RECEIVED
Nov 09 2026
S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
In The Supreme Court

Appeal from Abbeville County
Court of Common Pleas (Capital PCR)

Honorable R. Scott Sprouse, Circuit Court Judge

Appellate Case No. 2026-002451

STEVEN VERNON BIXBY, ... PETITIONER,

v.

STATE OF SOUTH CAROLINA, ...RESPONDENT.

RETURN OPPOSING MOTION TO HOLD THE ISSUANCE OF AN EXECUTION NOTICE IN ABEYANCE

Petitioner, Steven Vernon Bixby, seeks an order to prevent compliance with the statutory direction that the Clerk of this Court must issue a notice of execution at completion of this action challenging Bixby's competency to be executed.[1] *See* S.C. Code Ann. § 17-25-370 (clerk must issue the notice after judgment is affirmed). Bixby fails to show cause for such an order.

1. Bixby's request to restrain the Clerk from issuing the notice is contrary to state law and the ministerial nature of the act. *See, e.g., Roberts v. Moore,* 332 S.C. 488, 488, 505 S.E.2d 593 (1998) (recognizing that S.C. Code Ann. § 17-25-370 directs the Clerk of this Court to issue

[1] Petitioner's Motion to Hold the Issuance of an Execution Notice in Abeyance was originally filed on November 4, 2026, under the previous action case number, Appellate Case No. 2025-002075. The motion has since been moved to the new action, under Appellate Case No. 2026-002451. Respondent herein files under the new Appellate Case Number.

the notice and the ministerial nature of the duty). Bixby's present stay of execution is in place only to allow litigation of the permitted successive state PCR action[2] in challenge to his competency to be executed.[3] (*See* Appellate Case No. 2007-054161, March 13, 2025 Order). Thus, at the latest, the Clerk must issue the notice when the remittitur is issued. *In re Stays of Execution in Cap. Cases*, 321 S.C. 544, 546–47, 471 S.E.2d 140, 141 (1996) (when "the petition for a writ of certiorari is denied, or an order or opinion is issued by this Court which does not invalidate the sentence of death, the Clerk of this Court shall issue an execution notice when the remittitur is sent to the circuit court"). In the absence of any discretion, there is no cause to restrain the Clerk from compliance.

Further, Bixby's argument that this Court should do so as part of its "inherent power to control the order of its business" and for the benefit of the parties engaged in litigation, (Mtn. 3), misses the mark. The notice is issued when this Court's review is completed. *Roberts, supra.* Thus, not only is his request improper under existing law, but delay is also unnecessary for "control" of the litigation because the litigation has ended when the ministerial duty arises.

---

[2] This final action followed ample and repeated opportunities to challenge the death sentenced imposed on February 21, 2007, for the murders of Abbeville County Deputy Sheriff Danny Wilson and Magistrate's Constable Donnie Ouzts. Bixby pursued a direct appeal, post-conviction relief, post-conviction relief appeal, and federal habeas review but failed to show any relief was due. *See generally State v. Bixby, supra*; *Bixby v. Stirling*, No. 4:17-CV-954-BHH, 2021 WL 783660 (D.S.C. Mar. 1, 2021), *appeal dismissed*, No. 21-5, 2022 WL 4494130 (4th Cir. Apr. 29, 2022), reh'g denied (Aug. 31, 2022), *cert. denied* 2023 WL 3440639 (U.S. May 15, 2023). On May 16, 2023, the State advised by letter addressed to the Clerk of Court that he had concluded his ordinarily available state and federal remedies, though he also had a separate post-judgment appeal in the Fourth Circuit. That action, too, failed to afford any relief. *Bixby v. Stirling*, 90 F.4th 140 (4th Cir.), *cert. denied*, 145 S. Ct. 224, 220 L. Ed. 2d 57 (2024).

[3] Strictly speaking, *Bixby* does not challenge his competency; rather, Bixby's *present collateral counsel* challenges his competency. Judge Sprouse, after full consideration of the evidence and arguments, found that Bixby maintains full ability to interact with counsel, he simply chooses not to. (*See* Return to Petition for Writ of Certiorari, pp. 18-19, discussing Judge Sprouse's order finding Bixby competent to be executed; *see also* App. 1637, Order, Judge Sprouse finding ample evidence of the ability to communicate).

2. Even so, Bixby submits that he should be allowed to avoid a notice over the "winter holidays." (Mtn. at 1, 5). It is true that this Court previously issued an order to modify an execution schedule, but the order does not expressly hold the modification was granted because of the "winter holidays" as Bixby suggests. (*See* Appellate Case No. 2024-001373, November 14, 2024 Order).[4] Further, the modification was granted in context of the unusual circumstance of scheduling multiple executions after the passage of an amended statute, which included a new method and certification by the director regarding the methods, and when the State had not had an execution since 2011. Notably, Bixby was the benefit of that stay, as well as Marion Bowman, Brad Sigmon and Mikal Mahdi. At any rate, while the modification was a functional equivalent of a stay, it was still a modification of an order. That alone shows a much different procedural stance and does not work to support Bixby's argument here.

