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S.C. SUPREME COURT

ALAN WILSON  
ATTORNEY GENERAL

November 3, 2017

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

Re: Bobby Wayne Stone vs. Bryan P. Stirling, Commissioner, South Carolina Department of Corrections, and Joseph McFadden, Warden, Lieber Correctional Institution  
C/A No. 2:17-01221-MGL-MGB

Dear Mr. Shearouse:

Please find enclosed a copy of the Status Report filed by the Respondents in the above-named action today. I am also enclosing a copy of the Status Report that was filed on August 15, 2017. As outlined in the status reports, the stay of execution issued by the United States District Court has expired. Since the stay of execution has expired, and in the absence of the filing of a federal habeas petition and request for an additional stay, pursuant to In re Stays of Execution in Capital Cases, 321 S.C. 544, 548, 471 S.E.2d 140, 142 (1996), Respondents believe the circumstances warrant the issuance of an execution notice. See Roberts v. Moore, 332 S.C. 488, 505 S.E.2d 593 (1998).

If you should have any questions, or if I can be of any assistance to you, please do not hesitate to contact me.

Sincerely,

Alphonso Simon, Jr.  
Assistant Attorney General

AS:dmd

Enclosures

cc: Emily C. Paavola, Esquire  
John H. Blume, III, Esquire

cc: John F. Warren, III, Esquire  
Trisha Allen  
Salley Elliott, Esquire

UNITED STATES DISTRICT COURT  
DISTRICT OF SOUTH CAROLINA

Bobby Wayne Stone,

Petitioner,

vs.

Bryan P. Stirling, Commissioner, South  
Carolina Department of Corrections, and  
Joseph McFadden, Warden, Lieber  
Correctional Institution,

Respondents.

) C/A No. 2:17-cv-01221-MGL-MGB  
) (Capital Case)  
)  
)

) STATUS REPORT

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S.C. SUPREME COURT

Comes now Respondents, above named, by and through the Office of the South Carolina Attorney General, and hereby file this Status Report.

1. Joseph McFadden is no longer the warden at Lieber Correctional Institution. Earlier this month, Joel Anderson was named interim warden at the institution.

2. By Respondents' calculations, there is no longer a stay of execution in place. On April 10, 2017, this Court filed an Order Granting Petitioner's Motion to Stay his Execution and Holding in Abeyance his Motion for the Appointment of Counsel. [Docket Entry #9]. In the Order, Petitioner's execution was stayed "until ninety days after the Court rules on Petitioner's motion for the appointment of counsel." [Docket Entry #9, p. 4].

On May 4, 2017, this Court filed its Order Granting Petitioner's Motion for Appointment of Counsel as Modified. [Docket Entry #13]. In the Order, this Court appointed John Blume, Esq., and Emily Paavola, Esq., to represent Petitioner as habeas counsel. This Court also appointed John Warren, Esq. to serve as independent

counsel to conduct an investigation into whether Petitioner has any potential Martinez<sup>1</sup> claims he may wish to raise in his federal habeas corpus petition.

Pursuant to this Court's April 10, 2017 Order, Petitioner's stay of execution was set to elapse ninety days after the Order filed on May 4, 2017. Respondents' calculations reflect that Wednesday, August 2, 2017 was the ninetieth day. Thus, on Thursday, August 3, 2017, the stay of execution issued by this Court expired. Counsel for Respondents has conferred with Petitioner's counsel regarding this calculation via email. Counsel for Petitioner indicated this calculation is consistent with their calculations.<sup>2</sup> Counsel also indicated that Mr. Blume and Ms. Paavola are preparing a petition for writ of certiorari to file in the United States Supreme Court later this month, and are in the process of preparing a federal habeas petition. Counsel also indicated Mr. Warren is conducting his Martinez investigation.

Respectfully submitted,

ALAN WILSON  
Attorney General

DONALD J. ZELENKA  
Deputy Attorney General

MELODY J. BROWN  
Senior Assistant Deputy Attorney General

ALPHONSO SIMON JR.  
Assistant Attorney General  
ID No. 10199

SHERRIE BUTTERBAUGH  
Assistant Attorney General

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<sup>1</sup> Martinez v. Ryan, 566 U.S. 1 (2012).

<sup>2</sup> A copy of this Status Report is being provided to the South Carolina Supreme Court.

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

August 15, 2017

ATTORNEYS FOR RESPONDENTS  
By: s/ Alphonso Simon Jr.

UNITED STATES DISTRICT COURT  
DISTRICT OF SOUTH CAROLINA

Bobby Wayne Stone,	)	C/A No. 2:17-cv-01221-MGL-MGB
	)	(Capital Case)
	)	
Petitioner,	)	
	)	<b>STATUS REPORT</b>
vs.	)	
	)	
Bryan P. Stirling, Commissioner, South	)	
Carolina Department of Corrections, and	)	
Joseph McFadden, Warden, Lieber	)	
Correctional Institution,	)	
	)	
	)	
Respondents.	)	
_____	)	

Comes now Respondents, above named, by and through the Office of the South Carolina Attorney General, and hereby file this Status Report.

1. Petitioner is no longer being held at Lieber Correctional Institution. On September 26, 2017, South Carolina's Death Row was transferred from Lieber Correctional Institution to Kirkland Correctional Institution. The warden at Kirkland Correctional Institution is Willie D. Davis.

2. Petitioner filed a Petition for Writ of Certiorari in the United States Supreme Court on August 24, 2017. A copy of the Petition was filed with this Court as part of the State Court Record as Attachment No. 32. [Docket Entry #38-1]. The State filed a Brief in Opposition on September 28, 2017. A copy of the Brief was filed with this Court as part of the State Court Record as Attachment No. 33. [Docket Entry #38-2]. Petitioner also filed a Reply to the Brief in Opposition, a copy of which was filed with this Court as part of the State Court Record as Attachment No. 34. [Docket Entry #38-3]. The Petition for Writ of Certiorari was denied by the United States Supreme Court on October 30, 2017.

The letter from the Supreme Court reflecting the order was filed with this Court as part of the State Court Record as Attachment No. 34. [Docket Entry #38-4].

3. As explained in the Status Report filed on August 15, 2017 [Docket Entry #35], there is not a stay of execution in place. The stay issued by this Court expired on August 3, 2017. Respondents would note that in the absence of a stay of execution, the Clerk of Court for the South Carolina Supreme Court may issue an execution notice at any time. In re Stays of Execution in Capital Cases, 321 S.C. 544, 548, 471 S.E.2d 140, 142 (1996) (“In the event a federal court grants a stay of execution, the Clerk of this Court shall issue an execution notice once the stay expires or is dissolved by the federal court.”); see generally S.C. Code § 17-25-370 (2016); Roberts v. Moore, 332 S.C. 488, 488, 505 S.E.2d 593 (1998)(noting it is a ministerial duty of Clerk of Court to issue an execution notice). A copy of this Status Report is being provided to the South Carolina Supreme Court, and pursuant to Roberts, Respondents will submit a letter expressing their belief the circumstances warrant the issuance of an execution notice. A copy of the letter is attached to this Report.

Respectfully submitted,

ALAN WILSON  
Attorney General

DONALD J. ZELENKA  
Deputy Attorney General

MELODY J. BROWN  
Senior Assistant Deputy Attorney General

ALPHONSO SIMON JR.  
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