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Jan 10 2025

S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
In The Supreme Court

MARION BOWMAN, JR.,

Petitioner,

v.

BRYAN P. STIRLING,

Respondent.

Appellate Case No. 2024-002113

RESPONSE IN OPPOSITION TO MOTION FOR STAY OF EXECUTION

Petitioner Marion Bowman, Jr.'s execution is scheduled for Friday, January 31, 2025. Prior to the issuance of the notice on January 3, 2025, Bowman filed a petition in this Court asking the Court to exercise its original jurisdiction to review multiple issues and grant a writ of habeas corpus. Bowman now seeks a stay of his execution for this Court to consider his petition. The State opposes the motion primarily because Bowman has failed to show this Court will exercise its original jurisdiction as the petition fails to set out the procedural requirements necessary to warrant this extraordinary review. Consequently, Bowman cannot show the "exceptional circumstances" to support a stay under the requirements of *In re Stays of Execution in Cap. Cases,* 321 S.C. 544, 548, 471 S.E.2d 140, 142 (1996). In support of this position, Respondent would respectfully show the Court:

1. Bowman admits in his petition for a writ of habeas corpus that he has been in litigation over twenty years, and that he has exhausted his ordinarily available state and federal remedies. (Pet. at 10). Now facing execution, he recycles rejected *Brady* claims

and makes a new specious claim against one of his attorneys from the 2002 trial (he has yet to explain why he would not have complained earlier if he heard comments in or around the time of trial that indicated to him that counsel held a racial animosity of any kind).[1] Further, he seeks to have this Court craft a new proportionality review,[2] untethered to statute or other provision of law, geared toward overriding the twelve-member jury's decision that death was appropriate based on the circumstances of the crime and the character of the defendant who committed that crime.[3] None of these should warrant merits review at all, much less support a stay to delay the execution.

2. Bowman's arguments fail to satisfy the first hurdle of demonstrating a basis *to seek* a Stay – that is, the existence of an action wherein the Court has exercised its original jurisdiction such that a merits review of his Petition for Writ of Habeas Corpus is warranted. However, he also fails to satisfy the independent standard for *the grant* of a Stay. There must be exceptional circumstances warranting the Stay and Bowman has failed to prove such. As previously noted the procedural bars to relief on any of these claims are conclusive. Likewise, the merit of these arguments is lacking.

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[1] Bowman does not go so far as to offer a sworn affidavit accusing counsel of racial animosity toward him or expressed in the case, even though Bowman is required to show in his petition that relief may be warranted. *See Moore v. Stirling*, 436 S.C. 207, 219, 871 S.E.2d 423, 429 (2022). He has only made unsworn statements thus far, though he and/or counsel have published such statements through non-pleading material posted on his counsel's website.

[2] Petitioner received the one proportionality review he was entitled to during his direct appeal as provided by statute. *See State v. Bowman*, 366 S.C. 485, 502–03, 623 S.E.2d 378, 387 (2005) (citing S.C. Code Ann. § 16-3-25(C)(3)(2003)).

[3] It is inescapable Bowman dresses his request in proportionality clothing, but his request is for clemency – a power reserved to the governor, not the courts.

Bowman's habeas petition asserts that he should receive habeas relief on the basis of his three previously litigated *Brady* claims, the assertion that counsel was racist in his representation of Petitioner at trial, and that he should receive a new proportionality review with consideration of his good behavior during incarceration. As set forth in the Return to the Petition for Writ of Habeas Corpus, and as briefly reasserted herein, the *Brady* claims have each been considered and 1) denied by the PCR court, denied certiorari by this Court, denied habeas relief in federal district court, denied habeas appellate relief by the Fourth Circuit Court of Appeals, and denied certiorari by The Supreme Court of the United States. The PCR court's findings reflect that two of the three claims failed to demonstrate suppression, and all three lacked materiality. Despite four subsequent reviews of that decision, no court has found merit to Bowman's arguments for relief. These claims are exhausted, both legally and figurately, and they possess no merit worthy of consideration by this Court. Bowman's second argument asserts that trial counsel was a racist who injected his racists views into this presentation of the case to the jury during trial. Bowman has defaulted in his opportunity to raise this claim as an ineffective assistance of counsel claim, and in any case, the record does not support the claim. As set forth in Respondent's Return to the petition, a careful review of the record demonstrates that the trial lacked any measurable articulation of racist opinions or assertions by counsel and the PCR hearing demonstrates that counsel was taking considerable efforts to *eliminate* the concern for race from the trial. Lastly, Bowman seeks a legally unfounded new proportionality review. *Moore v. Stirling*, 436 S.C. 207, 871 S.E.2d 423 (2022) does not support Petitioner's argument, nor is there any legal precedent for hearing post-sentencing mitigation evidence in the form of a petitioner's alleged demonstration of good character while imprisoned.

