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S.C. SUPREME COURT

ALAN WILSON
ATTORNEY GENERAL

April 10, 2017

The Honorable Daniel E. Shearouse
Clerk, South Carolina Supreme Court
P.O. Box 11330
Columbia, South Carolina 29211

Re: State of South Carolina vs. Bobby Wayne Stone
Trial Court Case No. 1996-GS-43-0698
Stay of Execution Issued by United States District Court

Dear Mr. Shearouse:

On March 30, 2017, this Court issued the Execution Notice in State of South Carolina vs. Bobby Wayne Stone. This morning, the Honorable Mary Geiger Lewis, United States District Judge issued an Order staying Mr. Stone's execution. The Order granting the stay indicates the stay will last until ninety days after the date Stone's motion for appointment of counsel is resolved in the United States District Court for the District of South Carolina.

Please find enclosed a copy of the Order Granting Petitioner's Motion to Stay His Execution and Holding in Abeyance His Motion for the Appointment of Counsel. For reference, I am also including a copy of the Motion for Stay of Execution and Appointment of Counsel filed by Mr. Stone, and a copy of the Return to the Motion filed by the Respondents in United States District Court for the District of South Carolina.

Please let me know if you have any questions.

Sincerely,

Alphonso Simon, Jr.
Assistant Attorney General

AS/

Enclosures

cc: Emily C. Paavola, Esq. (w/copy of encls.)
John H. Blume, III, Esq. (w/copy of encls.)
Salley Elliott, Esq. (w/copy of encls.)
The Honorable Ernest Adolphus Finney, III., Solicitor, 3rd Judicial Circuit (w/copy
of encls.)
Trisha Allen, Victim Services (w/copy of encls.)



**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION**

BOBBY WAYNE STONE,

Petitioner,

vs.

BRYAN P. STIRLING, Commissioner, South
Carolina Department of Corrections, and
JOSEPH MCFADDEN, Warden, Lieber
Correctional Institution,
Respondents.

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MISC. ACTION NO. 2:17-0136-MGL-MGB
CAPITAL CASE

**ORDER GRANTING PETITIONER'S MOTION TO STAY HIS EXECUTION
AND HOLDING IN ABEYANCE HIS MOTION
FOR THE APPOINTMENT OF COUNSEL**

I. INTRODUCTION

This is a state capital case filed under 28 U.S.C. § 2254. The matter is before the Court for consideration of Petitioner's motions to stay his execution and for the appointment of counsel. Having considered the motions, the response, the record, and the applicable law, the Court will grant Petitioner's motion to stay his execution and hold in abeyance his motion for the appointment of counsel pending briefing and further order of this Court.

II. PETITIONER'S MOTION TO STAY HIS EXECUTION

Petitioner moves the Court to stay his execution. Respondents do not object. Petitioner's execution is currently set for April 21, 2017.

Section 2251(a)(3) provides:

If a State prisoner sentenced to death applies for appointment of counsel pursuant to [the federal statute mandating the appointment of counsel for indigent petitioners who have been sentenced to death] in a court that would have jurisdiction to entertain a habeas corpus application regarding that sentence, that court may stay execution of the sentence of death, but such stay shall terminate not later than 90 days after counsel is appointed or the application for appointment of counsel is withdrawn or denied.

Id. The Court will grant Petitioner's motion to stay his execution. The stay will terminate ninety days after the Court rules on Petitioner's motion for the appointment of counsel.

III. PETITIONER'S MOTION FOR THE APPOINTMENT OF COUNSEL

Petitioner also moves the Court to appoint John H. Blume, of Ithaca, New York, and Emily C. Paavola, of Columbia, South Carolina, as his counsel in this action. They represented him during his post-conviction relief proceedings (PCR). Respondents offer no opposition to the motion.

A petitioner in a § 2254 action is entitled to bring ineffective assistance of counsel claims against his PCR counsel. *See Martinez v. Ryan*, 566 U.S. 1, 9 (2012) ("Inadequate assistance of counsel at initial-review collateral proceedings may establish cause for a prisoner's procedural default of a claim of ineffective assistance at trial."). "[I]f a federal habeas petitioner is represented by the same counsel as in state habeas proceedings, [however,] and the petitioner requests independent counsel . . . to investigate and pursue claims under *Martinez* in a state where the petitioner may only raise ineffective assistance claims in an initial-review collateral proceeding, qualified and independent counsel is *ethically* required." *Juniper v. Davis*, 737 F.3d 288, 290 (4th Cir. 2013) (citation omitted) (internal quotation marks omitted).

Petitioner has waived his right to bring any ineffective-assistance-of-counsel claims against his PCR counsel. And he has not requested independent counsel to pursue any *Martinez* claims. Nevertheless, the Court is reticent to accept his waiver. This, of course, is not to suggest the Court has concluded Petitioner might have any colorable claims in this regard. Instead, the Court's hesitancy springs from an abundance of caution.

Therefore, the Court will require briefing on the following issues:

1. Whether there is any appellate authority in which a court has allowed the petitioner to waive his ineffective-assistance-of-counsel claims against his counsel in his state collateral proceedings so counsel could represent him during his federal habeas proceedings.
2. Whether, in addition to appointing Mr. Blume and Ms. Paavola, it would be appropriate for the Court to appoint independent counsel to investigate and, if warranted, bring any ineffective-assistance-of-counsel claims as to Petitioner's PCR counsel.
3. Whether Petitioner wishes to request a specific statutorily qualified attorney in the event the Court concludes it is necessary to appoint independent counsel to investigate and, if warranted, bring any ineffective-assistance-of-counsel claims as to Petitioner's PCR counsel.

Petitioner shall file his brief on these issues not later than April 17, 2017. If Respondents wish to file a response, they must do so not later than April 24, 2017. If they decide not to file a response, they shall inform the Court as soon as that decision is made. If Respondents file a response, Petitioner must file his reply to the response not later than April 31, 2017.

IV. CONCLUSION

Wherefore, as discussed above, Petitioner's motion to stay his execution is **GRANTED** and his motion for the appointment of counsel is **HELD IN ABEYANCE** pending briefing and further order of this Court. Petitioner's execution is **STAYED** until ninety days after the Court rules on Petitioner's motion for the appointment of counsel.

IT IS SO ORDERED.

Signed this 10th day of April, 2017, in Columbia, South Carolina.

