

STATE OF SOUTH CAROLINA
In The Supreme Court

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S.C. SUPREME COURT

STEVEN VERNON BIXBY,
Petitioner,
v.

STATE OF SOUTH CAROLINA
Respondent.

Appellate Case No. 2007-054161

**RESPONSE IN OPPOSITION TO MOTION
FOR STAY OF EXECUTION**

On August 30, 2024, this Court issued an order stating that Mr. Bixby would be 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. Petitioner Steven Bixby’s execution is currently stayed pursuant to this Court’s Order issued November 14, 2024, instructing that no execution notices be issued until January 3, 2025. On November 25, 2024, counsel for Petitioner sought to file a successive PCR application, alleging that Mr. Bixby is incompetent to be executed for failure to satisfy the state standard set forth in *Singleton v. State*, 313 S.C. 75, 84, 437 S.E.2d 53, 58 (1993). In tandem with the application, Counsel for Mr. Bixby filed a Motion to Stay Issuance of the Execution Notice on the Ground of Incompetence to be Executed. In support of the argument, counsel has presented the report of defense-retained expert, Dr. Richard DeMier.

Respondent would first assert that the application is premature. Issuance of a notice of execution, a ministerial duty, must first occur before a timely contest of competency to be executed

can be asserted. *Singleton v. State*, 313 S.C. 75, 87, 437 S.E.2d 53, 60 (1993) (“Upon the issuance of an Order for Execution by this Court, the defendant or his/her guardian may apply for subsequent Post Conviction Relief on the basis of competency”).¹ Secondly, the Application itself is faulty as Petitioner has not signed the verification. S.C. Code Ann. § 17-27-40. Thirdly, Petitioner’s claims do not satisfy the high burden of “exceptional circumstances” so as to warrant the issuance of stay because the content of their expert report is factually insufficient for the conclusion reached by their expert. See *In re Stays of Execution in Cap. Cases*, 321 S.C. 544, 548, 471 S.E.2d 140, 142 (1996). Notwithstanding Respondent’s confidence in the following arguments, Respondent would ask the Court to hold the record open and not rule on this pending matter so that Respondent can move for an Order permitting an affidavit from SCDC medical personnel on Mr. Bixby’s mental health, competency, and cognitive function, as observed and documented during his incarceration on death row. As counsel for Petitioner has sought to contest Mr. Bixby’s competency, Respondent seeks to provide an affidavit to this Court to further demonstrate the lack of merit to Petitioner’s claims and demonstrate the lack of extraordinary circumstances for which the matter is contingent.

In support of these arguments and in making this response in opposition, Respondent would respectfully show this Court:

Relevant Law

In re Stays of Execution in Cap. Cases, 321 S.C. 544, 548, 471 S.E.2d 140, 142 (1996) provides for the narrow possibility of an additional stay of execution for successive PCR action. To obtain a stay in such circumstances, a petitioner’s “motion must demonstrate that there are exceptional circumstances warranting the issuance of the stay.” *Id.*, 321 S.C. at 548, 471 S.E.2d at

¹ The Motion for Stay is technically premature, as a notice for execution has not been issued.

142. The high bar is understandable as the execution notice issues only after exhaustion (or waiver) of ordinarily available state and federal remedies. See S.C. Code Ann. § 17-25-370.

Singleton is the controlling authority in this matter and it sets forth a two-prong test for determining competency for execution. “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 v. State*, 313 S.C. 75, 84, 437 S.E.2d 53, 58 (1993). In arriving at this standard, this Court noted that the ability to assist does not require the defendant to “be able to think of new issues for counsel to raise,” “suggest a particular trial strategy,” or “choose among alternative defenses.” *Id.* at 82-83, 437 S.E.2d at 57–58. At base, this means the defendant can communicate rationally if he chooses to do so.

2024 PCR Application Claims and Motion to Stay

Petitioner’s application asserts the following claims, in pertinent part:

- a. Mr. Bixby is incompetent to be executed pursuant to the standards set forth in *Singleton v. State*, 313 S.C. 75, 437 S.E.2d 53 (1993), and as a result, his sentence cannot be lawfully carried out.”

...

