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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

THE STATE,

Respondent/Movant,

v.

STEVEN V. BIXBY,

Appellant/Respondent.

Appellate Case No. 2007-054161

**REPLY TO THE RETURN TO
MOTION TO RECONSIDER ORDER FOR STAY OF EXECUTION
AND TO STAY PROCEEDINGS IN CIRCUIT COURT
AND ALLOW ADDITIONAL BRIEFING**

On March 19, 2025, the State filed a motion to reconsider this Court's March 13, 2025, order granting Bixby a stay of execution and allowing additional post-conviction relief proceedings in circuit court for the sole purpose of determining his competency to be executed. Bixby submitted his return on March 25, 2025, and ultimately conceded that additional briefing on the correct standard and resolution of the standard to be used in the circuit court proceeding "will aid the parties and circuit court alike … and will ensure an efficient and orderly resolution of this matter." (Rtn. 4). As he states it, "On this narrow ground alone, Bixby joins the State's request for further appellate proceedings prior to the circuit court hearing the evidence of Bixby's incompetence to be executed." (Rtn. 4). Yet, before he gets to the concession, Bixby makes several assertions that should be addressed lest they detract from the possibility of relief. This short reply follows to address Bixby's incorrect assertions:

1. Bixby begins in high dudgeon, alleging that the State's motion is procedurally incorrect. He asserts Rule 240(i), SCACR prohibits the filing of a petition to reconsider. Bixby

is mistaken. Rule 240(i) expressly applies to motions in appeals. Bixby's motion to stay was not part of an appeal. The motion to stay was necessary to prevent execution and obtain permission to pursue circuit court proceedings. Thus, Rule 240(i) does not expressly apply. Bixby finds no better support in the case law he cites as the Court found only that petitions for rehearing from a denial of certiorari review are not allowed. (*See* Rtn.1-2). The motion for stay of execution was not a petition for writ of certiorari review. For that matter, though he does not list it in his complaints, Rule 221(a), SCACR prohibits such petitions not only from the denial of certiorari to review court of appeals opinions, but also denial of petitions for original jurisdiction petitions or the denial of motions to reinstate after dismissal for failure to comply with appellate court rules. Requesting reconsideration of the order on a motion for stay of execution does not fit into those express prohibitions either. Bixby also argues that the State's motion offends not simply the rules but also the practices of the Court. (Rtn. 2). Again, he is incorrect. In fact, present counsel for Bixby, acting as counsel for Freddie Owens, moved for reconsideration of the denial of stay in that case, which this Court addressed. (*See* Appellate Case No. 2024-001397). The practice argument is against him. All in all, Bixby's procedural arguments lack support.

2. Bixby also incorrectly attempts to find either concession(s) or law of the case or issue preclusion – a round selection of procedural bars – in the State's motion or elsewhere. (Rtn. 2-3). Again, the nature of Bixby's motion renders these assertions untenable, as well. There was no action for litigation of the standard. Stated differently, there was no case for law of the case to apply (or issue preclusion or any other litigation theory).[1] This likewise addresses Bixby's

[1] Bixby's argument attempting to fault the State for not raising the potential *Singleton* argument in Wood's case as a basis for finding laches is simply perplexing. First, that action was stayed with consent for resolution of *Owens v. Stirling*, which was not decided until last year. Second, the action is ongoing. Moreover, the State promptly reviewed the Bixby order, considered the points made concerning *Singleton,* reviewed the precedent referencing *Singleton* in and outside

assertion that the Court already affirmed *Singleton's* applicability by way of the stay order. (Rtn. 3). Bixby apparently misapprehends the ruling. The motion granted the stay. That is all. In fact, the State's motion specifically notes that if the question is not posed, the Court's precedent suggests the question may not be answered, which may explain why the *Singleton* standard is not discussed. (*See* Mtn. ¶ 1).