/s/Mary Geiger Lewis
MARY GEIGER LEWIS
UNITED STATES DISTRICT JUDGE

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

| | | |
|---|---|---|
| BOBBY WAYNE STONE |) | |
| |) | CIVIL ACTION NO. <u>2:17-mc-00136-MGL-MGB</u> |
| <i>Petitioner,</i> |) | |
| v. |) | MOTION FOR STAY OF EXECUTION |
| BRYAN P. STIRLING, Commissioner, |) | AND APPOINTMENT OF COUNSEL |
| South Carolina Department of Corrections, |) | |
| and JOSEPH MCFADDEN, Warden, |) | |
| Lieber Correctional Institution |) | |
| |) | |
| <u><i>Respondents.</i></u> |) | |

THIS IS A CAPITAL CASE.

Bobby Stone is an indigent prisoner under sentence of death imposed by the Sumer County, South Carolina, Court of General Sessions. Through undersigned counsel, Stone requests that this Court stay his execution, which is **currently scheduled for Friday, April 21, 2017,**¹ and appoint counsel to represent him in the preparation, presentation, and litigation of his first federal petition for a writ of habeas corpus. Specifically, Stone requests that this Court appoint John H. Blume, of Ithaca, New York, and Emily C. Paavola, of Columbia, South Carolina, to represent him. In support of this motion, counsel submit the following facts and argument.

I. RELEVANT PROCEDURAL HISTORY.

Stone was convicted and sentenced to death on January 28, 1997, for the shooting death of a sheriff's deputy in Sumter, South Carolina. On direct appeal, the South Carolina Supreme Court reversed the death sentence and remanded for a new sentencing proceeding. *State v. Stone*, 350 S.C. 442, 567 S.E.2d 244 (2002). Following a second sentencing proceeding, Stone was again

¹ The South Carolina Supreme Court issued the remittitur on March 29, 2017, and served the death warrant on March 30, 2017. Per South Carolina law, Stone's execution is scheduled for the fourth Friday following issuance of the remittitur to the circuit court. S.C. Code § 17-25-370; *In re: Stays of Execution in Capital Cases*, 321 S.C. 544, 546-47, 471 S.E.2d 140, 141 (1996). Accordingly, the execution date is April 21, 2017.

sentenced to death on February 27, 2005. He timely appealed, and the South Carolina Supreme Court affirmed his second death sentence on direct review. *State v. Stone*, 376 S.C. 32, 655 S.E.2d 487 (2007). Rehearing was denied on January 23, 2008. Stone did not seek a petition for writ of certiorari from the United States Supreme Court, and his time to do so expired on April 22, 2008.

Stone properly filed an application for post-conviction relief (“PCR”) on April 7, 2008. At that time, zero (0) days had elapsed on the one year limitations period for filing a federal habeas corpus petition as prescribed by 28 U.S.C. § 2244(d). This is because the federal statute of limitations does not begin running until “the date on which the judgment became final by the conclusion of direct review *or the expiration of the time for seeking such review.*” 28 U.S.C. 2244(d)(1)(A) (emphasis added); *see also, Crawley v. Catoe*, 257 F.3d 395, 400 (4th Cir. 2001) (“the limitation of action begins to run when the conviction is final under § 2244(d)(1)(A) only when the availability of direct appeal has been exhausted, which includes the denial of a certiorari petition to the United States Supreme Court *or the expiration of time for seeking such review.*”) (emphasis added).

The state PCR court held an evidentiary hearing at which Stone was represented by John Blume and Robert Lominack. At the conclusion of the hearing, and with the consent of Stone, Robert Lominack was relieved and Emily Paavola was substituted as counsel for Stone. The PCR court denied relief and Stone timely appealed. He was represented for the duration of the PCR appeal by Blume and Paavola, and the South Carolina Supreme Court’s denial of relief became final on March 29, 2017. Stone’s PCR application remained pending, and operated to toll the limitations period, until March 29th, on which date his 365 days on the federal statute of limitations began running. *See* 28 U.S.C. § 2244(d)(2) (“The time during which a properly filed application for State post-conviction or other collateral review with respect to the pertinent judgment or claim

is pending shall not be counted toward any period of limitation under this subsection.”). Thus, Stone has until March 29, 2018 to file his federal habeas corpus petition.

II. THE COURT MUST ENTER A STAY AND APPOINT COUNSEL TO REPRESENT MR. STONE IN HIS FIRST FEDERAL HABEAS CORPUS PROCEEDING.

Pursuant to 18 U.S.C. § 3599, indigent death-sentenced prisoners are “entitled to the appointment of one or more attorneys” in order to pursue federal habeas corpus remedies. The right to counsel conferred by section 3559 attaches prior to the filing of a prisoner’s habeas petition. As the Supreme Court has explained, absent this pre-petition right to counsel, condemned prisoners would not have meaningful access to the remedy of habeas corpus:

Congress’ provision of a right to counsel under [§3559] reflects a determination that quality legal representation is necessary in capital habeas corpus proceedings in light of “the seriousness of the possible penalty and . . . the unique and complex nature of the litigation.” An attorney’s assistance prior to the filing of a capital defendant’s habeas corpus petition is crucial because ‘the complexity of our jurisprudence in this area . . . makes it unlikely that capital defendants will be able to file successful petitions for collateral relief without the assistance of persons learned in the law.’

McFarland v. Scott, 512 U.S. 849, 855-856 (1994) (quoting *Murray v. Giarratano*, 492 U.S. 1, 14 (1989) (Kennedy, J., joined by O’Connor, J., concurring in the judgment)).

In construing § 3599 to require appointment of counsel prior to the filing of the petition, the Supreme Court explained that Congress provided for investigative and expert resources to be made available to counsel upon request and a showing of need. Since these services “may be critical in the pre-application phase of a habeas corpus proceeding, when possible claims and their factual bases are researched and identified,” Congress clearly intended counsel to be appointed prior to the filing of the habeas petition. *McFarland*, 512 U.S. at 855. It is thus plain that the right to counsel conferred by section 3599 is a right to assistance in identifying, developing, and pleading all available claims for relief.

Moreover, “the right to counsel necessarily includes a right for that counsel meaningfully to research and present a defendant’s habeas claims. Where this opportunity is not afforded, ‘[a]pproving the execution of a defendant before his [petition] is decided on the merits would clearly be improper.’” *Id.* at 858 (quoting *Barefoot v. Estelle*, 463 U.S. 880, 889 (1983)). Accordingly, once a capital defendant invokes his right to appointed counsel, this Court has jurisdiction to enter a stay of execution. *Id.*; *see also, id.* at 857 (“Even if the District Court had granted McFarland’s motion for appointment of counsel and had found an attorney to represent him, this appointment would have been meaningless unless McFarland’s execution also was stayed.”).