- c. As 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
- d. 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.*
- e. Dr. DeMier’s opinion that Mr. Bixby is incompetent to be executed is based in part on Mr. Bixby’s belief in bizarre and paranoid concepts:

- i. Mr. Bixby believes that prison officials injected a tracking device when he received a tuberculin skin test.
- ii. He believes death row inmates are traded like hogs on the stock market and the money earned becomes the reward for catching escapees.
- iii. Mr. Bixby believes he received a sign from God approving of his conduct during the capital crime when, the night before the crime, gold was trading at \$1,967 and his birth year is 1967.
- iv. School and medical records were removed, destroyed, or withheld because they would have been helpful to Mr. Bixby. "Somebody went around and made sure they cleaned everything out."
- v. Mr. Bixby believes his actions during the capital crime were justified because "the law backs me up completely" and "the discovery proves my innocence."
- vi. Mr. Bixby also believes that blood found on his clothing contained the DNA of Christ and that crime scene photos contain evidence that an angel was present during the crime.
- vii. Mr. Bixby believes his death warrant is "null and void" because it was not "properly sworn and completed."

- f. These are exactly the kind of deficits – inability to understand the legal proceedings and inability to rationally communicate with counsel – that the *Singleton* Court found render a person incompetent to be executed.

Petitioner requests a stay so as to litigate these claims.

Argument

Respondent's first two arguments are procedural in nature. First, Respondent asserts that the motion for stay is premature in light of *In re Stays of Execution in Cap. Cases*, 321 S.C. 544, 548, 471 S.E.2d 140, 142 (1996). There is no issued notice of execution in which to stay. Secondly, if the action were permitted to proceed, the application is faulty for lack of verification by Mr. Bixby.

Respondent's third argument addresses the supposed merit of the motion and application. In short, the application and the accompanying expert report are facially insufficient.

The motion for a stay asserts that "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 his proceedings. Second, he does not possess sufficient capacity or ability to rationally communicate

with counsel.” The statement, in and of itself is merely a regurgitation of the legal standard, conclusory in nature, and the application demonstrates that it is wholly reliant upon the applicant’s “beliefs” as a basis for judging his competency. Not only is such an argument a nullity in the eyes of the law – for our state and federal Constitutions permit its citizens to adopt whatever beliefs they wish so long as they abide by the laws of applicable jurisdictions – but more importantly, the factual recitations from Dr. DeMier demonstrate that Petitioner is perfectly capable of comprehending his legal proceedings and communicating rationally with his attorneys and doctors. The fact that he holds “bizarre”, less-than-mainstream, or religious beliefs does not relate to his ability to comprehend matters or rationally communicate and such is demonstrated by Dr. DeMier’s recitations.

In summary of the factual matters presented by Dr. DeMier and in dispute of his conclusions, Respondent argues that the expert report demonstrates the following mental faculties and abilities to communicate rationally:

1. Mr. Bixby is aware of his currently assigned legal counsel and able to personally recognize even the less visible staff members, such as paralegals, that are actively attending to his legal needs.
2. At the outset of his examination with Dr. DeMier, he is reported as being capable of *reading and understanding* the Forensic Evaluation Notification Form. Such is considerably detailed document that involves both medical and legal matters. The attestation to his understanding of such is a demonstration that he has the ability for rational comprehension and communication of that comprehension to Dr. DeMier.
3. By Dr. DeMier’s own admission, Mr. Bixby was able to recall and describe the elements of Dr. DeMier’s explanation of the limits of confidentiality that were relevant to his

examination. More impressively, Mr. Bixby was able to recall and describe these matters not just immediately after being informed, but was able to recall such nearly two full months later when Dr. DeMier conducted a follow-up evaluation via Zoom. *Respondent would note that, if an individual truly suffered from an ability to communicate rationally, it would seem highly unlikely that a doctor could even conduct 15 hours of examinations, part of which by way of a remote electronic medium.*

