The Supreme Court of South Carolina

The State, Respondent,

v.

Steven V. Bixby, Appellant.

Appellate Case No. 2007-054161

ORDER

Appellant was convicted of two counts of murder, conspiracy to commit murder, kidnapping, possession of a firearm during the commission of a violent crime, and twelve counts of assault with intent to kill. Appellant was sentenced to death. This Court affirmed Appellant's convictions and sentences, and the United States Supreme Court denied his petition for a writ of certiorari. *State v. Bixby*, 388 S.C. 528, 698 S.E.2d 572 (2010), *cert. denied*, 563 U.S. 963 (2011).

Appellant now seeks a stay of the issuance of the execution notice pursuant to *Singleton v. State*, 313 S.C. 75, 437 S.E.2d 53 (1993), so that he can pursue post-conviction relief (PCR) to determine whether he is competent to be executed.

The request for a stay of the issuance of the execution notice is granted. The stay shall remain in effect to the extent provided by this Court in *Singleton*.
The Honorable R. Scott Sprouse is hereby assigned to the PCR action filed by Appellant. Judge Sprouse shall retain jurisdiction over this case regardless of where he may be assigned to hold court and may schedule such hearings as may be necessary at any time without regard to whether there is a term of court scheduled. Within thirty days of the date of this order, Judge Sprouse shall hold a status conference in this matter. Within thirty days of the date the status conference, Judge Sprouse shall issue a scheduling order setting forth the schedule that shall be followed in this matter, including the date of the evidentiary hearing, which shall be held not later than September 1, 2025. A copy of the scheduling order shall be provided to counsel, this Court, and Court Administration. A final order must be filed not later than thirty days following the evidentiary hearing. In addition, Judge

Sprouse is requested to inform the Clerk of this Court and Court Administration in writing in the event some extraordinary circumstance arises warranting a brief delay in the hearing and resolution of this matter.

The State's motion for an order permitting an affidavit from SCDC medical personnel on Appellant's mental health, competency, and cognitive function while incarcerated and requiring disclosure of Appellant's mental health status is denied without prejudice to its right to renew the motion before Judge Sprouse.

John Kittredge C.J.

D. Hamilton J.

Kaye H. Hearn J.

JUSTICE FEW: Respectfully, I would deny the motion. While I appreciate the caution the Court is showing in granting Bixby a hearing, I believe this caution is squarely inconsistent with the principles of law it is our solemn duty to apply, even in this admittedly difficult situation. *See In re Stays of Execution in Cap. Cases*, 321 S.C. 544, 548, 471 S.E.2d 140, 142 (1996) ("A request for a stay of execution . . . must demonstrate that there are exceptional circumstances warranting the issuance of the stay."). I would summarily deny Bixby's motion on three grounds, including—most importantly—the ground the Forensic Psychological Evaluation Report by Richart L. DeMier, Ph.D., which is the only evidence Bixby provides to support his claim he is not competent to be executed, does not in fact support Bixby's claim.

First, Bixby presents no evidence whatsoever he is incompetent to be executed under the competence standard of the Constitution of the United States. *See Ford v. Wainwright*, 477 U.S. 399, 422, 106 S. Ct. 2595, 2608, 91 L. Ed. 2d 335, 354 (1986) (Powell, J., concurring) ("I would hold that the Eighth Amendment forbids the execution only of those who are unaware of the punishment they are about to suffer and why they are to suffer it."); *Singleton v. State*, 313 S.C. 75, 79, 437 S.E.2d 53, 56 (1993) (describing the Powell standard from *Ford v. Wainwright* as "the constitutional minimum"). In fact, Dr. DeMier states on page 1 of his

report—again, the only evidence Bixby offers to support his claim—that Bixby "meets the criteria for competency for execution in the federal standard."