3. Next, Bixby argues that he would like to file a petition for writ of certiorari following this Court's denial of review. (Mtn. at 3). Again, this shows no basis to hold the notice. Further, such preemptive action, if allowed, would undercut a petitioner's burden of showing that there is '"a reasonable probability that four Members of the [United States Supreme] Court will consider the issue sufficiently meritorious to grant certiorari or to note probable jurisdiction.'" *In re Stays,* at 547, 471 S.E.2d at 142 (quoting *Graves v. Barnes,* 405 U.S. 1201, 1203 (1972) (J. Powell, Circuit Justice). That is a duty this Court squarely places on the inmate. *Id.* That aside for the moment, and only for the sake of argument, Bixby appears to wish to raise a "Due Process

[4] Bixby neglects to recognize that the State did not consent to a prior stay in the series of executions beginning in late 2024. (*See* Appellate Case No. 2024-001373, Return filed Nov. 7, 2024). The South Carolina Department of Corrections is a 24-hour, 365-day operation and stands ready to carry out the court ordered sentence, and has, in fact, carried out several executions in November and December, notably four between December 4-18, 1998. Id., at 3 n. 3. Justice should not be delayed for any reason outside an express and specific need supporting good cause. Bixby fails to show delay is warranted here.

and Equal Protection" based argument regarding the denial of certiorari. (Mtn. at 3). That itself is a tall order, but even so, Bixby did not assert a federal basis but relied on state law in his petition and reply.[5] There is no federal issue presented in the litigation to take up. The suggestion that argument in the petition for rehearing implicates federal law is involved not only fails to cure the deficiency but also is not even a proper petition for rehearing. This Court denied certiorari. A petition for rehearing is allowed only to raise "with particularity the points supposed to have been overlooked or misapprehended by the court." Rule 221(a), SCACR. The only "point" that could be at issue in the summary order denying further review is whether there was an exercise of discretion in this case; and the fact there was briefing, consideration and an order certainly supports the appropriate review in the certiorari process was made and that this Court exercised discretion in deciding no further review was warranted. *See generally* Rule 243(a) (setting procedures for PCR action appeals). At bottom, Bixby is not arguing that a true federal right was violated; he argues the certiorari process failed to afford him enough review. Nothing in due process or equal protection (if it could be applicable) would work to invalidate the discretionary nature of certiorari review as adopted in this jurisdiction. Indeed, the Supreme Court is also a certiorari court. It would seem the process is likely to be upheld. [6]

---

[5] Indeed, as noted in the dissent from the grant of a stay to allow the competency challenge in the circuit court, Bixby concedes that he meets the federal standard for competency to be executed. (Appellate Case No., 2007-054161, March 13, 2025 Order (J. Few, dissenting, J. James, concurring in dissent). Further, Judge Sprouse, after the evidentiary hearing, found the same. (App. 1627-1628).

[6] A brief reference to Bixby's assertion that he "is not requesting a lengthy, open-ended stay" but acknowledges he could take at least 150 days to file a petition, though he offers to file in 45 days from any order. (Mtn. at 4, 5). Much has been written about the delays in these cases, and that need not be reiterated in detail. The State would be remiss if it did not point out that it has been over 19 years since Bixby was sentenced to death and over 20 since the murders. Review has been completed and Bixby has been found competent to be executed. It is time for the sentence—repeatedly reviewed, and repeatedly affirmed—to be carried out.

4. As yet another reason for his motion, Bixby argues that this Court should restrain the Clerk from issuing the notice under proper procedure because he wishes to pursue a civil action to have the execution protocols declared to be subject to the Administrative Procedure Act. (Mtn. at 3-4). That could not possibly affect the competency ruling at issue, nor the validity of his conviction, and has nothing to do with this Court's review of Bixby's competency. Apparently, Bixby's execution would not even end the action as William Dickerson is also named as a plaintiff. (*See* Mtn. at 4).[7] At any rate, the mere filing of a related action should not be extraordinary cause to stay a valid execution as it would be the ordinary route to avoid carrying out the jury-determined sentence.

THEREFORE, based on the foregoing, the motion should be denied.

Respectfully Submitted,

ALAN WILSON
Attorney General

DONALD J. ZELENKA
Deputy Attorney General

MELODY J. BROWN
Senior Assistant Deputy Attorney General
S.C. Bar No: 14244

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

By: *s/Melody J. Brown*
MELODY J. BROWN
ATTORNEYS FOR RESPONDENT

November 9, 2026

[7] Further, the action appears to be an attempt to avoid the confidentiality measures regarding the execution protocol; however, the statutory exemption of "orders of the supervisory or administrative agency of a penal, mental, or medical institution, in respect to the institutional supervision, custody, control, care, or treatment of inmates, prisoners, or patients" in S.C. Code Ann.§ 1-23-10(4), seems to control and be dispositive and consistent with the Legislative intent to protect the measures.