

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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APPEAL FROM HORRY COUNTY

The Honorable Benjamin H. Culbertson, Circuit Court Judge, S.C. SUPREME COURT

Appellate Case No. 2014-000904
Opinion No. 27685

LOUIS MICHAEL WINKLER, JR.,

RESPONDENT,

V.

STATE OF SOUTH CAROLINA,

PETITIONER.

RETURN TO MOTION TO
STAY ISSUANCE OF REMITTITUR

Comes now the State of South Carolina, by and through the Office of the South Carolina Attorney General, and hereby opposes Winkler's Motion to Stay Issuance of Remittitur filed December 21, 2016. The State submits a stay of the remittitur is not warranted in this case.

A stay of the remittitur would cause unnecessary delay in the remand of the post-conviction relief action by this Court in its opinion in this appeal. In this Court's Opinion filed November 23, 2016, the post-conviction relief action in this case was remanded to the PCR court for resolution of the claim relating to trial counsel's alleged failure to investigate and present evidence of Winkler's alleged brain damage. This remand would become effective upon the filing of the remittitur. See generally Bunkum v. Manor

Properties, 321 S.C. 95, 99, 467 S.E.2d 758, 760 (Ct. App. 1996) (noting that an appellate court retains jurisdiction of case until the remittitur is issued and proceedings returned to circuit court, and upon issuance of remittitur, "the circuit court re-acquired subject matter jurisdiction to enforce the judgment and take any action consistent with the appellate court's ruling."); see also Muller v. Myrtle Beach Golf & Yacht Club, 313 S.C. 412, 415, 438 S.E.2d 248, 250 (1993).

A stay in the issuance of the remittitur in this action would unnecessarily delay the investigation, presentation, and resolution of this claim before the PCR Court. Such a delay is not warranted. First, as noted by Winkler in his motion, further factual development upon the remaining claim is needed. The issuance of the remittitur would allow for the post-conviction relief action, including the investigation, exchange of discovery, and scheduling of the evidentiary hearing, to go forward. A stay in the issuance of the remittitur would delay this process. See generally Rule 205, SCACR. The issuance of the remittitur does not affect Winkler's ability to seek certiorari from the United States Supreme Court. Winkler can seek a writ of certiorari with the United States Supreme Court without staying the remittitur and without delaying the continuation of the post-conviction relief action proceedings.

Second, Winkler's assertions that a stay of the remittitur may prevent the need for further factual development in this case, and/or would otherwise only potentially delay the post-conviction relief action by a few months are speculative. While the timeline for the filing a petition for writ of certiorari with the United States Supreme Court, it is unclear how long it may take the United States Supreme Court to rule upon a petition. The State submits it may be more prudent for this Court to issue the remittitur,

allow the post-conviction relief action to go forward, and then allow the PCR Court to resolve whether a stay would be warranted if the United States Supreme Court grants a petition for writ of certiorari filed by Winkler.

WHEREFORE, premises considered, the State respectfully requests this Court deny Winkler's Motion to Stay Issuance of Remittitur. The State further requests any other relief this Court deems appropriate.

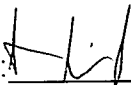
Respectfully submitted,

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ATTORNEYS FOR RESPONDENT

By: 

Alphonso Simon Jr. (Bar No. 74713)

January 3, 2017.

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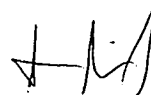
PETITIONER.

PROOF OF SERVICE

I, Alphonso Simon, Jr., of counsel for the Petitioner, certify that I have served two (2) copies of the within Return to Motion to Stay Issuance of Remittitur via U.S. mail to his attorneys of record, Emily C. Paavola, Esq., Justice 360, f/k/a Death Penalty Resource and Defense Center, 900 Elmwood Avenue, Ste. #200, Columbia, South Carolina 29201, and to John R. Mills, Esq., The Phillips Black Project, 836 Harrison Street, San Francisco, CA 94107.

I further certify that all parties required by Rule to be served have been served.

This 3rd day of January, 2017.



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