The appointment provision of 18 U.S.C. § 3599 requires appointment of at least one attorney who has been admitted to practice in the court of appeals for not less than five years and who has not less than three years of experience in the handling of appeals in that court in felony cases. §3599(b). Alternatively, for good cause, this Court may appoint counsel “whose background, knowledge, or experience would otherwise enable him or her to properly represent the defendant, with due consideration to the seriousness of the possible penalty and to the unique and complex nature of litigation.” §3599(d).

Undersigned counsel, John H. Blume, received a B.A. from the University of Chapel Hill (1978), a M.Div. from the Yale Divinity School (1982), and a J.D. Yale Law School (1984). After graduating from law school, he clerked for the Honorable Thomas A. Clark, United States Court of Appeals for the Eleventh Circuit, and was admitted to the South Carolina Bar in 1985. Since that time, he has been an Associate at a law firm in Charleston, S.C. (McClain & Derfner), Charleston, SC), a partner in a Columbia S.C. law firm (Bruck & Blume), the Executive Director of the South Carolina Death Penalty Resource Center and, since 1997, a Professor of Law at

Cornell Law School where he also serves as Director of the Cornell Death Penalty Project. Mr. Blume has argued eight capital cases in the Supreme Court of the United States, and numerous cases in the federal courts of appeal including arguments before the Second, Fourth, Fifth, Seventh, Ninth and Eleventh Circuits. He represents or has represented more than seventy-five death row inmates or persons facing the death penalty at trial, on direct appeal and in state and federal post-conviction proceedings in South Carolina as well as in Alabama, California, Georgia, Illinois, Texas and Virginia. He has been appointed to represent indigent death sentenced inmates in the District of South Carolina on multiple occasions from 1986 to the present. He is presently on this Court's CJA Death Penalty Panel Attorney List as approved lead counsel.

Emily C. Paavola is the Legal Director of Justice 360 (formerly "the Death Penalty Resource & Defense Center"). She is a 2005 graduate of Cornell Law School. She is licensed and admitted in New York, South Carolina, the United States District Court for the District of South Carolina, the Fourth Circuit Court of Appeals, and the Supreme Court of the United States. After law school, she served as a Project Fellow for the Cornell Death Penalty Project in Ithaca, New York, and then practiced as an associate in the business litigation practice group at Baker & Daniels LLP in Indianapolis, Indiana, where she handled civil matters primarily in federal court and also provided *pro bono* representation to death sentenced inmates in capital post-conviction proceedings. Ms. Paavola moved to South Carolina in 2008, and has spent the past nine years exclusively handling death penalty cases in state and federal court. She has represented approximately twenty death-row inmates or persons facing the death penalty at trial, on direct appeal and in state and federal post-conviction proceedings in South Carolina. She is also listed as approved lead counsel on this Court's CJA Death Penalty Panel Attorney List.

III. STONE WAIVES AN INVESTIGATION UNDER *MARTINEZ V. RYAN*.

As indicated above in section II, Bobby Stone was represented in his state collateral review proceedings by both Blume and Paavola. Under *Martinez v. Ryan*, 566 U.S. 1 (2012), Stone is permitted to request new, independent counsel to investigate whether prior collateral review counsel (i.e., Blume and Paavola) were ineffective, which Stone could assert as “cause” to excuse otherwise procedurally barred ineffective-assistance-of-trial-counsel claims. *See, e.g., Juniper v. Davis*, 737 F.3d 288, 290 (4th Cir. 2013); *Gray v. Pearson*, 526 Fed. Appx. 331, 334 (4th Cir. 2013). Thus, if Stone desired to pursue an investigation into potential *Martinez* claims, he would be entitled to the appointment of at least one independent attorney because undersigned counsel cannot reasonably be expected to identify and investigate potential errors that they themselves may have made in state post-conviction proceedings. *See Gray*, 526 Fed. Appx. at 334.

However, as set forth in his attached declaration, Stone strongly desires to retain current counsel for his federal habeas corpus proceedings, and he does not wish to investigate or pursue potential *Martinez* claims. *See Exhibit A, Declaration of Bobby Wayne Stone*. He therefore wishes to waive any rights he has under *Martinez v. Ryan*, 566 U.S. 1 (2012). Because this course of action involves the waiver of undersigned counsel’s own potential ineffectiveness, Blume and Paavola requested that Stone meet with two experienced attorneys who could offer him independent advice on this decision. As set forth in their respective affidavits, attorneys John Warren and Charles Grose met with Stone to ensure that he fully understands the rights he now seeks to waive and that his waiver was made knowingly and intelligently. *See Exhibits B and C*. After receiving outside advice from attorneys Warren and Grose, Stone maintains his position that he wishes to waive a *Martinez* investigation in order to retain Blume and Paavola as his federal habeas counsel.

IV. CONCLUSION.

Wherefore, for the foregoing reasons, this Court should enter an order staying Stone's execution and appointing John H. Blume as lead counsel, and Emily C. Paavola as second-chair to assist Stone in the preparation and filing of a timely petition for habeas relief.

Respectfully submitted,

s/Emily C. Paavola

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Columbia, South Carolina 29201
(803) 765-1044
Emily@justice360sc.org

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

| | | |
|---|---|---|
| BOBBY WAYNE STONE |) | |
| |) | CIVIL ACTION NO. <u>2:17-mc-00136-MGL-MGB</u> |
| <i>Petitioner,</i> |) | |
| v. |) | |
| BRYAN P. STIRLING, Commissioner, |) | |
| South Carolina Department of Corrections, |) | |
| and JOSEPH MCFADDEN, Warden, |) | |
| Lieber Correctional Institution |) | |
| |) | |
| <u><i>Respondents.</i></u> |) | |

I, Emily C. Paavola, hereby certify that I have this date served the Motion for Stay of Execution and Appointment of Counsel in the above-captioned case upon counsel for respondent via US mail:

Alphonso Simon
SC Attorney General's Office
P.O. Box 11549
Columbia, SC 29211
(803) 734-6305

March 31, 2017

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

| | | |
|---|---|--|
| Bobby Wayne Stone, |) | |
| |) | |
| Petitioner, |) | |
| |) | |
| v. |) | |
| |) | |
| Bryan P. Stirling, Commissioner, |) | |
| South Carolina Department of Corrections, |) | |
| |) | |
| Respondent. |) | |
| | | |

DECLARATION OF BOBBY WAYNE STONE

1. I, Bobby Wayne Stone, am the petitioner in the above captioned case. I am incarcerated at Lieber Correctional Institution in Ridgeville, South Carolina.

