

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

STEVEN VERNON BIXBY,
Petitioner

v.

STATE OF SOUTH CAROLINA,
Respondent

Appellate Case No. 2007-054161

**RESPONSE IN OPPOSITION TO
RESPONDENT’S MOTION FOR ORDER REQUIRING DISCLOSURE
OF MENTAL HEALTH STATUS AND COMPETENCY**

On December 10, 2024, Respondent submitted to this Court a request for an order “that would permit mental health professionals at SCDC, who are responsible for Mr. Bixby’s mental health needs on a daily basis, to provide this Court with an affidavit summarizing Mr. Bixby’s mental health and in particular his ability to communicate rationally.” For the reasons already explained in Mr. Bixby’s reply brief filed on December 12, 2024, Respondent’s request for this type of factual development at the appellate level is out of step with the hearing procedures the Court long ago established in *Singleton*. Respondent’s request should be denied on this basis alone. Undersigned counsel believes there is no other case raising an issue of competency to be executed in which this Court has permitted factual development and resolved factual disputes in the first instance, prior to a hearing.

Procedural irregularity is not the only reason to deny Respondent’s motion. While SCDC personnel may be qualified to treat Mr. Bixby’s mental health, Respondent has made no showing that the personnel whose opinions they would proffer to the Court are qualified as forensic

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experts to offer an opinion about competency. Forensic psychology and mental health is a specialized field that requires unique training and experience. For example, the American Psychological Association's [*Specialty Guidelines for Forensic Psychology*](#) notes that "training in forensic psychology is available in pre-doctoral, internship and post-doctoral settings, and the American Psychological Association recognized forensic psychology as a specialty in 2001, with subsequent re-certification in 2008." The Court should not allow Respondent to undertake a novel factual development approach in an appellate setting by offering information from witnesses who may not even be qualified to address the ultimate question in this proceeding.

Respondent's motion should also be denied because it raises unnecessary questions of conflict of interest. The S.C. Department of Corrections is the state agency tasked with carrying out Mr. Bixby's execution. There is at least an appearance if not an actual conflict of interest in asking SCDC mental health personnel to opine on a question that will determine whether Mr. Bixby can be executed, when SCDC itself will be carrying out that execution. This in all likelihood is why the normal practice has been for forensic experts from the S.C. Department of Mental Health to give opinions about a defendant's competency. At best, an SCDC competency evaluation would have an appearance of bias. At worst, it may be actually biased.

Similarly, there is a clear conflict in asking SCDC mental health personnel who are treating Mr. Bixby to also forensically evaluate him for his competency to be executed. Again, the APA's *Guidelines for Forensic Psychology* warn against this, explaining that "providing forensic and therapeutic psychological services to the same individual or closely related individuals involves multiple relationships that may impair objectivity and/or cause exploitation or other harm." For this reason, the Guidelines urge practitioners "to disclose the potential risk and make reasonable efforts to refer the request to another qualified provider." Particularly at

this early stage of the litigation, in a forum not well-suited for evaluating expert requests and finding facts, the Court should decline to inject this unnecessary complication into the case.

The evidentiary record in *Hughes v. State*, 367 S.C. 389, 626 S.E.2d 805 (2006), illustrates these conflict of interest considerations and the sensible division of roles between the two agencies. In *Hughes*, during a probate proceeding, Mr. Hughes was treated at the DOC psychiatric hospital, and personnel from that hospital testified about their treatment and observations of his mental state. *Id.* at 399, 626 S.E.2d at 810. However, at the hearing on Mr. Hughes’s competency to waive PCR review, it was psychiatrists from the Department of Mental Health, not the DOC, who were called to give an opinion about competency under the *Singleton* standard. *Id.* at 400-01, 626 S.E.2d at 811. In Mr. Bixby’s case, Respondent does not supply the Court with any reason to depart from this established separation of the roles of mental health professionals in a competency proceeding.

At bottom, Respondent’s request for an order allowing SCDC staff to give an affidavit about Mr. Bixby’s competency only underscores the need to appoint a judge and remand this case for a hearing. The types of issues that Respondent raises—and the question of what type of evaluating expert should be appointed for the State—are best suited for initial consideration in a fact-finding forum, by a trial judge who can exercise discretion based on the parties’ contentions, prior to appellate review in this tribunal. Mr. Bixby thus renews his request for remand and an evidentiary proceeding.

Submitted on December 20, 2024.

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