legal procedures available at this stage of his case.” *Id.* at p. 29. And, Mr. Bixby “is unable to have a coherent discussion with his attorneys about matters of legal relevance.” *Id.* These are exactly the kind of deficits that the *Singleton* court found render a person incompetent to be executed and that counsel for Mr. Bixby has raised in the attached post-conviction application.

6. Under the procedure established in *Singleton*, 313 S.C. at 87, 437 S.E.2d at 60, upon the filing of a subsequent PCR application based on competency, an evidentiary hearing will be held. It has been the practice of this Court in capital post-conviction matters to assign a judge to conduct an evidentiary hearing on a preliminary showing of a defendant’s incompetence. *See, e.g. State v. Wood*, Appellate Case No. 2002-022661 (order issued Nov. 17, 2022); *State v. Mar-Reece Hughes* (order issued on May 11, 2000).

WHEREFORE, counsel request that this Court direct the Clerk to refrain from issuing an execution notice for Mr. Bixby, assign a circuit court judge to oversee post-conviction proceedings, and appoint undersigned counsel to represent Mr. Bixby in those proceedings.

Submitted on November 25, 2024.

/s/ Joshua Snow Kendrick  
Joshua Snow Kendrick (No. 70453)  
KENDRICK & LEONARD, P.C.

P.O. Box 6938  
Greenville, SC 29606

COUNSEL FOR STEVEN BIXBY