Second, the *Singleton* standard—which purports to be a more stringent standard apparently based on the South Carolina Constitution[1] than the federal standard set forth in *Ford v. Wainwright*—is clearly dictum. The reason for this is the inmate subject to execution in *Singleton* was indisputably incompetent under the *Ford v. Wainwright* standard. *See Singleton*, 313 S.C. at 78, 437 S.E.2d at 55 (stating "the PCR judge issued an order holding Singleton incompetent to be executed under either the A.B.A. Standard or the standard set forth in Justice Powell's concurring opinion in *Ford v. Wainwright*"); 313 S.C. at 84, 437 S.E.2d at 58 ("Singleton is completely unaware that he is capable of dying in the electric chair. His reliance on protective 'genes' and his inability to respond to his counsel's questions with anything other than a yes-no are indicative of Singleton's failure to understand either the reason or the nature of his punishment."). Therefore, it was unnecessary for this Court in *Singleton* to decide whether South Carolina should apply a more stringent standard. *See also* 313 S.C. at 82 n.2, 437 S.E.2d at 57 n.2 (stating, "The adoption of the 'assistance' prong"—which is the primary difference between the purported *Singleton* standard and the *Ford v. Wainwright* standard—"in most states has been by statute," while the Court adopted the assistance prong in a case where doing so was unnecessary to our decision). While this Court has recited the *Singleton* standard in many cases, I have not found one instance in which applying the *Singleton* standard was necessary to our decision to stay an execution because the inmate about to be executed was competent under the *Ford v. Wainwright* standard but incompetent under *Singleton*. As has been universally recognized, "Dictum is not the law." *Gordon v. Lancaster*, 425 S.C. 386, 395, 823 S.E.2d 173, 177 (2018) (Few, J., concurring in result).

Third, Dr. DeMier's report—again, the only evidence Bixby offers to support his claim—does not provide any evidence to actually support his claim. The report states in words that Dr. DeMier reached the conclusion Bixby is not competent under either the "cognitive prong" or the "assistance prong" of the *Singleton* standard, but the substance of his explanation of how he reached that conclusion is

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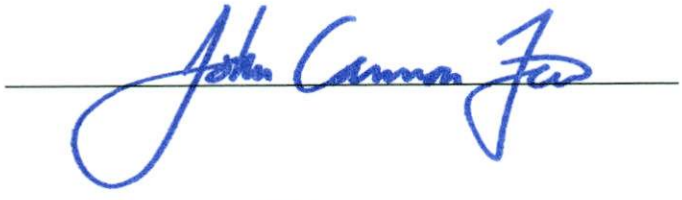
[1] I am not convinced this purported standard from *Singleton* is actually based on the South Carolina Constitution. *See* 313 S.C. at 83-84, 437 S.E.2d at 58 (suggesting the *Singleton* competence standard is based on "English common law"). To the extent Bixby's motion for a stay is based on a principle of common law, he clearly does not meet the *In re Stays of Execution* requirement of "exceptional circumstances."

(1) conclusory without appearing to base his conclusion on any evidence, and (2) inconsistent with what he previously recounted from his extensive investigation. As examples of this inconsistency, as to the cognitive prong, Dr. DeMier stated he administered the Montreal Cognitive Assessment to Bixby and Bixby scored in the range of "normal cognition." Dr. DeMier provided no explanation as to how Bixby can have "normal cognition" and yet fail the cognitive prong of the *Singleton* test. As to the assistance prong, Dr. DeMier stated that on his initial meeting with Bixby on February 13, 2024, "Bixby read a Forensic Evaluation Notification Form . . . without any difficulty, indicated he understood this notification, and . . . was able to recall the various elements of my explanation." Dr. DeMier also wrote that during the February meeting, "[Bixby] was able to describe the limits of confidentiality, and he accurately recalled the potential disposition of the report." Dr. DeMier also met with Bixby on April 8, 2024, and as to that meeting Dr. DeMier wrote, "At the beginning of that session, I asked him similar questions about the nature and purpose of the evaluation, issues of confidentiality, and the various ways the information could be used. [Bixby] accurately recalled our previous discussion and provided correct responses to my inquiries." From Dr. DeMier's substantive interactions with Bixby, it appears Bixby clearly "possesses sufficient capacity or ability to rationally communicate with counsel" as required by the assistance prong of *Singleton*. 313 S.C. at 84, 437 S.E.2d at 58.

I would deny Bixby's motion to stay because (1) his own expert concedes Bixby is competent to be executed under the federal constitutional standard, (2) the competence standard set forth in *Singleton* is not the law, and (3) even if we were to apply the purported *Singleton* standard, Bixby provided no evidence which—even if determined by a trial court to be true—could support a finding that he is not competent to be executed. Bixby therefore fails to meet the *In re Stays of Execution* requirement that he "must demonstrate that there are exceptional circumstances warranting the issuance of the stay." 321 S.C. at 548, 471 S.E.2d at 142.



J.

I concur.

J.

Columbia, South Carolina
March 13, 2025

cc:
Donald J. Zelenka
Henry Dargan McMaster
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