2. I understand that the South Carolina state courts have denied relief on all of my direct appeal and post-conviction relief claims, and my case is now ready for federal habeas corpus review.

3. I further understand that under *Martinez v. Ryan*, 132 S. Ct. 1309 (2012), I may have new attorneys appointed to represent me in my federal habeas proceedings who could then investigate to see if there are any claims of ineffective assistance of trial counsel that my current post-conviction attorneys, John Blume and Emily Paavola, failed to raise in my state post-conviction relief proceedings. However, I do not want to have new attorneys appointed to represent me. Instead, I want to keep my current attorneys and waive any investigation into potential *Martinez* claims and my right to raise *Martinez* claims if any would be uncovered.

4. Mr. Blume and Ms. Paavola have advised me about the decision in *Martinez*, its importance in capital habeas cases, and the risks involved with my decision to waive my rights

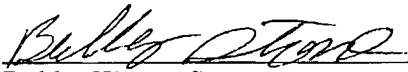
under that case. They also told me they wanted me to speak privately with independent attorneys who could offer me their own advice about these issues.

5. On March 10, 2017, I met with attorneys Charles Grose and John Warren, who also spoke to me about *Martinez* and the consequences of the decision I was considering.

6. After receiving this advice and thinking about this issue carefully, I still strongly desire to keep my current attorneys and waive a *Martinez* investigation. I understand that by waiving this investigation, I cannot raise new claims of ineffective assistance of trial counsel in my petition for federal habeas corpus that were not already raised in my state court proceedings below.

7. This decision was my own decision and no one pressured or even encouraged me to waive potential *Martinez* claims.

I declare, under the penalty of perjury, that the above statements are true and correct.


Bobby Wayne Stone

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA

Bobby Wayne Stone,)
)
 Petitioner,)
)
 v.)
)
 Bryan P. Stirling, Commissioner, South)
 Carolina Department of Corrections,)
)
 Respondent.)
 _____)

AFFIDAVIT OF JOHN L. WARREN III

1. I, John L. Warren III, am an attorney with Simmons Law Firm, LLC in Columbia, South Carolina.

2. I am a member of the South Carolina Bar and am also admitted to practice before the United States District Court, District of South Carolina and the Fourth Circuit Court of Appeals.

3. I graduated from the University of South Carolina with Honors from the South Carolina Honors College in 2009 and Elon University School of Law in 2013. I became a member of the South Carolina Bar on November 18, 2013.

4. During my time in law school, I clerked exclusively for John S. Simmons of Simmons Law Firm. During such time, I worked on various medical malpractice, criminal defense, wrongful death, personal injury, and *qui tam* whistleblower cases. I also drafted a victorious appellate brief in a multi-million dollar civil lawsuit in the Fourth Circuit Court of Appeals.

5. Following graduation from law school, I accepted a position as a law clerk to Justice John W. Kittredge of the South Carolina Supreme Court. I clerked for Justice Kittredge for two years. In that position, I was exposed to many aspects of South Carolina law, including complex

constitutional, civil, criminal, and death penalty cases. My primary job responsibilities included researching complex legal questions and drafting bench memoranda for members of the Court. During this time, I learned a great deal about capital litigation in the State of South Carolina and worked on several capital cases.

6. In August 2016, after the conclusion of my two-year judicial clerkship, I began working for Simmons Law Firm as an Associate Attorney. Simmons Law Firm is a small boutique litigation firm in Columbia, South Carolina that currently employs three attorneys. Although we are a general practice, we typically litigate medical malpractice, constitutional litigation, personal injury, white-collar criminal defense, and *qui tam* whistleblower actions.

7. In addition to the practice areas outlined above, I have recently been appointed second chair counsel for Mikal Deen Mahdi in a pending capital habeas case assigned to Judge Cain in the District of South Carolina.

8. My representation of Mr. Mahdi entails dealing with a number of complex substantive and procedural legal issues, including claims pursuant to *Martinez v. Ryan*, 132 S. Ct. 1309 (2012). Accordingly, I have become very familiar with the legal issues surrounding *Martinez* and the importance of litigating *Martinez* claims in order to establish cause for default of claims of ineffective assistance of counsel.

9. Sometime in late February, Emily Paavola asked me to meet with her client, Bobby Wayne Stone. Ms. Paavola explained that Mr. Stone had recently expressed a strong preference for waiving an investigation into potential *Martinez* claims in order to retain his current state post-conviction counsel, Ms. Paavola and John Blume, for his federal habeas corpus proceedings. Ms. Paavola stated that she and Mr. Blume believed that Mr. Stone should receive independent counsel and advice on this issue and asked if I would be willing to discuss the matter with Mr. Stone. On

March 10, 2017, I, along with Charles Grose, met with Bobby Wayne Stone at Lieber Correctional Institution.

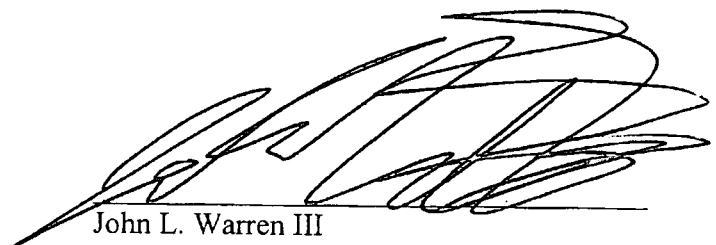
10. I am generally familiar with Mr. Stone's case, having read the published opinions by the Supreme Court of South Carolina related to his capital case.

11. During that meeting, Mr. Grose and I counseled Mr. Stone about the importance of *Martinez*, its role in capital habeas cases, and the risks associated with Mr. Stone's proposed plan to waive an investigation into any potential *Martinez* claims.


12. Mr. Grose and I spent approximately two hours with Mr. Stone. Based on my lengthy meeting with Mr. Stone, it is my opinion that Mr. Stone understands the Court's decision in *Martinez*; he understands the importance and potential benefits of being able to raise *Martinez* claims if his state post-conviction counsel failed to raise any meritorious issues; and, he has voluntarily, knowingly, and intelligently chosen to waive any *Martinez* claims so that he can retain his current state post-conviction counsel during his federal habeas case.

13. To that end, Mr. Stone emphasized that no one has pressured him into waiving potential *Martinez* claims and that he has made the choice to do so of his own free will.

