The Supreme Court of South Carolina

Marion Bowman, Jr., Petitioner,

v.

Bryan P. Stirling, Commissioner, South Carolina Department of Corrections, Respondent.

Appellate Case No. 2024-002113

AND

The State, Respondent,

v.

Marion Bowman, Jr., Appellant.

Appellate Case No. 2025-000013

ORDER

Marion Bowman, a death-sentenced inmate, seeks a writ of habeas corpus in this Court's original jurisdiction (Case No. 2024-002113) and seeks a stay of his January 31, 2025 execution pending this Court's resolution of the petition (Case No. 2025-0013).

We recently visited the issue of habeas corpus relief in the matter of Freddie Eugene Owens, another inmate who was sentenced to death. *See State v. Owens*, S.C. Sup. Ct. Order dated September 12, 2024 (denying habeas relief). As we explained, habeas corpus relief is available to prisoners in South Carolina in this Court's original jurisdiction. *See* S.C. Const. art. I, § 18. Writs of habeas corpus are used only when necessary to ensure fundamental constitutional rights. A writ

of habeas corpus will issue "only under circumstances where there has been a 'violation, which, in the setting, constitutes a denial of fundamental fairness shocking to the universal sense of justice.'" *Butler v. State*, 302 S.C. 466, 468, 397 S.E.2d 87, 88 (1990) (quoting *State v. Miller*, 84 A.2d 459 (N.J. Super. 1951))); *see also Moore v. Stirling*, 436 S.C. 207, 218–19, 871 S.E.2d 423, 429 (2022) ("[T]wo components are needed to meet the standard articulated in *Butler* and other cases. The petitioner must prove (1) the existence of a constitutional violation; and (2) the denial of fundamental fairness which, in the setting, is shocking to the universal sense of justice."); *McWee v. State*, 357 S.C. 403, 406, 593 S.E.2d 456, 457 (2004) (stating a writ of habeas corpus will be granted only under "unique and compelling circumstances"). This Court has noted that "[a]t some juncture judicial review must stop, with only the very rarest of exceptions, when the system has simply failed a defendant and where to continue the defendant's imprisonment without review would amount to a gross miscarriage of justice." *Williams v. Ozmint*, 380 S.C. 473, 480, 671 S.E.2d 600, 603 (2008).

Bowman contends he is entitled to a writ of habeas corpus based upon: (1) *Brady* violations on the part of the State; (2) his lead trial counsel's prejudice against black people; and (3) his contention that carrying out his execution would be shocking to the universal sense of justice in light of his personal growth since he was sentenced. Citing *In re Stays of Execution in Capital Cases*, 321 S.C. 544, 548, 471 S.E.2d 140, 142 (1996), Bowman also contends the pendency of his habeas petition constitutes "exceptional circumstances warranting the issuance of a stay." For the reasons stated below, we deny the petition for a writ of habeas corpus, and we deny the motion for a stay as moot.

Brady Violations

Bowman argues the State withheld evidence that would have impeached the credibility of key witnesses against him—co-defendant James Gadson and Hiram Johnson—in violation of *Brady v. Maryland*, 373 U.S. 83 (1963) (holding the prosecution's suppression of evidence favorable to the accused violates due process where the evidence is material either to guilt or punishment). This evidence includes: (1) a memorandum prepared by an investigator for the solicitor's office based on an interview with Bowman and Gadson's fellow inmate, Ricky Davis (the Sam Memo); (2) Gadson's mental health records (the Gadson Report); and (3) unindicted criminal charges that were pending against Johnson. Bowman asserts the Court must consider the cumulative impact of the undisclosed impeachment evidence in determining materiality under *Brady*, and he claims the withheld evidence was material to the jury's sentencing decision.

In his 2008 PCR hearing, Bowman raised the same three *Brady* violations but alleged the withheld evidence was material to the issue of guilt. The PCR court found the Sam Memo was neither favorable to the defense nor material to the issue of guilt because the defense already had inmate Davis' note stating co-defendant Gadson told him he killed the victim, and Bowman did not call Davis to testify at trial. The PCR court further ruled there was not a reasonable probability that the outcome of the guilt phase would have been different had trial counsel possessed the Sam Memo.