4. Dr. DeMier's report admits that Mr. Bixby was capable of discussing his own background and personal history, noting only that he can become agitated when someone else attempts to disagree with the nature of his own personal experiences.
5. Mr. Bixby demonstrates both an acknowledgement and an understanding of his own birthing difficulties. In an effort to make this fact seem supportive to his own findings, Dr. DeMier offers his own personal judgment that Mr. Bixby did not make sense in his comprehension of such matters, noting that he believed his mother taking aspirin may also have been a cause for birthing complications.
 - a. While Mr. Bixby may in fact be mistaken about the risks to pregnancy posed by aspirin, he demonstrates a competence for understanding that medications taken during pregnancy can lead to birth complications or defects. He has therefore demonstrated the ability to comprehend a complex subject, demonstrated an ability to rationally communicate about that subject, but is simply incorrect about the medicine. Death row inmates are not entitled to stays of execution because they happen to lack accurate medical knowledge.
6. Dr. DeMier's report demonstrates that Mr. Bixby is capable of understanding and discussing his family relationships and history. This includes Mr. Bixby providing Dr.

DeMier with his own personal assessment that his discipline received as a child was not abusive and was balanced to the misbehaviors he committed. Dr. DeMier may not “agree,” but the challenge to competence here is not a question of agreement about Mr. Bixby’s beliefs, it is a question of *his ability to communicate rationally*. Mr. Bixby has demonstrated his ability to do so.

7. Next, Mr. Bixby’s evaluation demonstrated an ability to identify and articulate the belief that his siblings were embellishing the living conditions he was at times raised in – that is, the reference to “frost on the bedsheets.” Mr. Bixby did not just provide a disagreement with the characterizations of such facts, but logically and rationally noted that if such were to be the case then their house would have suffered from frozen pipes. Dr. DeMier, again, demonstrated in his report a personal disagreement as to this fact, but in review, Respondent submits that Mr. Bixby has an exceptionally valid point.
8. Mr. Bixby demonstrated an ability to acknowledge and discuss the sexual abuse he sustained in his early years.
9. Mr. Bixby demonstrated an ability to describe and defend his scholastic aptitude and performance by noting that had his grades been as poor as described by others he would not have been able to participate in extra-curricular activities. Respondent lacks sufficient information to know whose assessment and memory is more accurate, but again Mr. Bixby’s evaluation should not be about his accurate recall of decades old particular facts, but about his ability to rationally communicate. He has done so again, here.
10. Mr. Bixby was able to recall and rationally communicate his homeschooling, the educational resources that his mother had available for him, and his experience of attending court with his mother.

11. Next, Mr. Bixby was able to recall and rationally communicate to Dr. DeMier his own work history. Of particular interest here is that with each of Mr. Bixby's answers Dr. DeMier had to further clarify his own question so as to obtain the specific answers he was looking for. Mr. Bixby first articulated his work history to include one-off work he performed for neighbors in his community. When asked for clarification as to steady work, he articulated his "under-the-table" employment for his family. When asked for clarification of steady and taxable employment, Mr. Bixby answered that question as well. Notably, Bixby quite precisely narrowed his own work history to suit the Doctor's twice amended parameters. This is facially and starkly contradictory to Dr. DeMier's supposed findings regarding Mr. Bixby's ability to understanding his legal proceedings and communicate rationally with his attorneys.

12. Mr. Bixby was able to recall the date of his marriage and the nature of his marriage.

13. Mr. Bixby recalls having his guns removed from his home in 1994, during an episode wherein he suffered from suicidal thoughts. He again demonstrates his ability to rationally communicate, and even communicate on matters of law, by noting that he believed such constituted a violation of his 2nd Amendment rights. Whether ultimately "correct" on his assessment of the law in this regard or not, it certainly demonstrates his ability to comprehend his legal matters and communicate rationally with his attorneys about those matters.

- a. Just as death row inmates are not entitled to stays of execution because they happen to lack accurate medical knowledge, likewise are they not entitled to stays of execution for not possessing sufficient legal training or knowledge.

14. Mr. Bixby next discussed with Dr. DeMier his prior legal troubles which took place before the murders for which he is sentenced. He recalled one such issue being a DUI arrest. Dr. DeMier again attempts to offer an editorialization of this subject, by noting that Mr. Bixby demonstrated narcissism and conspiratorial thinking. However, such are not psychoses – indeed, even Dr. DeMier conceded that Mr. Bixby “does not meet the diagnostic criteria for any psychotic disorder. . .” (Report, p. 25). Moreover, such are not matters that detract from Mr. Bixby’s competence. His ability to recall and discuss his own self-representation is an acute demonstration of his understanding of legal proceedings and his ability for rational communication, regardless of whether he has an accurate assessment of his own legal skills. Similarly, his belief that his arrest was the result of retribution for his speaking out against the police on an earlier occasion, is a rational, even if likely erroneous, communication of beliefs – not an inability to communicate.