FURTHER AFFIANT SAYETH NOT.


John L. Warren III

State of South Carolina
County of Richland
Sworn to and subscribed before me
This 22 day of March 2017.



Notary Public

My Commission Expires: 8/30/20

STATE OF SOUTH CAROLINA)
) AFFIDAVIT OF E. CHARLES GROSE, JR.
COUNTY OF GREENWOOD)

E. Charles Grose, Jr., being first duly sworn, swears and affirms that the following is true to the best of my knowledge:

1) I was admitted to practice law in the State of South Carolina on May 17, 1993 and the United States District Court for the District of South Carolina on February 23, 1994. I am also admitted to practice law in the Supreme Court of the United States and the United States Court of Appeals for the Fourth Circuit.

2) From 1993-1996, I was an Associate Attorney with Grimball & Cabanis P.A. in Charleston South Carolina. In 1996, I became an Assistant Public Defender in Orangeburg County, South Carolina. When I left that office in 1999, I was the Deputy Public Defender. From 1999-2008, I was the Chief Public Defender for Greenwood and Abbeville Counties, South Carolina. Upon implementation of the Indigent Defense Act of 2007, I was appointed the Circuit Public Defender for the Eighth Judicial Circuit (Abbeville, Greenwood, Laurens, and Newberry Counties), serving a term from August 2008 to August 2012. I am currently a sole practitioner in Greenwood, South Carolina. Throughout my career I have tried numerous felony cases.

3) I am certified by the South Carolina Supreme Court to be lead counsel in capital cases and am approved as first chair on the CJA Death Penalty Attorney List for the United States District Court for the District of South Carolina. My capital trial court experience includes: *State v. Bennie Ray Brown*, Laurens County Warrant Numbers I-556766-67, J-619971-77, who was found to suffer from Intellectual Disabilities pursuant to *Atkins v. Virginia*, 536 U.S. 304 (2002); *State v. Bixby*, Abbeville County Case

Numbers 2004-GS-01-321, 322 and *State v. Bixby*, 388 S.C. 528, 698 S.E.2d 572 (2010) as trial and appellate counsel; *State v. Steven A. Tinch*, Abbeville County Case Number 2006-GS-01-417, 419, which resulted in a guilty plea and a forty-five year sentence; *State v. Domonique O. Brown*, Laurens County Case Number 2007-GS-30-220, which resulted in a guilty plea and a thirty-year sentence; *State v. Anthony A. Myers*, Greenwood County Case Number 2000-GS-24-1170, which resulted in a guilty plea and sentence of life imprisonment without the possibility of parole; and *State v. Barry L. Ervin*, Greenwood County Case Number 1998-GS-24-1770, which resulted in a guilty plea and sentence of life imprisonment without the possibility of parole. I represented John Kennedy Hughey in his capital post-conviction relief case, subsequent appeals, and resentencing to life imprisonment. Abbeville County Case No. 1996-GS-01-220 and 2000-CP-01-210 and *Hughey v. State*, (S.C.S.Ct. Op. No. 2015-UP-029) (Filed May 13, 2015) *cert. denied South Carolina v. Hughey*, 136 S.Ct. 1659 (2016). I am currently state post-conviction counsel in *William O. Dickerson, Jr. v. State*, Charleston County Cases Number 2012-CP-10-3216, and *Jerry Buck Inman v. State*, Pickens County Case Number 2012-CP-39-00918. I am counsel in *Donald Jones v. State*, Lancaster County Case No. 2001-CP-29-1030, a competency to be executed proceeding. I am federal *habeas* counsel in *Mikal D. Mahdi v. Sterling, et. al.*, 8:16-cv-03911-TMC-JDA and *Stephen Corey Bryant v. Sterling et. al.*, 9:16-cv-01423-DCN-BM, which is stayed pending a state court determination of Intellectual Disabilities pursuant to *Atkins* in *Bryant v. State* in *Bryant v. State*, Sumter County Case No. 2016-CP-43-828.

3) My death penalty training includes but is not limited to the Annual National Federal *Habeas Corpus* Seminar, (2015, 2014, 2013, and 2011); NAACP Legal

Defense & Educational Fund, Inc.'s Annual Capital Punishment Training Conference, Airlie Conference Center, Warrenton, VA (2012, 2010, and 2005); and Capital Case Initiative, sponsored by South Carolina Commission on Indigent Defense (2013, 2012, 2011, and 2010).

4) I am also a former member of the Board of Directors of Justice 360, which was formerly known as the Death Penalty Resource & Defense Center and the Center for Capital Litigation and was designated by this Court as a Community Defender Organization authorized to provide representation, assistance, information and other matters related to federal death penalty *habeas corpus* cases. *See In re: Amendments to the Plan on the United States District Court for the District of South Carolina for Implementing the Criminal Justice Act*, filed May 25, 2010.

5) I am familiar with *Martinez v. Ryan*, 132 S.Ct. 1309 (2012). My representations of Mr. Mahdi and Mr. Bryant involve investigating potential *Martinez* issues. I am also familiar with *Juniper v. Davis*, 737 F.3d 288, 290 (4th Cir 2014) holding, "If a federal habeas petitioner is represented by the same counsel as in state habeas proceedings, and the petitioner requests independent counsel in order to investigate and pursue claims under *Martinez* in a state [like South Carolina] where the petitioner may only raise ineffective assistance claims in an 'initial review collateral proceeding,' qualified and independent counsel is ethically required."

6) John Blume and Emily Paavola represent Bobby Wayne Stone in his state capital post-conviction relief case. Because Mr. Stone expressed a strong preference for retaining his current counsel for his federal habeas petition, Mr. Blume and Ms. Paavola

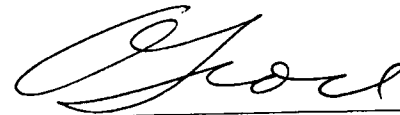
asked John Warren and me to meet with Mr. Stone to make sure he understands his right to independent counsel to investigate potential *Martinez* claims.

7) On March 10, 2017, Mr. Warren and I met with Mr. Stone at length at Lieber Correctional Institution. During the meeting, we counseled Mr. Stone about the significance of *Martinez*, its role in capital cases, his right to request independent counsel, and the risks and consequences of waving an investigation into potential *Martinez* claims. Mr. Stone explained why he desires to continue with current counsel. We answered all of Mr. Stone's questions.

