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Jan 06 2025

S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In the Supreme Court

Appellate Case No 2024-002113

MARION BOWMAN, JR.,
Petitioner,

v.

BRYAN P. STIRLING,
Respondent.

MOTION FOR STAY OF EXECUTION
PENDING RESOLUTION OF PETITION FOR WRIT OF HABEAS CORPUS

Petitioner, Marion Bowman, Jr., through undersigned counsel requests a stay of execution pursuant to *In re Stays of Execution in Capital Cases*, 321 S.C. 544, 548, 471 S.E.2d 140, 142 (1996). Bowman’s execution is currently scheduled for **January 31, 2025**. Now pending before this Court is a Petition for Writ of Habeas Corpus raising circumstances that Bowman contends “constitute[] a denial of fundamental fairness shocking to the universal sense of justice.” *State v. Butler*, 302 S.C. 466, 468, 397 S.E.2d 87, 88 (1990).

Bowman filed the present Petition for Writ of Habeas Corpus on December 16, 2024, requesting this Court consider grave constitutional violations, resulting from the suppression of evidence in violation of *Brady v. Maryland*, 373 U.S. 83 (1963), trial counsel’s racist attitudes violating Bowman’s right to the effective assistance of counsel, and Bowman’s record and character rendering his death sentence disproportionate. Allowing Bowman’s execution to proceed while these questions remain unresolved risks an unjust execution that could not be remedied given the irrevocability of the punishment. *See Murray v. Giarratano*, 492 U.S. 1, 8–9 (1989) (“The

finality of the death penalty requires ‘a greater degree of reliability’ when it is imposed.” (citing *Lockett v. Ohio*, 438 U.S. 586, 604 (1978)).

Bowman’s petition demonstrates “there are exceptional circumstances warranting the issuance of a stay.” *In re Stays*, 321 S.C. at 548, 471 S.E.2d at 142. As a matter of timing, at the time of this filing, there are only twenty-five (25) days until Bowman’s scheduled execution. Though Bowman filed the petition before this Court issued an execution notice, and the parties have efficiently finalized briefing, the complexities of Bowman’s claims necessitate more time for review than the brief time between the issuance of an execution notice and an execution date. S.C. Code § 17-25-370. Bowman’s claims raise issues related to the credibility of witnesses and weight of evidence at both the guilt and sentencing phases of his trial. They also raise issues related to trial counsel’s PCR testimony and trial performance and Bowman’s record in the more than two decades he has spent on death row. To allow time to thoroughly review these materials and address the merits of these claims, a stay of execution is warranted. Failure to do so would risk an unreliable and erroneous execution, which cannot be remedied after the fact.

Additionally, Bowman’s claims raise grave concerns of constitutional errors infecting both the guilt and sentencing determinations in Bowman’s case. Bowman’s claims are fully laid out in his Petition for Writ of Habeas Corpus and Reply, but a brief discussion of their merit and likelihood of success is warranted here.

Bowman’s *Brady* claims allege the State withheld evidence that would have undermined the credibility of two key witnesses against Bowman—James “Tawain” Gadson and Hiram Johnson. The only evidence placing Bowman at the murder crime scene came from Gadson,¹ and Johnson testified to a chilling “confession” allegedly made by Bowman. Aside from their

¹ No forensic evidence tied Bowman to the crime scene.

testimony, the State's case relied exclusively on circumstantial evidence and incentivized testimony from witnesses who received plea deals in exchange for their testimony. *See* Petition 2–4. Both Gadson and Johnson's testimony raise credibility issues: Gadson because he was initially charged with the murder giving him the incentive to testify that Bowman committed it to satisfy his plea agreement with the State and avoid being himself convicted of the murder; Johnson because he did not tell the police about the alleged confession in his pretrial written statement to police. *See* Petition 4–6.

Bowman's trial counsel, however, were unable to challenge Gadson and Johnson's credibility with all available impeaching evidence because the State withheld impeachment material related to both witnesses. As to Gadson, the Solicitor withheld a State investigator's report that another inmate told him that Gadson confessed to committing the murder in front of numerous people in the Dorchester County Detention Center. Petition 15–18. The State also withheld Gadson's mental health records showing Gadson suffered from blackouts, had memory problems, and heard voices and beeping noises. Petition 18–21. As to Johnson, the State withheld evidence that he had pending charges brought by the same prosecutor's office, giving him incentive to curry favor with the Solicitor by providing testimony against Bowman. Failure to turn over this evidence going directly to the credibility of the key witnesses against Bowman raises grave constitutional concerns pursuant to *Brady* and undermines the reliability of the guilt and sentencing determinations in this case.

Bowman's lead attorney also held racist attitudes, which permeated his representation of Bowman, further undermining the reliability of Bowman's convictions and sentence. Prior to trial, Bowman's lead counsel pressured Bowman to plead guilty because he was black and the victim was a "white female." Petition Exhibits 99. Trial counsel did not believe his black client's

profession of innocence, causing him to fail to present credible evidence that would have undermined the State's theory and bolstered Bowman's claims of innocence—namely that the victim regularly purchased drugs from Bowman and others and pawned personal items to obtain more drugs, which would have provided an explanation for why Bowman had access to the victim's car and her watch in his pocket. *See* Petition 29–45. On top of that, trial counsel injected odious racial prejudice into Bowman's case by viewing it simply as pitting the victim—a “little white girl”—against Bowman as a “black man,” even though the victim was older than Bowman. *Id.* “Discrimination on the basis of race, odious in all aspects, is especially pernicious in the administration of justice.” *Rose v. Mitchell*, 443 U.S. 545, 555 (1979). This Court should not allow an execution based on convictions and a death sentence obtained on the basis of ineffective, conflicted trial counsel whose racial prejudice infected the proceedings.

Finally, Bowman raises the novel issue of this Court's proportionality review following decades of maturation and good conduct by the petitioner. Petition 45–76. Since his arrest at just 20 years old, Bowman has matured to adulthood with a record of positive adaptation to prison and helping other inmate and officers, family support and stability, strong spiritual development and beliefs, and continued self-improvement. The question before this Court is whether more than twenty (20) years of good conduct should be weighed in evaluating the proportionality of a death sentence pursuant to South Carolina Code section 16-3-25(C)(3) and *Moore v. Stirling*, 436 S.C. 207, 871 S.E.2d 423 (2022).

Because the Court is currently considering the merits of Bowman's claims for habeas relief, “there are exceptional circumstances warranting the issuance of a stay,” *See In re Stays of Execution*, 321 S.C. at 548, 471 S.E.2d at 142, and Bowman requests the Court enter a stay pending the resolution of his petition for a writ of habeas corpus.

Respectfully submitted,

s/ Lindsey S. Vann

TERESA L. NORRIS
CAPITAL HABEAS UNIT FOR THE FOURTH
CIRCUIT
129 West Trade Street, Suite 300
Charlotte, NC 28202
(980) 378-5105
Teresa_Norris@fd.org

LINDSEY S. VANN
JUSTICE 360
900 Elmwood Avenue, Suite 200
Columbia, SC 29201
(803) 765-1044
lindsey@justice360sc.org

S. BOYD YOUNG
S.C. COMMISSION ON INDIGENT DEFENSE
CAPITAL TRIAL DIVISION
1330 Lady Street, Suite 401
Columbia, SC 29201
(803) 734-7818
byoung@sccid.sc.gov

Counsel for Marion Bowman, Jr.

January 6, 2025.