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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

MIKAL D. MAHDI,

Petitioner,

v.

BRYAN P. STIRLING, DIRECTOR OF THE SOUTH CAROLINA DEPARTMENT OF CORRECTIONS,
.

Respondent.

Appellate Case No. 2025-000491

RESPONSE IN OPPOSITION TO MOTION FOR STAY OF EXECUTION

As part of a multistate crime spree, Mikal Mahdi murdered Captain James Myers in 2004, shooting Myers nine times and then setting his body on fire—leaving it for Myers' wife to eventually discover. Mahdi was convicted and sentenced to death by a respected judge. Since then, Mahdi's sentence has been reviewed by this Court on direct appeal, a circuit court on post-conviction relief, this Court through a petition for a writ of certiorari on that finding, and the federal district and appeals courts through federal habeas. Now, with his execution scheduled for April 11, 2025, Mahdi asks this Court to stay his execution for another round of review, arguing that trial counsel did not adequately develop his mitigation defense and that this Court should reconsider his sentence under the results of alleged new scientific discoveries. Respondent opposes this motion because Mahdi has failed to show any error, much less constitutional error amounting to the "exceptional circumstances" that must support a stay. *In re Stays of Execution in Cap. Cases*,

321 S.C. 544, 548, 471 S.E.2d 140, 142 (1996). In support of its opposition to the stay, Respondent would respectfully show the Court:

1. As noted briefly above, Mahdi seeks a stay to allow him to continue his arguments before this Court regarding the alleged ineffective assistance of his counsel and the "new evidence" presented by recent support for scientific knowledge—already available at the time of his PCR proceedings, at least—regarding the effects of periods of isolation during his prior confinement in Virginia. None of the issues raised in his petition warrant merits review, much less a stay of execution. Mahdi's appeal for a stay falls short for several reasons.

2. First, he does not show an action in which the Court has exercised its original jurisdiction to revisit an issue.[1] For this same reason, he has not shown the exceptional circumstances warranting one. As discussed in Respondent's other filing and briefly recounted here, his arguments lack legal merit.

3. As to the allegations that Mahdi's trial counsel did not adequately prepare for the mitigation phase of his trial, Respondent would note initially that even Mahdi concedes the PCR court considered the same evidence related to this issue. The fact that this Court has not specifically weighed this argument with full briefing is not an "exceptional circumstance." Rather, it shows that the Court did not find it necessary to grant certiorari on the issues raised at PCR. Further, even without this Court's review of the evidence from the PCR hearing, Mahdi can hardly argue that he has not received adequate attention to his claims through the state and federal courts that have already reviewed his claims. Additionally, as this litigation has progressed, the evidence that has emerged has not always been beneficial to Mahdi. In fact, new aggravation evidence was

[1] Respondent has today filed a separate return requesting that the Court deny Mahdi's petition for the writ in *Mahdi v. Stirling*, Case No. 2025-000524. This response will briefly summarize some of those arguments, but Respondent would refer this Court to the full return.

presented at PCR in addition to new mitigation evidence. There is no reason to believe that additional briefing before this Court will change the repeated results of previous rounds of review.

4. As to the claims relating to new scientific information regarding Mahdi's prior incarceration, there is simply very little new information there. More recent studies are providing more information on how isolation during incarceration can affect the juvenile mind, but practitioners knew well before Mahdi's PCR hearing that it did so. In several more years, science is likely to provide even greater information—but that does not mean that if this Court accepted the current case, its ruling would only last until new issues of scientific journals are released. Likewise, the fact that experts continued to develop knowledge about a phenomenon already the subject of testimony at Mahdi's PCR hearing does not mean that Mahdi should get another review. The refinement of existing scientific knowledge is not an exceptional circumstance.

5. This Court has recently reiterated the state test for original jurisdiction habeas relief.

> A habeas petition must support the relief requested. *Gibson v. State*, 329 S.C. 37, 40, 495 S.E.2d 426, 427 (1998). While the allegations in the petition are treated as true, the petition must set forth a prima facie case showing the petitioner is entitled to relief. *Id.* In other words, it must allege that the petitioner has exhausted all other remedies, and it must set out a constitutional claim that meets the standard delineated in *Butler*. *Id.* at 40, 495 S.E.2d at 428. . . . [A] defendant bears a much higher burden of proof in a habeas proceeding.

Moore v. Stirling, 436 S.C. 207, 219, 871 S.E.2d 423, 429 (2022). And the standard annunciated in *Butler* is more demanding that a simple assertion that a constitutional right has been violated. *See Butler v. State*, 302 S.C. 466, 468, 397 S.E.2d 87, 88 (1990) ("We caution that not every intervening decision, nor every constitutional error at trial will justify issuance of the writ. Rather, the writ 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.'" (quoting *State v. Miller*, 16 N.J. Super. 251, 84 A.2d 459 (1951)).

This Court unquestionably has the constitutional authority to issue a number of extraordinary writs in its original jurisdiction, including a writ of habeas corpus. *See* S.C. Const. Art. V, § 5. The exercise of that jurisdiction, however, is discretionary. *Id. See generally* 39 C.J.S. Habeas Corpus § 293 (December 2024 update). A petition is required to seek such review, but jurisdiction is only requested—not obtained—when the petition is filed. *See* Rule 245(b); *Mod. Fin. Co. v. Hicks*, 235 S.C. 212, 216, 110 S.E.2d 859, 861 (1959) ("Whether or not this court should exercise original jurisdiction is a matter not for agreement between litigants, but for determination by this Court in the light of its rules and of the facts upon which such jurisdiction is invoked."). As this Court has said, "habeas corpus continues to be available as a constitutional remedy provided a petitioner qualifies for this extraordinary relief and clears the procedural hurdles." *Gibson v. State*, 329 S.C. 37, 41, 495 S.E.2d 426, 428 (1998). *See also Moore*, 436 S.C. at 219, 871 S.E.2d at 429 ("Habeas relief is seldom used and acts as an ultimate ensurer of fundamental constitutional rights." (quoting Williams v. Ozmint, 380 S.C. 473, 477, 671 S.E.2d 600, 602 (2008))). The Court just does not need to exercise jurisdiction here.

As stated above, none of the issues raised in Mahdi's motion for a stay or his petition for writ of certiorari constitute exceptional circumstances, and the pendency of his execution cannot itself be an exceptional circumstance; if so, every death row inmate able to make a claim would be able to readily obtain review as the execution approached. There is no reason to believe that this Court will find merit in the issues raised in his petition, and in fact no reason to believe that this Court will agree to hear the case in its original jurisdiction; given that, there are no grounds to issue a stay.

CONCLUSION

Mahdi has not asserted meritorious claims, and he has not met the standards for this Court to issue a stay. The motion should be denied.

Respectfully Submitted,

ALAN WILSON
Attorney General of South Carolina

DONALD J. ZELENKA
Deputy Attorney General

MELODY J. BROWN
Senior Assistant Deputy Attorney General

J. ANTHONY MABRY
Senior Assistant Attorney General

R. BRANDON LARRABEE
Assistant Attorney General

s/Melody J. Brown
By:_____
S.C. Bar No. 14244

s/J. Anthony Mabry
By:_____
S.C. Bar No. 11973

s/R. Brandon Larrabee
By: _____
S.C. Bar No. 104865

Post Office Box 11549
Columbia, South Carolina
29211 (803) 734-6305

ATTORNEYS FOR RESPONDENT

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