

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

Respondent's Reply to the Response in Opposition

Counsel for petitioner Steven Vernon Bixby has asked this Court to stay his execution and determine whether he is competent to be executed on a very narrow allegation – that his belief system renders him unable to “communicate rationally” with his attorneys. A fair assumption is that Bixby and his attorneys do not agree.¹ Indeed, as pointed out in the return, Bixby has not personally signed the verification for the PCR application, though no issue on general competency is raised or any mental disability alleged. (*See* Return to Petition for Stay at 2). Even so, to fairly show that there is no factual basis to develop, the State has asked for access to Bixby’s current medical professionals in the Department of Corrections. In response, Bixby’s counsel urges this Court to deny the State’s request and asserts that “factual development” in this Court is “out of step” with hearings allowed under *Singleton*. (Resp. to Motion at 1). Bixby’s counsel misses the point.

¹ Simply, refusal to work with counsel is different than an inability to do so. *See, e.g., United States v. Cometa*, 966 F.3d 1285, 1293 (11th Cir. 2020) (collecting cases).

Bixby's beliefs have never changed over the course of many years of litigation. (*see* Return to Petition for Stay at 10). There is no "fact" to develop in this regard. Further, there is no law that compels him to change his beliefs – social, political, or otherwise – to be deemed "competent" in any legal proceeding.² Bixby's counsel's motion is based more on requesting this Court settle a conflict in representation rather than presenting a cognizable concern on competency to be executed. It is also telling that Bixby's counsel would object to an order allowing access to medical personal when it is Bixby's counsel who has placed Bixby's competency to be executed at issue, and references care provided from SCDC mental health personnel in doing so. Access to Bixby's current mental health professionals is prudent in determining whether there truly has been a change in mental health status – this *adds* to reliability of the decision this Court must make rather than detracts from it.

Instead, though, Bixby's counsel asks this Court to allow him proceedings³ and a hearing, which, it would be anticipated, the medical professions will testify on that which is not in question – Bixby's belief have never changed over the court of many years of litigation. That Bixby continues to hold those beliefs is neither new nor evidence of deterioration or any alleged

² Racist beliefs are abhorrent, but do not automatically undermine competency. *See generally United States v. Roof*, 10 F.4th 314, 342 (4th Cir. 2021) (beliefs not from mental health issue but "rooted in 'a deep seated racial prejudice'"). Similarly, terrorists hold beliefs rejected by many, many people, but those beliefs alone would not undermine competency. *See generally United States v. Tsarnaev*, 595 U.S. 302, 306 (2022) (defendant sentenced to death after inflicting catastrophic damage to individuals during the Boston Marathon in 2013 as a result of his "actively contemplating how to wage radical jihad"). What Bixby's counsel misses is that there is no factual development necessary for the rejection of his position. He has brought a claim that is insufficient on its face and does not support the requested stay to explore competency to be executed.

³ If this Court should consider Bixby's counsel's request, then to prevent unmerited delay in resolution, this Court should impose strict, expedited requirements. After all, Bixby's counsel has already developed his theory and evidence; thus, delay is not warranted.

circumstance that would warrant a stay. (*See* Return at 5-9). The unnecessary delay anticipated in Bixby’s preferred course is unreasonable, and certainly so without some initial inquiry into Bixby’s present mental state. *See generally Thompson v. Wainwright*, 714 F.2d 1495, 1506 (11th Cir. 1983) (“Each delay, for its span, is a commutation of a death sentence to one of imprisonment.”).

Bixby’s counsel also alleged a potential issue with whether the personnel would include a qualified forensic expert.⁴ Of course, if that were the case, Bixby could object to the sufficiency of the submission, but an anticipatory objection that may never arise should be rejected.

WHEREFORE, having made its reply, the State respectfully requests the Court grant the motion.

Respectfully submitted,

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⁴ Inconsistently, Bixby’s counsel, in presenting the DeMier affidavit in support of his petition, relies in part on reported communication with none other than SCDC mental health professionals. Further, counsel’s assertion that SCDC personnel may not be able to conduct a forensic evaluation rings equally hollow. Not only does SCDC employ well-credentialed mental health professionals, but also that is the wrong point since the State’s position is none is needed. However, if some deterioration has been noted in mental health or communication, this Court should know to allow it to fairly consider the pending petition.

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