15. As to the crimes in question, Dr. DeMier admits that Mr. Bixby’s recollection of events was largely correct, and therefore rationally communicated.

16. In discussion of his legal matters, Mr. Bixby articulated his belief that his execution could be delayed by the repetitious filing of federal habeas actions. Such is a clear demonstration that Mr. Bixby is fully capable of comprehending his legal proceedings. Though Petitioner is not precisely correct under the law, the intent of his proposition is not entirely incorrect, as it is well-known that death row inmates will continue to file pleadings in both state and federal court right up until the day the execution is carried out.

The content of Dr. DeMier’s report focuses entirely upon Mr. Bixby’s beliefs, and whether those beliefs are factual or mainstream in nature. His characterizations of such as being bizarre do

not support his finding of incompetency, they merely demonstrate disagreement with the beliefs in question. It is here that the Motion and Application miss the mark.

Mr. Bixby's unusual beliefs are in no way a new phenomenon or somehow representative of a change in his cognitive faculties or mental health. In fact, these beliefs are well documented in the prior records and testimonies offered during his first PCR action. They were even discussed by experts in the context of evaluating his mental health. Mr. Bixby may be a narcissist and a conspiracy theorist – as has been diagnosed. (See Exhibit 1, Dr. Frierson's 2006 Evaluation).² He may in fact have fervent religious beliefs and beliefs about the inappropriate functions of government in America – as has been identified. But none of that is relevant to the question of his competency for sentencing. He is fully capable of understanding his legal proceedings and rationally communicating with counsel so that they can articulate a defense on his behalf. The law does not require him to be strategic or thoughtful in choosing what legal strategies he would prefer his attorneys pursue. The law does not even require him to understand the intricacies of the law and or accept why his beliefs may be legally inaccurate or out of the mainstream. What is necessary is that he have the ability to understand his legal proceedings and be able to communicate rationally with counsel so that they can defend him. Rational communication can exist even when counsel does not agree with their client's beliefs or opinions concerning the case. See *Robert Leroy McCoy v. Louisiana*, 584 U.S. 414, 421-22, 138 S. Ct. 1500, 1508, 200 L. Ed. 2d 821 (2018) (The Sixth Amendment does not effectuate total control over the case by either counsel or the defendant). Dr. DeMier's report has repeatedly and clearly demonstrated that Mr. Bixby possesses such competency. Compare *Singleton v. State*, 313 S.C. 75, 84, 437 S.E.2d 53, 58 (1993) (noting lack of competency was demonstrated by the inmate's incognizance of his own mortality and the

² This exhibit is provided from the Joint Appendix for Petitioner's federal habeas proceedings and has marks on the document that were included as part of the record.

inability to respond to legal counsel with answers more complex than yes and no). Counsel for Mr. Bixby has failed to demonstrate any extraordinary circumstances that would necessitate a stay of execution on the basis of competency.

CONCLUSION

Respondent asserts that the above arguments are sufficient to demonstrate that the burden for relief in this matter has not been met, but in an effort to ensure that this Court is thoroughly informed, Respondent would request that the record remain open and the matter remain pending until such time as Respondent can move for and obtain a medical affidavit confirming Mr. Bixby's competence from SCDC's onsite staff. Once the affidavit is subsequently obtained and filed, for the above stated reasons, Respondent respectfully requests this Court deny the Motion for Stay and dismiss the newly submitted application.

Respectfully submitted,

ALAN WILSON
Attorney General

DONALD J. ZELENKA
Deputy Attorney General

MELODY J. BROWN
Senior Assistant Deputy Attorney General
S.C. Bar No. 14244

W. JOSEPH MAYE
Assistant Attorney General
S.C. Bar No. 100851

BY: s/ W. Joseph Maye
W. Joseph Maye

Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211-1549
(803) 734-6305

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