The PCR court further found: (1) the Gadson Report was a public record and could have been accessed by trial counsel, who should have known the report existed because Bowman had a similar evaluation performed; (2) Bowman failed to establish the report was favorable or impeaching, as it did not support his theory that Gadson was unable to recall events; (3) the report was not material because there were no allegations that Gadson suffered memory issues because of seizures or marijuana use the *day of* the murder; and (4) Gadson's credibility was impeached by testimony that he had been drinking alcohol the day of the murder.

As to Johnson's unindicted charges, the PCR court found Bowman failed to establish the materiality of this evidence under *Brady* in light of the overwhelming evidence of his guilt. For the same reason, the PCR court found the impeachment value of the unindicted charges was limited, primarily because the charges were unrelated to the underlying case and trial counsel impeached Johnson on other grounds.

The PCR court did not rule on cumulative materiality; rather, it found each individual piece of allegedly withheld evidence was not material. After the PCR court denied Bowman's claim for relief, he raised these issues in his petition for a writ of certiorari to this Court, and this Court denied certiorari as to the *Brady* issues. *Bowman v. State*, S.C. Sup. Ct. Order dated April 15, 2016 (granting the petition on one question and denying the petition as to the remaining questions).

The federal courts have also addressed Bowman's *Brady* arguments. The United States Court of Appeals for the Fourth Circuit held the Sam Memo and, ostensibly, Davis' statements about Gadson would have harmed, not helped, Bowman's case because they were cumulative to Davis' note, which the defense already had, and contained multiple levels of hearsay. *Bowman v. Sterling*, 45 F.4th 740, 754 (4th Cir. 2022). Further, Davis testified at the PCR hearing that he never spoke with Gadson, and he testified he wrote the note at Bowman's insistence using information Bowman provided, which would have been damaging to Bowman. *Id.* The Fourth Circuit further held the impeachment value of the Gadson Report

would have only been slight, as there was no evidence Gadson suffered a seizure or consumed marijuana the day or night of the murder, and the report would have even bolstered Gadson's memory and sanity in some respects. *Id.* at 755. Further, Gadson's memory *was* impeached through testimony that he had been drinking all afternoon before the murder and was drunk later that night. *Id.* Lastly, the Fourth Circuit held Johnson's unindicted charges would have had impeachment value and could have led a jury to infer that he was motivated to curry favor with the State. *Id.* at 756. However, the court determined the information would have had a limited effect because other evidence at trial—including testimony from witnesses who were explicitly testifying pursuant to plea agreements with the State—corroborated Johnson's "ancillary" account of events. *Id.* Considering the cumulative materiality of these three pieces of undisclosed evidence, the Fourth Circuit held there was overwhelming evidence of Bowman's guilt, and the withheld evidence was insufficient to undermine confidence in the jury's verdict *or recommended sentence of death*. *Id.* at 758.

The only distinction between Bowman's previous arguments and the argument he now raises is that he emphasizes the *Brady* evidence prejudiced him during the *sentencing* phase instead of the guilt phase. Thus, in Bowman's view, the *Brady* materiality analysis differs, and he contends the Court must consider whether his sentence was appropriate considering all aggravating and mitigating evidence presented during the sentencing phase.

We reject Bowman's argument that these pieces of evidence would have affected the outcome of his sentencing. First, the Fourth Circuit has already determined this issue. *See id.* at 758 (holding the withheld evidence was insufficient to undermine the confidence in the jury's recommended sentence of death). Second, even construing the withheld evidence as potentially mitigating at the sentencing phase, we conclude the evidence did not create a reasonable probability that at least one juror would have decided upon a sentence other than death. To this end, Bowman concedes in his petition that trial counsel presented extensive mitigating evidence on his behalf, while the State offered little evidence in aggravation. *Cf. Wiggins v. Smith*, 539 U.S. 510, 537 (2003) (holding the defendant's "excruciating" life history presented a reasonable probability that at least one juror would have struck a different balance where the only mitigating factor present was that defendant had no prior convictions). Therefore, we find the State's allegedly improper withholding of the Sam Memo, the Gadson Report, and Johnson's unindicted charges is not "shocking to the universal sense of justice." *Butler*, 302 S.C. at 468, 397 S.E.2d at 88.

