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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA

S.C. Supreme Court

Brad Keith Sigmon, # SK-6008,)
)
 Petitioner,)
)
 vs.)
)
 William R. Byars, Jr., *Commissioner, South Carolina*)
Department of Corrections; Joseph McFadden, *Warden*)
of Lieber Correctional Institution,)
)
 Respondents.)
)

C/A No. 8:13-1399-RBH

ORDER

This matter is before the Court on Petitioner’s August 8, 2013, Motion For Additional Time Staying His Execution And Additional Time To File A Memorandum Of Law In Support Of The Petition For Writ Of Habeas Corpus (“Motion”). ECF No. 35. Respondent filed a Response to the Motion on August 13, 2013. ECF No. 37. In this death penalty case, as of this date it appears that Petitioner’s execution date is still imminent yet *unscheduled*.¹

On May 23, 2013, because Petitioner had filed a pleading to invoke his right to appointed counsel under 28 U.S.C. § 2251, this Court granted Petitioner a stay of execution for ninety (90) days from the date counsel is appointed, which occurred on the same date (ECF No. 19), pursuant to 28 U.S.C. § 2251(a)(3). ECF No. 17. The stay of execution is due to expire on August 21, 2013.

¹ This Court takes judicial notice that the Greenville County on-line court records indicate that in Sigmon’s PCR action, 2006CP2306547, the Supreme Court entered an Remittur Order on May 17, 2013. *See Philips v. Pitt Cnty. Mem. Hosp.*, 572 F.3d 176, 180 (4th Cir. 2009) (courts “may properly take judicial notice of matters of public record.”); *Colonial Penn Ins. Co. v. Coil*, 887 F.2d 1236, 1239 (4th Cir. 1989) (“We note that ‘the most frequent use of judicial notice is in noticing the content of court records.’”). **Apparently, no execution date has been scheduled, and Respondent asserts that it “will not seek the issuance of an execution notice until such time as this Court may act on the motion [Petition for Writ of Habeas Corpus].”** ECF No. 37.

Further, this Court ordered that Petitioner is required to file the habeas petition within the ninety (90) day stay of execution, and prior to the expiration of the ninety (90) day stay of execution Petitioner is required to seek a longer stay of execution pursuant to 28 U.S.C. § 2251(a)(1) in order to allow this Court to rule on the merits of the habeas petition. *Id.* No motion for reconsideration was filed.²

In his Motion, Petitioner asserts that he will file the Petition for Writ of Habeas Corpus on or before August 21, 2013. ECF No. 35. Petitioner did so by filing the Petition on August 21, 2013. ECF No. 42. Accordingly, because a habeas corpus proceeding is now pending as prescribed by 28 U.S.C. § 2251 (a)(1) and (2), this Court will stay the execution while this proceeding is pending in

² In the Motion, in a footnote Petitioner alleges that this Court entered the May 23, 2013, order (ECF No. 17) “without notice to Sigmon, who was acting *pro se* at the time, and with no opportunity for him to respond.” ECF No. 35 at 3, n.3. Further, he alleges that the Court’s order (ECF No. 5) requiring any reply by Petitioner to be filed by Friday May 17, 2013, “was not served upon Sigmon, who was still acting *pro se* at the time.” *Id.* Counsel for Petitioner allege that prior to being appointed by this Court on May 23, 2013, they “had no authority to represent Mr. Sigmon before this Court in filing a reply or any other document on his behalf and notice to the undersigned counsel did not serve as *notice* to Sigmon, who was acting *pro se* at that time.” *Id.*

First, this Court finds that counsel’s assertions are somewhat surprising because, even though Petitioner signed the May 10, 2013, Motion for Stay of Execution, it is apparent that counsel prepared the pleading. Additionally, on May 22, 2013, prior to being appointed by this Court to represent Petitioner, William Ehliès on behalf of Petitioner filed via CM/ECF additional attachments to the Motion for Stay of Execution. ECF No. 13. Further, on or about May 20, 2013, prior to being appointed by this Court to represent Petitioner, a representative of this Court telephoned Teresa Norris to inquire whether a Reply brief would be filed, and she indicated that Petitioner would not file a Reply to the Response. Such conduct indicated to this Court that Mr. Ehliès and Ms. Norris were already representing Petitioner even though the official appointment had not been ordered. Regardless, this Court mailed a copy of the text order shortening the response and reply time to the Motion for Stay of Execution and for Appointment of Counsel (ECF No. 5) directly to Petitioner by U.S. Mail. ECF No. 6. Further, based on the Certificate of Service, Respondent served its Return to Motion for Stay of Execution and Appointment of Counsel on Petitioner by U.S. mail, Mr. Ehliès by U.S. Mail and e-mail, and Ms. Norris by U.S. Mail and e-mail. ECF No. 9-1. Finally, the May 23, 2013, order was served by this Court on Petitioner’s counsel who were appointed that same date, so as of May 23, 2013, they did have authority to receive notice of that order on behalf of Petitioner, and they could have filed a motion to reconsider or to alter or amend if they disagreed with this Court’s order.

order to allow this Court to rule on the merits of the habeas petition. Respondent does not object to this Court entering a stay of execution pursuant to 28 U.S.C. § 2251 (a)(1), because Petitioner has now filed a habeas petition. ECF No. 37. Thus, this Court finds that it is appropriate to extend the stay of execution, and the stay is hereby continued while this habeas corpus proceeding is pending pursuant to 28 U.S.C. § 2251 (a)(1).

Additionally, in the Motion, Petitioner requests an additional period of 60 days, up to and including October 21, 2013, to file a memorandum of law in support of the Petition for Writ of Habeas Corpus, which was filed as previously ordered by this Court on August 21, 2013. ECF No. 35. As to this request by Petitioner, Respondent takes no position and asserts that this Court has discretion to determine whether it should allow Petitioner additional time to file a brief in support of the habeas petition. ECF No. 37. This Court has reviewed the reasons set forth by Petitioner's counsel in support of their request for additional time to file the legal memorandum, and it is appropriate to grant Petitioner 60 days additional time to file a memorandum of law in support of the Petition for Writ of Habeas Corpus. Accordingly, Petitioner shall file his memorandum of law in support of the Petition for Writ of Habeas Corpus on or before October 21, 2013.

Accordingly, this Court orders the following:

(1) Petitioner's Motion for Additional Time Staying his Execution is **granted**, and the stay is hereby continued while this habeas corpus proceeding is pending pursuant to 28 U.S.C. § 2251 (a)(1); and

(2) Petitioner's Motion for Additional Time to File a Memorandum of Law in Support of the Petition for Writ of Habeas Corpus is **granted** such that he shall file his memorandum of law in support of the Petition for Writ of Habeas Corpus on or before October 21, 2013.

IT IS SO ORDERED.

s/R. Bryan Harwell
R. Bryan Harwell
United States District Judge

August 21, 2013
Florence, South Carolina