

## Hopkins, Debbie

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**From:** Zelenka, Don  
**Sent:** Friday, December 12, 2014 11:39 AM  
**To:** Donna D'Alessio; Lauren Meara; Lonnie Brawley; Melissa Vail; Al Simon; Brendan McDonald; Caroline Scramton; Zelenka, Don; Ed Salter; Anthony Mabry; Kaycie Timmons; Melody Brown; Creighton Waters  
**Cc:** Barnette, Barry; Hopkins, Debbie; Adam Piper; Mark Powell; Ava Thomas; Marie Higgins; Trisha Allen  
**Subject:** Richard Moore - Spartanburg Death Penalty - Motion to STay in Federal Court  
**Attachments:** Moore Richard Motion to Stay Execution (00506084xD2C78).pdf

Attached is the motion to stay that I just received from the Federal Court.

Donald J. Zelenka  
Senior Assistant Deputy Attorney General  
South Carolina Attorney General's Office  
P.O. Box 11549  
Columbia, S.C. 29211  
803-734-3601  
[dzelenka@scag.gov](mailto:dzelenka@scag.gov)

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

RICHARD BERNARD MOORE	)	
<i>Petitioner,</i>	)	NO. 4:14-mc-00356-MGL-TER
v.	)	
BRYAN P. STIRLING, Commissioner,	)	<b>MOTION FOR STAY OF</b>
South Carolina Department of Corrections,	)	<b>EXECUTION</b>
and JOSEPH MCFADDEN, Warden,	)	
Lieber Correctional Institution	)	
<i>Respondents.</i>	)	

**THIS IS A CAPITAL CASE.**

Richard Bernard Moore is an indigent prisoner under sentence of death imposed by the Spartanburg County, South Carolina, Court of General Sessions. Through undersigned counsel, Mr. Moore requests this Court stay his imminent execution pursuant to 28 U.S.C. § 2251(a)(3). In support of this Motion, counsel submit the following facts and argument.

Mr. Moore was convicted of murder, assault with intent to kill, and armed robbery in Spartanburg County, South Carolina in 2001. Mr. Moore was subsequently sentenced to death. On March 1, 2004, the Supreme Court of South Carolina upheld Mr. Moore's convictions and sentence on direct appeal. *State v. Moore*, 357 S.C. 458, 593 S.E.2d 608 (2004). Mr. Moore's initial application for post-conviction relief was filed on August 8, 2004. The post-conviction court denied post-conviction relief, and the Supreme Court of South Carolina denied Mr. Moore's petition for a writ of certiorari to review the lower court's denial on September 11, 2014. Mr. Moore petitioned the Supreme Court of South Carolina for rehearing, which was denied on October 24, 2014. The remittitur from the South Carolina Supreme Court was also issued on October 24, 2014.

On November 20, 2014, Mr. Moore filed a Motion for Appointment of Counsel (ECF No. 1), asking this Court to appoint counsel to represent him in the preparation, presentation, and

litigation of his federal habeas petition for writ of habeas corpus.<sup>1</sup> At the time, Mr. Moore did not ask the Court to stay his execution because a motion was pending before the South Carolina Supreme Court, asking that court to stay his execution while the South Carolina Office of Appellate Defense petitioned the Supreme Court of the United States for a writ of certiorari to review the South Carolina courts' denial of post-conviction relief. On December 10, 2014, the South Carolina Supreme Court denied Mr. Moore's motion for a stay of execution.<sup>2</sup> Though the South Carolina Supreme Court did not issue an execution warrant setting an execution date with its denial of Mr. Moore's motion for a stay of execution, Mr. Moore's execution is nevertheless imminent and requires a stay from this Court. Given the denial of the motion for a stay of execution, the South Carolina Supreme Court soon will inform the South Carolina Department of Corrections of the denial and the execution will be scheduled for the fourth Friday after such notice.<sup>3</sup> See S.C. Code § 17-25-370; *In re: Stays of Execution in Capital Cases*, 321 S.C. 544, 471 S.E.2d 140 (1996).

