

 ORIGINAL

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Sumter County

R. Ferrell Cothran, Jr., Circuit Court Judge

RECEIVED

MAY 12 2015

S.C. Supreme Court

STEPHEN COREY BRYANT,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT.

APPELLATE CASE NO. 2013-000518

PETITION FOR STAY OF EXECUTION

Counsel for Stephen Corey Bryant petitions this Court for a stay of execution to allow him to file a petition for writ of certiorari with the United States Supreme Court. This Court denied rehearing on May 6, 2015.

I.

On March 4, 2015, this Court denied the petition for a writ of certiorari from the trial court's order denying post-conviction relief. Petitioner had filed the petition for writ of certiorari on March 28, 2014 along with the accompanying appendix. Respondent had filed its return on July 28, 2014.

II.

A petition for rehearing was filed on March 19, 2015. As stated, this Court denied rehearing

on May 6, 2015.

III.

A petition for writ of certiorari to the United States Supreme Court is now Petitioner's proper avenue for relief from the judgment of this Court upholding his murder conviction and sentence of death. See Supreme Court Rule 13.1. Pursuant to In re Stays of Execution in Capital Cases, 321 S.C. 544, 471 S.E.2d 544 (1996), this Court is the proper Court to issue the stay pending the disposition of Petitioner's case in the United States Supreme Court.

IV.

Petitioner can raise the following federal issues, preliminarily framed, in the United States Supreme Court:

1. Did trial counsel render ineffective assistance in derogation of the Sixth, Eighth, and Fourteenth Amendments to the United States Constitution by providing inaccurate advice to Petitioner regarding the supposed advantages of pleading guilty, including the erroneous advice that a guilty plea would lessen the probability that Petitioner would be sentenced to death because a judge and not a jury was the sentencer?
2. Was Petitioner denied the effective assistance of counsel in violation of the United States Constitution by being deprived of two attorneys during a critical stage of his prosecution, namely the discussions of whether he should plead guilty and his resulting decision to plead guilty?
3. Did trial counsel render ineffective assistance in derogation of the Sixth, Eighth, and Fourteenth Amendments to the United States Constitution by failing to object to the solicitor's improper request in closing argument that the trial judge send a "message" by sentencing Petitioner to death?
4. Did trial counsel provide ineffective assistance, in violation of Petitioner's rights pursuant to the Fifth, Sixth, Eighth, and Fourteenth Amendments to the United States Constitution by failing to object to the trial court allowing the prosecutor to present additional evidence in aggravation of punishment — victim impact evidence — after both sides had rested?
5. Did trial counsel provide ineffective assistance, in violation of Petitioner's rights pursuant to the Sixth, Eighth, and Fourteenth Amendments to the United States

Constitution, by failing to preserve for review the trial judge's refusal to allow Petitioner to present mitigation testimony from Edward Gause, about whom the defense learned only after completing the case in mitigation? In the alternative, assuming the issue were preserved for review, did appellate counsel provide ineffective assistance, in violation of Petitioner's rights pursuant to the Fifth, Sixth, Eighth, and Fourteenth Amendments to the United States Constitution, by failing to raise the issue on direct appeal?

6. Was Petitioner denied due process under the Fifth, Eighth, and Fourteenth Amendments to the United States Constitution when the prosecution failed to release the complete computer analysis performed by law enforcement, which was relevant to Petitioner's case in mitigation of punishment because it corroborated Petitioner's statements and supported medical evidence of Petitioner's mental illness?
7. Were Petitioner's rights under the Sixth, Eighth, and Fourteenth Amendments to the United States Constitution violated because the trial judge failed to properly consider his application as evidenced by the PCR court's wholesale adoption of the state's proposed order?

V.

Pursuant to In re Stays of Execution in Capital Cases, *supra*, Petitioner has demonstrated that there is a reasonable probability that four Members of the United States Supreme Court will consider at least one of the issues presented sufficiently meritorious to grant certiorari or to note probable jurisdiction. There is no question that the United States Supreme Court has jurisdiction over the seven issues enumerated above as each detail the denial of a right secured by the United States Constitution – the effective assistance of counsel. Thus, the Supreme Court has jurisdiction pursuant to 28 U.S.C. § 1257(a).