The claims raised are procedurally barred and utterly without merit. No exceptional circumstance exists for which a Stay may be issued.

3. This Court has recently set out the very stringent state test for original jurisdiction habeas relief:

> A habeas petition must support the relief requested. *Gibson v. State*, 329 S.C. 37, 40, 495 S.E.2d 426, 427 (1998). While the allegations in the petition are treated as true, the petition must set forth a prima facie case showing the petitioner is entitled to relief. *Id*. In other words, it must allege that the petitioner has exhausted all other remedies, and it must set out a constitutional claim that meets the standard delineated in *Butler*. *Id*. at 40, 495 S.E.2d at 428.

Moore v. Stirling, 436 S.C. 207, 219, 871 S.E.2d 423, 429 (2022). See also *Bulter v. State*, 302 S.C. 466, 468, 397 S.E.2d 87, 88 (1990).

In order to obtain a stay, Petitioner appears to read out the "prima facie" requirement to the state test and maintains that this Court is reviewing the merits of the petition.

4. This Court unquestionably has the constitutional authority to issue a number of extraordinary writs in its original jurisdiction, including a writ of habeas corpus. *See* S.C. Const. Art. V, § 5. The exercise of original jurisdiction, though, is discretionary. *Id*. *See generally* 39 C.J.S. Habeas Corpus § 293 (December 2024 update). A petition is required to seek such review. Rule 245(b), SCACR. Original jurisdiction review is not obtained by the filing of a petition, it is requested. *See Mod. Fin. Co. v. Hicks*, 235 S.C. 212, 216, 110 S.E.2d 859, 861 (1959) (in deciding whether to act on a petition for a writ of prohibition: "Whether or not this court should exercise original jurisdiction is a matter not for agreement between litigants, but for determination by this Court in the light of its rules and of the facts upon which such jurisdiction is invoked."). As this Court has said, "habeas

corpus continues to be available as a constitutional remedy provided a petitioner qualifies for this extraordinary relief and clears the procedural hurdles." *Gibson v. State*, 329 S.C. 37, 41, 495 S.E.2d 426, 428 (1998) (emphasis added). *See also Moore v. Stirling*, at 219, 871 S.E.2d at 429 ("[h]abeas relief is seldom used and acts as an ultimate ensurer of fundamental constitutional rights") (quoting *Williams v. Ozmint*, 380 S.C. 473, 477, 671 S.E.2d 600, 602 (2008)).

While Bowman admits the high bar for original jurisdiction habeas relief, (see Pet. at 11), he fails to sufficiently acknowledge the difference between the discretionary act of exercising jurisdiction and considering any of the various issues presented on the merits. Several cases highlight the difference. In *Moore v. Stirling*, Appellate Case No. 2020-001519, this Court announced to parties that it would review proportionality review procedures and issued an order setting a briefing schedule. *See Moore v. Stirling*, 436 S.C. 207, 230, 871 S.E.2d 423, 435 (2022). In another filing by Moore, this Court simply denied the petition for original jurisdiction habeas. (*Moore v. Stirling*, Appellate Case No. 2023-001345, August 12, 2024 Order), as it did recently for Freddie Owens, as well. (*Owens* v. ____, Appellate Case No. _________. ___, 2024 Order). In *McWee v. State*, 357 S.C. 403, 593 S.E.2d 456 (2004), this Court denied the writ on the failure to show an error "shocking to the universal sense of justice," and additionally, because there were "no intervening circumstances by way of new law, after-discovered evidence, or any other alleged fact, which in the setting, warrants" relief and denied the petition. 357 S.C. at 408, 593 S.E.2d at 458. Similarly, this Court issued an Order denying a habeas petition filed by Freddy Owens because he failed to present a case that met the high standard. *Owens v. Stirling*, Appellate case No. 2021-000609, April 29, 2022 Order). Bowman's mere assumption this

