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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

BRAD KEITH SIGMON,

Movant,

v.

STATE OF SOUTH CAROLINA,

Respondent.

Appellate Case No. 2025-000187

RETURN TO MOTION FOR RECONSIDERATION

This Court has already rejected Brad Keith Sigmon’s plea for more information about lethal injection drugs, and he offers no reason—much less a compelling one—to reconsider that question. In the first place, Sigmon has elected a different method, which means he waived any argument about lethal injection. In the second, Sigmon points to nothing new from Marion Bowman’s autopsy that changes anything about his original Objection. And in the third, Sigmon implies something about the previous executions that he knows is not true, given that Sigmon has a copy of SCDC’s execution protocols.

I. Sigmon has elected a different method, so he has waived any arguments about lethal injection.

At the start, Sigmon’s argument fails because he has elected a different method. He therefore no longer has any standing to challenge anything about lethal injection because no order about lethal injection could redress any supposed harm. *Cf. Lebron v. Rumsfeld*, 670 F.3d 540, 561 (4th Cir. 2012) (plaintiff must have standing throughout the case).

By way of analogy, the U.S. Supreme Court has held that an inmate who elects a method of execution other than the State's default method waives a right to challenge that method. *See Stewart v. LaGrand*, 526 U.S. 115, 119 (1999); *see also, e.g., Stanford v. Parker*, 266 F.3d 442, 462 (6th Cir. 2001) ("if Stanford chooses electrocution over lethal injection, the constitutionality of which he does not challenge, he will waive any objection to electrocution"); *Orbe v. Johnson*, 601 S.E.2d 547, 549 (Va. 2004) (adopting *Stewart's* rule). To hold otherwise would promote procedural gamesmanship and delay carrying out capital sentences beyond the already decades' long delays that already exist. *Cf. Bucklew v. Precythe*, 587 U.S. 119, 149 (2019) ("The people of Missouri, the surviving victims of Mr. Bucklew's crimes, and others like them deserve better" than more delay.). In the same vein, an inmate should not be permitted to delay his execution by challenging something about a method he didn't elect.

It doesn't do Sigmon any good to frame his argument as a renewed due process one. He simply rehashes the same argument that he has made previously, and doing that does nothing to wipe away the waiver rule.

II. Bowman's autopsy adds nothing new to Sigmon's argument.

Even if Sigmon didn't waive the argument in his Motion, his Motion still fails. Reconsideration along the lines Sigmon seeks typically requires newly discovered evidence, some change in the controlling law, or a need to correct a manifest injustice. *E.g., Wojcicki v. SCANA/SCE&G*, 947 F.3d 240, 246 (4th Cir. 2020).

Sigmon can show none of those. As for evidence, nothing Sigmon points to from Bowman's autopsy is new. In both his Objection (p. 3) and his Motion (p. 5), he insists that previous inmates suffered from pulmonary edema.

As the State explained in opposing the Objection, this pulmonary edema debate over lethal

injection is nothing new, and neither Sigmon nor any other inmate has overcome two points. First, there is strong evidence (including both Dr. Antognini's declaration and the media witness descriptions) on the State's side that condemned inmates—including Owens, Moore, and Bowman—were insensate quickly and felt nothing after that before being declared dead. And second, Sigmon has not rebutted the fact that pulmonary edema is common in many overdose deaths. Nothing Sigmon points to now helps him on either front.

As for controlling law, Sigmon fares no better by recalling his legal argument on due process. *See* Mot. 4–5. In fact, he cites many of the same cases again. *Compare* Mot. 4–5, with Objection 4. This Court has considered this argument twice already—once from Owens and once from Sigmon. And it has rejected it both times. (For good measure, so have the federal courts.) A cursory recast of that argument adds nothing new. *Cf. Dockins v. Benchmark Commc'ns*, 180 F.R.D. 294, 295 (D.S.C. 1998) (“Motions under Rule 59 are limited in scope and are not to be used to rehash the same arguments and facts previously presented.” (cleaned up)).

And as for manifest injustice, Sigmon again repeats what he has already said. Which is what this Court has already rejected. There's no injustice here. Sigmon simply disagrees with the Court ruling against him.

III. Sigmon's contention about previous executions are unwarranted.

In claiming that the previous executions went awry, Sigmon asserts that previous executions “required a second dose” of pentobarbital. Mot. 3. Depending on what Sigmon means by “required,” his assertion is, at best, misleading.

A second series was administered according to SCDC's protocol. As Sigmon knows because Sigmon has the protocol (the revised protocol was provided to Sigmon under a confidentiality order as part of the *Owens v. Stirling* litigation challenging the methods of

execution and section 24-3-530), there is no discretion in the administration of the second series of pentobarbital. Nor is there, as Dr. Antognini explained, anything unusual about death by lethal injection taking more than ten minutes. Thus, to the extent that Sigmon suggests that the second series was needed to bring about death, he has *nothing* to support that, and the Court should give it no credence.

CONCLUSION

For all the above reasons, the Court should deny the Motion.

Respectfully submitted,

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