Rule 10 provides the non-exhaustive character of reasons the United States Supreme Court considers when deciding whether to grant the writ. Two of the three are applicable here. The first concerns a decision on a federal question that conflicts with another state court or federal court of appeals. The second is a state court's decision on an important federal question that has not been decided by the Supreme Court or the state court's decision conflicts with relevant decisions of the

Supreme Court. In his petition for writ of certiorari seeking review in this Court, Petitioner explained how the PCR judge erred in denying him review and how those decisions conflicted with decisions from other states, other federal appellate courts, and the United States Supreme Court.

In light of the heightened scrutiny afforded death penalty cases, Petitioner's case will require greater consideration by the Supreme Court on certiorari than non-death penalty cases seeking certiorari. In fact, at least four of the cases decided by the Supreme Court during its October Term 2013 were death penalty cases. During the current term, the Court has heard at least five cases concerning the death penalty. One of those cases, Glossip v. Gross, Docket No. 14-7955, concerns the constitutionality of executions when carried out using certain drug cocktails. For the October Term 2015, the Court has granted certiorari in at least four death penalty cases; however, three of them appear to raise the same issue concerning a challenge to the standard instructions in Kansas regarding mitigating circumstances.

On March 30, 2015, the Supreme Court decided Woods v. Donald, 135 S.Ct. 1372 (2015) addressing whether trial counsel's absence from the courtroom during testimony concerning other defendants was a case involving presumed prejudice. Although the Court determined prejudice was not presumed from counsel's absence, the case demonstrates the Court's continued interest in the claims involving the denial of counsel. Petitioner's second enumerated claim concerns just such an issue. In 2012, the Supreme Court issued a pair of opinions concerning the right to the effective assistance of counsel during the plea bargaining process: Lafler v. Cooper, 132 S.Ct. 1376 (2012) and Missouri v. Frye, 132 S.Ct. 1399 (2012). Petitioner's first enumerated issue also addresses the right to the effective assistance of counsel during the plea bargaining process.

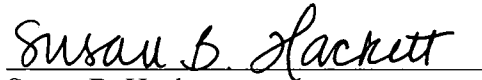
While it is impossible to predict how any of the Justices of the United States Supreme Court will vote concerning any given petition for writ of certiorari, Petitioner has demonstrated a

reasonable probability that at least four of the justices will vote to review Petitioner's case. Over the last two decades, we have witnessed the pendulum move toward greater restrictions on the imposition of the death penalty. In 2002, the Court held the execution of intellectually disabled people constitutes cruel and unusual punishment. Atkins v. Virginia, 536 U.S. 304 (2002). That year, the Court also held that a criminal defendant is entitled to a jury sentencing in capital cases following a jury adjudication of guilt. Ring v. Arizona, 536 U.S. 584 (2002). In 2005, the Supreme Court excluded juveniles from the group of individuals eligible for the death penalty. Roper v. Simmons, 543 U.S. 551 (2005). Recently, in Hall v. Florida, 134 S.Ct. 1986 (2014), the Court held that a state may not establish a strict IQ score cut-off for determining intellectual disability because such a cut-off disregards established medical practice. Thus, an individual's death-eligibility, or lack thereof, may not be determined by IQ score alone. The Supreme Court has agreed to hear a case concerning the intersection of Ring and Atkins next term – Hurst v. Florida, Docket No. 14-7505. The Hurst case also challenges Florida's death penalty scheme's failure to require unanimity among the jurors for imposition of a death sentence.

Petitioner seeks only the opportunity to have the United States Supreme Court determine whether it will review his case. Respectfully, Petitioner requests this Court stay his execution while he seeks such review.

WHEREFORE, counsel for Stephen Corey Bryant requests a ninety-day stay of execution from May 6, 2015, in which to file a petition for writ of certiorari in the United States Supreme Court, and to continue until his case is ruled upon by the United States Supreme Court.

Respectfully submitted,



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May 12, 2015

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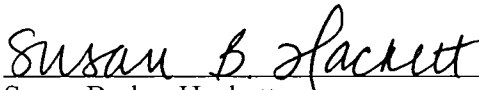
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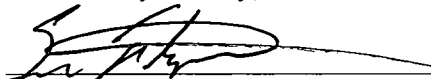
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CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Petition for Stay of Execution in the above referenced case has been served upon opposing counsel, Melody J. Brown, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, and Mr. Stephen Corey Bryant #5252, at Lieber Correctional Institution, PO Box 205, Ridgeville, SC 29472, this 12th day of May, 2015.


Susan Barber Hackett
Appellate Defender

SUBSCRIBED AND SWORN TO before me
this 12th day of May, 2015.



Notary Public for South Carolina (L.S.)
My Commission Expires: October 30, 2022.