3. Further, Bixby complains essentially that John Wood's action is separate and apart from Bixby's motion for stay and that stay will have to be issued in his case. (Rtn. 3). That is true, but also true is that both have received stays from this Court for the same reason – to determine competency to be executed. Each party was individually served. Each case number was appropriately referenced. For expediency, this Court could certainly modify the prior stay orders. On that, Respondent does not believe that Bixby would disagree (he has not yet). Further still, though Bixby argues that inclusion of the Wood matter it is procedurally incorrect, he concedes service was made on counsel for Wood. (Rtn. 3 and n. 1). Bixby neglects to inform the Court (or perhaps simply he does not know) that the State sent advance notice of the inclusion of the Wood case in the argument on reconsideration, provided a copy of the Bixby stay order, and advised both counsel and the circuit court judge that the *Singleton* issue would be raised in the circuit court litigation if the State's motion failed to result in additional briefing and clarity at this time. That is transparency and expediency, not procedural sleight of hand.

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this jurisdiction, drafted a motion for this Court, and notified the circuit court and counsel in Wood's case. No decision in Wood's case has been made – in fact, Wood requested and received up to May 1, 2025, to have his expert produce a report. It is difficult to find delay in any of those circumstances, and impossible to find prejudice. Further, Bixby's general delay logic runs circular. It is not improper delay to seek a ruling to prevent delay by curtailing unnecessary litigation. After all, it is this Court that must ultimately resolve the issue of the controlling standard and that will inform the parties and circuit court of the precise question(s) to be addressed in the litigation. Try as Bixby does, the shoe does not fit.

4. Bixby does not discuss or apparently object to the alternative request to grant a petition in the court's original jurisdiction to consider the matter should this Court decline to reconsider the order. The State, again in transparency for all to consider, expressly provided optional procedural routes to the same end. In case Bixby would also consider that to be part of the alleged procedural impropriety, there is precedent for that as well. *See State v. John Joseph Erb,* Appellate Case No. 2024-001518 (dismissing interlocutory appeal from circuit court but granted briefing in original jurisdiction to review issue alleging a double jeopardy violation).

5. Finally, Bixby objects to modification of the time limits. (Rtn. 4, n.2). There is no substantive argument offered. In addition to the arguments already submitted on that point, Respondent would also add the lack of real, substantive argument weighs against the objection. As to his scheduling argument, the State submits that capital cases should be given priority given the gravity of the sentence, especially in this circumstance where Bixby's execution would likely have been scheduled for May 16, 2025, but for the stay. And as set out in the State's motion, Bixby has already been evaluated by the defense expert, and he concedes Bixby meets the federal standard for competency to be executed. Even so, the State requested expedited proceedings, but merely "suggest[ed]" 45 days to hearing. Considering that the state has conducted executions with 35 days in between, 45 days seems ample time to settle one (if that one issue even needs to be settled). Yet, any shortened time frame would be appropriate for the reasons asserted.

THEREFORE, based on the foregoing, and the arguments and reasons in the State's motion, the State respectfully again requests reconsideration and the following relief, as previously set out in the State's motion:

1. Staying the circuit court proceedings allowed under the Order of March 13, 2025, and order additional briefing to consider and determine the controlling standard for competency to be executed. Upon that determination, the Court could revisit the motion to stay in light of the expert report attached in support of the motion;

2. Stay the circuit court proceedings in John Richard Wood's case, (C/A 2022-CP-23-06219), to allow this Court to consider the additional briefing and make its determination on the controlling standard for competency to be executed;

3. In the alternative of granting briefing on the motion, to grant a petition for writ of certiorari in this Court's original jurisdiction to consider and determine the controlling standard the circuit court should apply, and grant a stay of circuit court proceedings in the PCR actions filed by Bixby (2024-CP-01-00375), and Wood, (C/A 2022-CP-23-06219), or,

4. In the alternative, grant expedited proceedings allowing 45 days to hold the hearing and 30 days thereafter to issue an order, with the anticipation of an expedited appeal.

Respectfully submitted,

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