8) Based on the meeting, it is my opinion that Mr. Stone understands *Martinez*, the potential benefits of being able to investigate and raise *Martinez* claims, and the risks and consequences of waiving independent counsel to investigate potential *Martinez* claims. It is also my opinion that Mr. Stone knowingly and intelligently decided to waive independent counsel to investigate potential *Martinez* claims.

9) Based on the meeting, it is also my opinion that Mr. Stone has made a voluntary decision to waive independent counsel to investigate potential *Martinez* claims and continue with his current counsel. He stated that no one has pressured or coerced him to make this decision and expressed a strong desire to continue with current counsel.

Further affiant sayeth naught.



E. Charles Grose, Jr.

Sworn to and subscribed before me

this 24th day of March, 2017

May J. Loveland

NOTARY PUBLIC FOR SOUTH CAROLINA

My Commission Expires: 5-30-17

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA

| | |
|---|------------------------------------|
| Bobby Wayne Stone, #5051, |) C/A No. 2:17-MC-00136-MGL-MGB |
| |) (Capital Case) |
| |) |
| Petitioner, |) |
| |) RETURN TO MOTION FOR STAY |
| vs. |) OF EXECUTION AND |
| |) APPOINTMENT OF COUNSEL |
| Bryan P. Stirling, Commissioner, South |) |
| Carolina Department of Corrections, and |) |
| Joseph McFadden, Warden, Lieber |) |
| Correctional Institution, |) |
| |) |
| |) |
| Respondents. |) |
| |) |

Respondents, above named, through undersigned counsel, hereby respond to the Motion for Stay of Execution and Appointment of Counsel filed by Petitioner Bobby Wayne Stone on March 31, 2017. [Docket Entry #1]. Petitioner currently scheduled to be executed on April 21, 2017. (See Attachment No. 1). He has requested this Court stay his execution and appoint counsel to represent him in the preparation and litigation of his first federal petition for a writ of habeas corpus. Respondents have no objection to either a stay of execution or the appointment of appointment of two attorneys to represent Petitioner. Respondents would respectfully show the Court the following:

I. PROCEDURAL HISTORY

Petitioner, Bobby Wayne Stone ("Petitioner"), is presently confined in the Lieber Correctional Institution of the South Carolina Department of Corrections (SCDC) as the result of his Sumter County convictions and death sentence for the murder of Sumter County Sheriff's Deputy Charlie Kubala, first-degree burglary, and possession of a weapon during the commission of a violent crime. The Sumter County Grand Jury

indicted Petitioner during the August 1996 term for one count of murder, one count of first-degree burglary, and one count of possession of a weapon during a the commission of a violent crime (96-GS-43-0698). The State served Petitioner with its Notice of Intent to Seek the Death Penalty and its Notice of Evidence in Aggravation.

On January 23-28, 1997, Petitioner was tried by a jury before the Honorable R. Markely Dennis, Jr. Petitioner was represented in this first trial by Cameron B. Littlejohn, Jr., and James H. Babb; Solicitor Wade S. Kolb of the Third Judicial Circuit prosecuted the case for the State. Petitioner was convicted of all charges. After the jury found the existence of two aggravating factors and recommended a sentence of death, Judge Dennis sentenced Petitioner to death for the murder conviction; thirty (30) years confinement for first degree burglary conviction to be served consecutively; and five (5) years confinement for the possession of a weapon during the commission of a violent crime conviction, to be served consecutively to the other two sentences.

A timely Notice of Appeal was filed and served on January 31, 1997. Following briefing and oral argument, the South Carolina Supreme Court affirmed the convictions but reversed the sentencing phase and remanded for resentencing. State v. Stone, 350 S.C. 442, 567 S.E.2d 244 (2002).

On February 22-27, 2006, Petitioner received a new sentencing proceeding before the Honorable Howard P. King and a jury. Petitioner was again represented by Mr. Babb and Mr. Littlejohn. The case was prosecuted by Solicitor Kelly Jackson and Assistant Solicitor Dudley Saleeby, both of the Third Judicial Circuit. After the jury found the existence of one aggravating circumstance and recommended a sentence of death, Judge King imposed a death sentence for the murder conviction.

Petitioner timely filed and served a notice of appeal. Chief Appellate Defender Joseph L. Savitz, III, of the South Carolina Office of Appellate Defense, represented Petitioner on appeal from the resentencing. On September 6, 2007, Petitioner filed a Final Brief of Appellant. The State, represented by Assistant Attorney General S. Creighton Waters, filed a Final Brief of Respondent. Following oral argument, the South Carolina Supreme Court issued an opinion on December 20, 2007 affirming the death sentence. State v. Stone, 376 S.C. 32, 655 S.E.2d 487 (2007). Petitioner subsequently filed a Petition for Rehearing on January 4, 2008. The Petition was denied on January 23, 2008.

Petitioner then filed on January 23, 2008 a Petition for Stay of Execution to pursue a post-conviction relief action. The State responded by letter indicating it did not object to the stay. On February 21, 2008, the South Carolina Supreme Court issued an Order staying the execution to litigate the post-conviction relief action. Jim Brown and Robert E. Lominack were initially appointed to represent Petitioner. During the action and at the evidentiary hearing, Petitioner was represented by John H. Blume and Robert E. Lominack.

On April 9, 2008, Petitioner filed an Application for Post-Conviction Relief. The State served its Return, Motion to Dismiss, and Motion for Summary Judgment on May 12, 2008. Petitioner served an Amended Application dated May 4, 2009. The State served its Amended Return, Motion to Dismiss and Motion for Summary Judgment on June 3, 2009. Petitioner served his Second Amended Application for Post-Conviction Relief on June 26, 2009. Petitioner served his Third Amended Application for Post-Conviction Relief on March 22, 2012. The State served its Return, Motion to Dismiss

and Motion for More Definite Statement to Third Amended Application for Post-Conviction Relief on April 18, 2012. The evidentiary hearing was held on April 23-24, 2012 and on August 10, 2012. Petitioner was present and was represented by Mr. Blume and Mr. Lominack.¹ The State was represented by Senior Assistant Deputy Attorney General Donald J. Zelenka and Assistant Attorney General Alphonso Simon. After the hearing, both parties submitted post-trial briefs.

On May 2, 2013, the PCR Court filed its Order dismissing the Application for Post-Conviction Relief. Petitioner filed a Motion to Alter or Amend Judgment on May 10, 2013. The State also filed a Motion to Alter or Amend Judgment on May 17, 2013. A hearing on the motions was convened by the PCR Court on August 2, 2013. Petitioner was present and was presented by Mr. Blume and Ms. Paavola. The State was represented by Mr. Zelenka and Mr. Simon. On August 14, 2013, the PCR Court filed its Amended Order, again denying the application for post-conviction relief.

