RECEIVED
Jan 14 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.

REPLY TO RESPONSE IN OPPOSITION TO MOTION FOR STAY OF EXECUTION PENDING RESOLUTION OF PETITION FOR WRIT OF HABEAS CORPUS

Petitioner, Marion Bowman, by and through undersigned counsel, submits this Reply to Response in Opposition to Motion for Stay of Execution ("Stay Response"). Once again Respondent misconstrues the scope of this Court's habeas review in its original jurisdiction and the lack of any procedural bars to this Court's consideration of the merits of the claims.

For the most part, Respondent's arguments have already been addressed in Bowman's stay motion or in the petition and Bowman's reply to Respondent's Return to the petition and will not be repeated here. Three points bear response, however.

1. *Brady Sentencing Claim.*

First, Respondent asserts that Bowman "recycles rejected *Brady* claims" and that those claims are procedurally barred for review. Stay Response at 1-2. As explained before, however, there are no procedural bars to merits review in this Court's original jurisdiction whether the claim has previously been raised in some form or has not been raised. *Tucker v. Catoe*, 346 S.C. 483, 552 S.E.2d 712 (2001) (per curiam) (reviewing one claim in original jurisdiction previously held to be

procedurally barred on direct appeal and raised as an ineffectiveness claim in post-conviction and reviewing another claim never before raised by Tucker); *Butler v. State*, 302 S.C. 466, 397 S.E. 2d 87 (1990) (granting relief on a claim in original jurisdiction that had never been raised before); *see also Green v. Maynard*, 349 S.C. 535, 537-38, 564 S.E.2d 83, 84 (2002) (reviewing on the merits in original jurisdiction a claim that had been raised on rehearing following direct appeal and "throughout petitioner's habeas proceedings").

Moreover, Bowman has never before directly asserted a *Brady* claim as it relates to sentencing. It was not argued in state post-conviction relief or federal habeas proceedings when the trial *Brady* claims were raised. It was not argued in the opening briefs in the United States Court of Appeals for the Fourth Circuit. It was raised directly for the first time in reply briefing in the Fourth Circuit and then was argued in oral argument. In a footnote addressing the claim, the panel noted that Bowman had not raised the materiality as to sentencing in the state court, but "[e]ven assuming we may consider this argument, we reject it for the reasons already explained." *Bowman v. Stirling*, 45 F.4th 740, 758 n.7 (4th Cir. 2022). Thus, at most, it was considered only as an afterthought by the panel of the Fourth Circuit.

The reason this claim was not raised previously is fairly obvious, but if it needs explanation the explanation is simple. Neither Ms. Vann nor Ms. Norris, Bowman's appointed counsel, were appointed in the initial state PCR or federal habeas proceedings. Thus, there was no prior opportunity for either to raise the *Brady* sentencing claim for Bowman.

2. *Ineffective Assistance of Counsel Due to Racist Arguments and Thinking.*

Respondent also complains that Bowman's claim based on trial defense counsel's racist arguments and decision-making has never before been raised and that Bowman has failed to offer any explanation for why that is. Stay Response at 2. Again, as set forth in subsection 1 above, the

fact that this claim was never before raised is not a bar to this Court granting a stay, granting review, addressing the merits, and granting relief on this claim.

Moreover, while Respondent is owed no explanation for why the issue was never before raised, again the explanation is simple. Presently appointed counsel did not represent Bowman until his case was mid-way through federal habeas proceedings. This is the first opportunity counsel have had in which to present this claim. And, this is precisely why this Court has preserved for itself review in the original jurisdiction. As this Court recognized in *State v. Torrence*, 305 S.C. 45, 69, 406 S.E.2d 315, 328 (1991), the Court's original jurisdiction gives it the "ability to provide relief to those who have, for whatever reason, been utterly failed by our criminal justice system."

3. *Lack of Bowman Sworn Affidavit or Testimony*.

Respondent also complains that Bowman has not submitted "a sworn affidavit accusing counsel of racial animosity toward him or expressed it the case" and instead "has only made unsworn statements," published on "counsel's website." Stay Response at 2 n.1. First, Bowman's race claim is based on the trial and post-conviction record before this Court, along with the Original Jurisdiction Exhibits cited in that claim in the Petition and provided to this Court. The claim is not based on Bowman's unsworn statement that was not submitted to this Court by Bowman but was referred to by Respondent without citation.[1] Second, there is no requirement in post-conviction relief proceedings or in this Court's original jurisdiction that a petitioner provide his own affidavit or testimony in support and Respondent has cited to no such requirement. Again, the evidence supporting this claim is already before this Court in the trial and sentencing record, lead trial counsel's PCR testimony, and the exhibits submitted with the petition.

[1] For the Court's convenience, the statement is here. https://ncw.fd.org/sites/ncw/files/basic-attachments/Marion%20Bowman%27s%20Statement%20-%20updated.pdf

CONCLUSION

For the reasons stated above, in Bowman's Petition, and in the Stay Motion, and to ensure reliability in this capital case before Bowman's execution, this Court should grant the stay of execution, issue the writ of habeas corpus as to Bowman's convictions and death sentence and review the merits of his claims to ensure his execution does not take place despite a "denial of fundamental fairness" resulting from the unique circumstances of this case.

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 14, 2025.