Court is considering the merits of his petition is erroneous. (Motion to Stay, at 4). Under the cited precedent, it is more likely this Court would grant a stay, if it felt a consideration of the merits was necessary. Bowman's logic is precisely backwards.

5. Again though, the circumstances of this case are unexceptional. Bowman has availed himself of the right to trial by jury, direct appeal, state post-conviction relief proceedings, an appeal of his post-conviction relief proceedings, and federal habeas review of his conviction and sentencing to the South Carolina District Court of the United States, the Fourth Circuit Court of Appeals, and The Supreme Court of the United States. His claims now raised for state habeas relief do not present extraordinary reasons for review because each claim has either been, 1) exhausted on the merits by prior review, 2) rendered unavailable pursuant to various doctrines of finality, 3) waived for failure to raise the claim to the appropriate court at the appropriate time, or 4) lacking any legal foundation. Specifically, the *Brady* claims are not extraordinary, as they are both exhausted and issue precluded from further review. The determination of proportionality is barred by the doctrine of *Res Judicata*, as this Court has already decided the issue. The assertion of racism, notwithstanding its lack of merit as denoted within the record, was available to Bowman to raise as a basis for ineffective assistance of counsel. Bowman did not pursue the claim; he may not do so now as the allegation fails to demonstrate any extraordinary circumstance – in truth, it is spurious and an injuriously twisted narrative.[4] The merits of

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[4] As the majority in *Hood v. United Services Auto Association* just recently reminded: "Attorneys may have 'an obligation to provide zealous representation' to their client, but they also have 'a corresponding obligation to opposing parties, the public, [their] profession, the courts, and others to behave in a civilized and professional manner in discharging [their] obligations to [their] client[s].'" *Id.*, No. 2023-000423, 2025 WL 45711, at *7 (S.C. Jan. 8, 2025) (quoting *In re White*, 391 S.C. 581, 589, 707 S.E.2d 411, 415 (2011)). The majority underscored, "in the strongest terms, that bringing a meritless claim fails to meet this obligation." *Id.* Further, this portion of the

each of these claims are lacking as well, and the nature of Bowman's own arguments largely belie the propriety of his motion and Petition before this Court.[5]

6. Petitioner's arguments for a Stay boil down to the premise that any argument made in relation to a notice of execution must constitute an extraordinary reason or emergency warranting original jurisdiction and an exceptional circumstance for a Stay to conduct such review. It does not, and the substance of Petitioner's arguments and the record relating thereto make it clear that *these claims* fail. The motion should therefore be dismissed.

CONCLUSION

For the above stated reasons, Respondent respectfully requests this Court deny the Motion for Stay.

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concurrence from *Hood* is especially notable here: "The trust given to an attorney to be a zealous advocate should hardly ever extend to calling opposing counsel a liar. "*Hood v. United Servs. Auto Ass'n*, No. 2023-000423, 2025 WL 45711, at *8 (S.C. Jan. 8, 2025) (James, J., concurring). How much more damaging is a baseless and publicized allegation of racism levied at a member of the bar, when such is made for the first and only time more than twenty years after trial and in a manner where the attorney's reputation is at stake?

[5] Bowman insists that his arguments involve a review of "the credibility of witnesses and the weight of evidence at both the guilt and sentencing phases of trial." Neither is an appropriate endeavor for this Court, as it is tasked with addressing errors of law, and in the instance of original jurisdiction, constitutional violations so severe as to be shocking to the sense of justice.

Respectfully submitted,

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January 10, 2025