Petitioner subsequently filed a Notice of Appeal on September 17, 2013. Petitioner filed his Petition for Writ of Certiorari. Respondent filed its Return to the Petition for Writ of Certiorari. Petitioner then filed a Reply to Petition for Writ of Certiorari. By Order filed July 23, 2015, the South Carolina Supreme Court granted the Petition for Writ of Certiorari. Petitioner filed his Brief of Petitioner on September 22, 2015. The State filed the Brief of Respondent on December 29, 2015, and Petitioner filed his Reply Brief of Petitioner on January 19, 2016.

The South Carolina Supreme Court filed a published opinion affirming the order denying post-conviction relief on February 8, 2017. Both parties filed Petitions for

¹ After the evidentiary hearing was completed, but before briefing, Mr. Lominack was relieved as counsel and Ms. Paavola was appointed to represent Petitioner.

Rehearing. In an Order filed March 29, 2017, the South Carolina Supreme Court denied both Petitions for Rehearing. The Supreme Court also filed a revised published opinion. The Remittitur was issued on March 29, 2017. The South Carolina Supreme Court issued the Execution Notice on March 30, 2017.

Altogether, Petitioner has generally exhausted his available state remedies having pursued and completed both a direct appeal and a post-conviction relief action.² See generally Stewart v. Warden of Lieber Corr. Inst., 701 F. Supp. 2d 785, 790 (D.S.C. 2010), appeal dismissed, 412 F. App'x. 633 (4th Cir. 2011) ("To exhaust a claim in state court, a person in custody has two primary means of attacking his conviction: filing a direct appeal and/or filing an application for relief under the South Carolina Post Conviction Procedure Act").

II. TIMELINESS

Petitioner is not presently barred by the statute of limitations in seeking habeas relief. A person held in custody under a state court judgment may challenge the legality of that custody in federal court through a habeas corpus action filed pursuant to 28 U.S.C. § 2254. 28 U.S.C. § 2244 (d)(1) imposes a one year limitation period in actions filed pursuant to 28 U.S.C. § 2254. The limitations period runs from the latest of:

- (A) the date on which the judgment became final by the conclusion of direct review or the expiration of the time for seeking such review;
- (B) the date on which the impediment to filing an application created by State action in violation of the Constitution or laws of the United States is removed, if the applicant was prevented from filing by such State action;
- (C) the date on which the constitutional right asserted was initially recognized by the Supreme Court, if the right has been newly recognized

² Respondents simply refer to the process and make no comment on whether any particular issue has been properly exhausted and available for review on the merits.

by the Supreme Court and made retroactively applicable to cases on collateral review; or

(D) the date on which the factual predicate of the claim or claims presented could have been discovered through the exercise of due diligence.

28 U.S.C. § 2244(d)(1). However, “[t]he time during which a properly filed application for State post-conviction or other collateral review with respect to the pertinent judgment or claim is pending shall not be counted” 28 U.S.C. § 2244 (d)(2).

Petitioner’s convictions and sentence became final on January 23, 2008, when the South Carolina Supreme Court denied his Petition for Rehearing.³ See Gonzalez v. Thaler, 565 U.S. --, --, 132 S. Ct. 641, 653-54, 181 L. Ed. 2d 619 (2012) (For those who

³ Respondents would note that Petitioner did not present a federal question in his direct appeal. The issue raised on appeal was as follows:

The trial judge committed reversible error by permitting the victim’s widow to testify that she had attempted suicide when she learned - from a message left on her answering machine - that the Supreme Court had reversed Stone’s death sentence and “they were going to retry this case over again,” as this testimony introduced an arbitrary factor into Stone’s resentencing, in violation of S.C. Code Section 16-3-25-(C)(1).

“When a challenge to a state court conviction presents a federal question, the Supreme Court has held that ‘the process of direct review ... includes the right to petition this Court for a writ of certiorari.’” Bowen v. Roe, 188 F.3d 1157, 1159 (9th Cir. 1999) (quoting Barefoot v. Estelle, 463 U.S. 880, 887, 103 S.Ct. 3383, 77 L.Ed.2d 1090 (1983)). See also U.S. Sup.Ct. R. 10(b) (stating that certiorari is considered where “state court of last resort” has decided an important federal question); 28 U.S.C.A. § 1257 (a) (noting final judgments of a State’s highest court may be reviewed by the Supreme Court by writ of certiorari when “the validity of a treaty or statute of the United States is drawn in question,” “the validity of a statute of any State is drawn in question on the ground of its being repugnant to the Constitution, treaties, or laws of the United States,” or “any title, right, privilege, or immunity is specially set up or claimed under the Constitution or the treaties or statutes of, or any commission held or authority exercised under, the United States.” Since a federal question was not raised in the appeal to the South Carolina Supreme Court, Respondents submit Petitioner is not entitled to the additional ninety days available for seeking certiorari to the United States Supreme Court.

do not appeal all the way to the United States Supreme Court in the direct appeal, “the judgment becomes final at the ‘expiration of the time for seeking such review’ – when the time for pursuing direct review in this [the United States Supreme] Court, or in state court, expires.”). Since Petitioner could not seek further review, his convictions became final on January 23, 2008.

His federal time began to run from January 23, 2008. The time was tolled with the filing of his initial Application for Post-Conviction Relief on April 9, 2008. Seventy-seven days elapsed in that period. The statute remained tolled during the pendency of the PCR action which began on April 9, 2008, and lasted until the petitions for rehearing in the PCR appeal were denied on March 29, 2017. As of this filing, an additional eight days have lapsed. Thus, at this time, a total of eighty-five (85) days have lapsed, with additional time accruing until a federal habeas petition is filed. 28 U.S.C. § 2244(d). However, as set forth below, Petitioner must file his habeas petition within ninety (90) days of appointment of counsel to comply with the stay of execution requirements.

III. REQUEST FOR STAY

Petitioner moves for a stay of execution and seeks appointment of counsel pursuant to 18 U.S.C. § 3599. Pursuant to 28 U.S.C. § 2251(a)(3):

... If a State prisoner sentenced to death applies for appointment of counsel pursuant to section 3599 (a)(2) of title 18 in a court that would have jurisdiction to entertain a habeas corpus application regarding that sentence, that court may stay execution of the sentence of death, but such stay shall terminate not later than 90 days after counsel is appointed or the application for appointment of counsel is withdrawn or denied.