Trial Counsel's Racial Prejudice

Bowman is a black man and trial counsel is white. Bowman argues his "convictions and death sentence must be vacated under the Sixth, Eighth, and Fourteenth Amendments to the United States Constitution and Article I, Sections 3, 14, and 15 of the South Carolina Constitution due to the ineffective assistance of counsel inherent in trial counsel's insistence that Bowman plead guilty despite maintaining his innocence and counsel's racist arguments that injected odious racial prejudice into the case[.]" Bowman cites comments and arguments made by trial counsel during trial that Bowman contends supports this allegation. Bowman also cites several instances during the PCR hearing in which he claims trial counsel displayed racism. We flatly disagree. There is no evidence trial counsel exhibited racism during his representation of Bowman or during the PCR hearing.

Bowman has fashioned a meritless narrative by taking trial counsel's testimony during the PCR hearing completely out of context. During his PCR testimony, trial counsel articulated valid strategic decisions he made during the trial, decisions he made in an attempt to defuse any racial animus the jury may have had against Bowman, who was indicted for murdering a white woman. He also testified he made Bowman aware of his fear that the jury might view the circumstances of the murder through a racial lens. The comments and conduct of which Bowman now complains were in no way indicative of racism. *See Watson v. State*, 370 S.C. 68, 72, 634 S.E.2d 642, 644 (2006) ("[W]here counsel articulates a valid reason for employing a certain strategy, such conduct will not be deemed ineffective assistance of counsel." (citing *Stokes v. State*, 308 S.C. 546, 419 S.E.2d 778 (1992))).

Even if there were evidence to support Bowman's claim, the claim would fail because Bowman (1) could have raised the issue of trial counsel's conduct during trial in his PCR proceeding, (2) has presented no reason for not raising the issue then, and (3) fails to demonstrate conduct on the part of trial counsel that was shocking to the universal sense of justice. *See Gibson v. State*, 329 S.C. 37, 41, 495 S.E.2d 426, 428 (1998) (holding habeas corpus is available only when the petitioner alleges sufficient facts to show why other remedies are unavailable or inadequate).

Renewed Proportionality Review

Bowman contends his death sentence would be shocking to the universal sense of justice in light of his personal growth in the twenty-two years he has been imprisoned. He further contends his growth and character as it stands now should

be considered in determining whether his sentence is appropriate under section 16-3-25(C)(3) of the South Carolina Code (2015). Bowman essentially requests a renewed proportionality review.

S.C. Code Ann. § 16-3-25(C)(3) requires this Court to determine in a death penalty case "[w]hether the sentence of death is excessive or disproportionate to the penalty imposed in similar cases, considering both the crime and the defendant." The statute does not permit the Court to engage in a proportionality review considering character and prison adaptability evidence that accrues over the course of twenty years after the defendant's sentencing.

In any event, Bowman cannot prove the existence of a constitutional violation in this Court's refusal to consider a defendant's character at the time he seeks this Court's exercise of original jurisdiction to determine whether the death penalty is appropriate. Simply put, that constitutional right does not exist. *See Moore*, 436 S.C. at 218–19, 871 S.E.2d at 429 ("[T]wo components are needed to meet the standard articulated in *Butler* and other cases. The petitioner must prove (1) the existence of a constitutional violation; *and* (2) the denial of fundamental fairness which, in the setting, is shocking to the universal sense of justice." (emphasis added)).

For the foregoing reasons, we reject Bowman's argument that we must consider evidence of his personal growth during his time in prison.

Conclusion

Bowman has not met his burden of showing a constitutional violation that, in this setting, constitutes a denial of fundamental fairness shocking to the universal sense of justice. We, therefore, deny his petition for a writ of habeas corpus and deny as moot his motion for a stay of execution.

John W. Kittredge C.J.

John Cannon Few J.

Kaye G. Hearn J.

Jean H. Toal J.

Judith McMahon Lanier J.

Columbia, South Carolina
January 16, 2025

cc:
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