This Court is authorized to issue a stay of execution based on Mr. Moore's request for appointment of counsel to assist him in his federal habeas proceedings. 28 U.S.C. § 2251(a)(3); *McFarland v. Scott*, 512 U.S. 849 (1994). In order for the right of assistance of counsel to have meaning in federal habeas proceedings, the district courts are authorized to stay an execution. *McFarland*, 512 U.S. at 857. Mr. Moore has affirmatively represented that he wishes to pursue federal habeas review of his case and asked this Court to appoint undersigned counsel to represent

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<sup>1</sup> The Motion for Appointment of Counsel remains pending before this Court. Respondents filed no response to the Motion for Appointment. The deadline for Respondents to file a response was December 8, 2014. The Motion for Appointment of Counsel is, therefore, ripe for consideration by this Court.

<sup>2</sup> The order denying a stay of execution is attached as Exhibit A.

<sup>3</sup> Undersigned counsel was informed today by counsel from the Office of Appellate Defense that the South Carolina Supreme Court intends to issue the execution order today, December 12, 2014.

him. This Court should therefore enter a stay of execution pending the resolution of his federal habeas corpus proceedings to allow Mr. Moore to prepare, file, and litigate his petition for habeas relief.

Respectfully submitted,

**CHRISTOPHER W. ADAMS**

Fed. ID # 10595

The Law Office of Christopher W. Adams, P.C.

PO Box 561

Charleston, SC 29402

chris@chrisadamslaw.com

(843) 577-2153

**LINDSEY S. VANN**

Fed. ID # 11872

Death Penalty Resource & Defense Center

900 Elmwood Ave., Suite 101

Columbia, SC 29201

lindsey@deathpenaltyresource.org

(803) 765-1044

BY: s/ Lindsey S. Vann

December 12, 2014.



# The Supreme Court of South Carolina

Richard Bernard Moore, Petitioner,

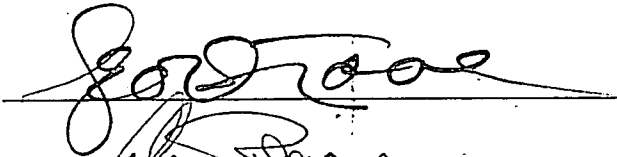
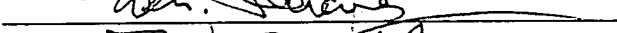

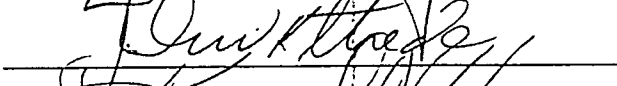
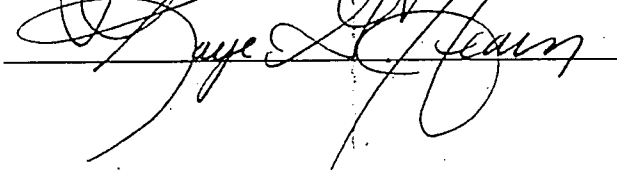
v.

State of South Carolina, Respondent.

Appellate Case No: 2001-021895

ORDER

Petitioner seeks a stay of execution to allow him to file a petition for a writ of certiorari in the United States Supreme Court. The State has filed a return in opposition to the petition for a stay of execution. The petition is denied. *In re Stays of Execution in Capital Cases*, 321 S.C. 544, 471 S.E.2d 140 (1996).

	C.J.
	J.
	J.
	J.
	J.

Columbia, South Carolina

December 10, 2014

cc:

W. Edgar Salter, III, Esquire

✓ Robert Michael Dudek, Esquire

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DEC 10 2014

SC OFFICE OF APPELLATE DEFENSE

**Susan Barber Hackett, Esquire**  
**Alan McCrory Wilson, Esquire**