See also *McFarland v. Scott*, 512 U.S. 849, 858 (1994) (“...once a capital defendant invokes his right to appointed counsel, a federal court also has jurisdiction under § 2251 to enter a stay of execution.”). Consistent with the responses and orders entered in

prior South Carolina death penalty actions before this District Court, Respondents do not oppose a stay in this matter. Such requests are generally deemed appropriate. See, e.g., In re Hearn, 376 F.3d 447, 457-58 (5th Cir. 2004) (stay of execution appropriate because defendant had filed petition for appointment of counsel); Brown v. Vasquez, 952 F.2d 1164, 1168 (9th Cir. 1991) (stay of execution issued because, while petitioner had not yet filed petition for writ of habeas, he had filed petition seeking appointment of counsel to do so).

However, such a stay is limited to ninety (90) days. 28 U.S.C. 2251(a)(3). Therefore, this Court should order the federal habeas petition be filed within that time and allow Petitioner additional time to seek a further stay under the provisions of 28 U.S.C. 2251(a)(1). Sigmon v. Byars, C/A No. 8:13-mc-206-RBH-JDA, Docket Entry #17, at p. 4 (D.S.C. May 23, 2013)(“This Court finds that Petitioner should be granted a stay of execution for ninety (90) days from the date counsel is appointed as prescribed by 28 U.S.C. § 2251(a)(3). Further, within the ninety (90) day stay of execution, Petitioner should be required to file the habeas petition.”); Mahdi v. Stirling, C/A No. 8:16-mc-402-TMC-JDA, Docket Entry #12, at p. 2 (D.S.C. Oct. 5, 2016)(granting stay of execution for ninety days from date counsel is appointed as provided in 28 U.S.C. § 2254(a)(3), noting the stay will terminate after ninety days, and further noting that Petitioner may seek an additional stay of execution as necessary pursuant to 28 U.S.C. § 2251(a)(1)); Moore v. Stirling, et al., C/A No. 4:14-4691-MGL-TER, Docket Entry #22, p. 3 (D.S.C. Dec. 22, 2014)(granting a stay for ninety days after date counsel was appointed and noting that “[o]nce Petitioner files his habeas petition, he may move for an indefinite stay pending the outcome of his habeas proceeding under § 2251(a)(1).”);

Stokes v. Stirling, et al., C/A No.: 1:16-mc-00073-RBH, pp. 2-3 (D.S.C. March 16, 2016)(“The Court finds that Petitioner should be granted a stay of execution. Pursuant to 28 U.S.C. § 2251(a)(3), the stay shall terminate not later than ninety (90) days from the date counsel is appointed. Further, within the ninety (90) day stay of execution, Petitioner shall file the habeas petition. Additionally, prior to the expiration of the ninety (90) day stay of execution, Petitioner must 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.”); See, for example, Gray v. Kelly, 131 S.Ct. 2956 (2011) (denying request to Circuit Justice to exercise “supervisory authority” over District Court and stay the District Court order, where District Court “stayed the execution of his death sentence for 90 days pursuant to § 2251 (a)(3),” and directed that petition be filed within that time); Koehler v. Horn, 2000 WL 1839137, * 3 (M.D.Pa. 2000) (“Petitioner will be granted a 90–day stay of execution in which to prepare his habeas corpus petition.”).

IV. APPOINTMENT OF COUNSEL

Petitioner requests the appointment of John H. Blume, Esquire, and Emily C. Paavola, Esquire. (Motion, pp. 4-5). Respondents take no position on who should be appointed in this matter. Respondents acknowledge that 28 U.S.C. 3599(a)(2) provides for the appointment of “one or more attorneys.”

Respondents do not oppose the appointment of any individual attorney, assuming that Petitioner satisfies the *in forma pauperis* requirements. Respondents also take no position on who should be appointed in this matter, as long as: (1) anyone appointed satisfies the qualifications set forth in 18 U.S.C. § 3599(c), which requires that attorneys appointed to capital habeas cases have both five years’ membership in

the bar of the Fourth Circuit, as well as three years' experience in handling appeals in felony cases, or (2) this Court finds qualification appropriate under 18 U.S.C. § 3599(d), which allows the Court "for good cause, [to] appoint another attorney whose background, knowledge, or experience would otherwise enable him or her to properly represent the defendant, with due consideration to the seriousness of the possible penalty and to the unique and complex nature of the litigation". Cf. 28 U.S.C. § 2261(e) ("...limitation shall not preclude the appointment of different counsel, on the court's own motion or at the request of the prisoner, at any phase of State or Federal postconviction proceedings on the basis of the ineffectiveness or incompetence of counsel in such proceedings").

CONCLUSION

WHEREFORE, having made Return, Respondents request that this Court issue a limited stay pursuant to the provisions of 28 U.S.C. § 2251(a)(3). After appointment of counsel, the stay may continue for up to ninety (90) days to provide for the filing of a petition. 28 U.S.C. § 2251(a)(3). Respondents request the Court order that the petition for habeas corpus be filed within the period of the stay, and any new motion for stay be requested under 28 U.S.C. § 2251(1).

Respectfully submitted,

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April 6, 2017

ATTORNEYS FOR RESPONDENTS
By: s/ Alphonso Simon Jr.

The Supreme Court of South Carolina

The State, Respondent,

v.

Bobby Wayne Stone, Appellant.

The Honorable R. Markley Dennis, Jr.
Sumter County
Trial Court Case No. 1996GS430698

EXECUTION NOTICE

TO THE HONORABLE BRYAN P. STIRLING, DIRECTOR OF THE SOUTH CAROLINA DEPARTMENT OF CORRECTIONS:

This is to notify you that the sentence of death imposed in the above case from which an appeal has been taken has been affirmed and finally disposed of by the Supreme Court of South Carolina and the remittitur has been sent to the Clerk of the Court of General Sessions for Sumter County.

IT IS, THEREFORE, required of you by Section 17-25-370 of the Code of Laws of South Carolina to execute the judgment and sentence of death imposed on said defendant on the fourth Friday after the service upon you or receipt of this notice.

Let a copy of this notice be served immediately upon the appellant.


CLERK

Columbia, South Carolina

March 30, 2017

cc:

Donald J. Zelenka, Esquire
Alphonso Simon, Jr., Esquire
Emily Paavola, Esquire
John H. Blume, III, Esquire
The Honorable Henry McMaster
Salley W. Elliott, Esquire