

Hopkins, Debbie

From: Allison_Rogers@scd.uscourts.gov
Sent: Monday, November 6, 2017 11:22 AM
To: Hopkins, Debbie; john@blumelaw.com; lbrawley@scag.gov; mbrown@scag.gov; sbutterbaugh@scag.gov; emily@justice360sc.org; asimon@scag.gov; jgamble@simmonsfirm.com; jwarren@simmonsfirm.com
Cc: Sara_Samsa@scd.uscourts.gov
Subject: response to inquiry in death penalty habeas case of 2:17-cv-01221-MGL-MGB Stone v. Stirling et al
Attachments: Stone v. Stirling.public docket.pdf

Good morning--

The Clerk's Office received a phone call this morning inquiring whether there was a stay of execution in the above-referenced case. (The caller is on this email chain and is either a Mr. or Ms. Hopkins from the South Carolina Supreme Court.)

To answer that question received from Mr. or Ms. Hopkins: there is no stay of execution in place in this case. Pursuant to Judge Lewis' Order of April 10, 2017, the execution of Petitioner Bobby Wayne Stone was stayed such that the stay terminated 90 days after the court ruled on Stone's Motion to Appoint Counsel. (See Dkt. No. 9.) Counsel was appointed for Petitioner Stone on May 4, 2017, meaning the stay of execution expired (by my calculation) on August 2, 2017.

Petitioner's counsel has not sought to extend the stay. I additionally note that the petition for writ of habeas corpus itself has not yet been filed.

Attached is a public docket sheet of the Stone v. Stirling case. I hope this helps.

FYI counsel, Mr. or Ms. Hopkins who called from the SC Supreme Court indicated that if no stay was entered, the State planned to schedule the execution.

Thank you, and best regards,

(See attached file: Stone v. Stirling.public docket.pdf)

Allison Smith Rogers
Law Clerk to the Honorable Mary Gordon Baker Allison_Rogers@scd.uscourts.gov
(843) 579-1443

DEATH,MGB-Inmate

**U.S. District Court
District of South Carolina (Charleston)
CIVIL DOCKET FOR CASE #: 2:17-cv-01221-MGL-MGB**

Stone v. Stirling et al
Assigned to: Honorable Mary Geiger Lewis
Referred to: Magistrate Judge Mary Gordon Baker
Cause: 28:2254 Ptn for Writ of H/C - Stay of Execution

Date Filed: 05/11/2017
Jury Demand: None
Nature of Suit: 535 Death Penalty - Habeas Corpus
Jurisdiction: Federal Question

Petitioner**Bobby Wayne Stone**

represented by **Emily Paavola**
Justice 360
900 Elmwood Avenue
Suite 101
Columbia, SC 29201
803-765-1044
Email: Emily@justice360sc.org
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

John H Blume
Blume Franklin Best and Young LLC
900 Elmwood Avenue
Suite 200
Columbia, SC 29201
803-765-1044
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LEAD ATTORNEY
ATTORNEY TO BE NOTICED

John LaFitte Warren , III
Simmons Law Firm
1711 Pickens Street
Columbia, SC 29201
803-779-4600
Email: jwarren@simmonsfirm.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

V.

Respondent

Bryan P Stirling
Commissioner, South Carolina Department of Corrections

represented by **Alphonso Simon , Jr**
SC Attorney General's Office
PO Box 11549
Columbia, SC 29211
803-734-6307
Email: asimon@scag.gov
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Melody Jane Brown
SC Attorney General's Office
PO Box 11549
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LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Sherrie Ann Butterbaugh
Office of the Attorney General

PO Box 11549
Columbia, SC 29211
803-734-0128
Email: sbutterbaugh@scag.gov
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Respondent

Joseph McFadden
Warden, Lieber Correctional Institution

represented by **Alphonso Simon , Jr**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Melody Jane Brown
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Sherrie Ann Butterbaugh
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Date Filed	#	Docket Text
03/31/2017	<u>1</u>	APPLICATION for Stay of Execution and MOTION to Appoint Counsel, filed by Bobby Wayne Stone. (Attachments: # <u>1</u> Declaration of Bobby Wayne Stone, # <u>2</u> Affidavit of John L. Warren, III, # <u>3</u> Affidavit of E. Charles Grose, Jr.)(ssam,). (Entered: 03/31/2017)
03/31/2017	<u>2</u>	MOTION for Leave to Proceed in forma pauperis (Restricted Access) by Bobby Wayne Stone. Response to Motion due by 4/14/2017. Add an additional 3 days only if served by mail or otherwise allowed under Fed. R. Civ. P. 6 or Fed. R. Crim. P. 45. (Attachments: # <u>1</u> IFP Application signed by Bobby Stone)Motions referred to Mary Gordon Baker.(ssam,) (Entered: 03/31/2017)
03/31/2017	<u>5</u>	ORDER granting <u>2</u> Motion for Leave to Proceed in forma pauperis. Signed by Magistrate Judge Mary Gordon Baker on 3/31/2017. (ssam,) (Entered: 03/31/2017)
04/03/2017	<u>6</u>	TEXT ORDER directing Respondents to file their response to Petitioner's Application for Stay of Execution and Motion to Appoint Counsel <u>1</u> not later than Friday, April 7, 2017. Entered at the direction of Honorable Mary Geiger Lewis on 4/3/2017. (ssam,)(ssam,) (Entered: 04/03/2017)
04/06/2017	<u>7</u>	RESPONSE to Motion re <u>1</u> MOTION to Stay MOTION to Appoint Counsel Response filed by Joseph McFadden, Bryan P Stirling.Reply to Response to Motion due by 4/13/2017 Add an additional 3 days only if served by mail or otherwise allowed under Fed. R. Civ. P. 6. (Attachments: # <u>1</u> State Court Documents Attachment No. 1, Execution Notice)(Simon, Alphonso) (Entered: 04/06/2017)
04/06/2017	<u>8</u>	NOTICE of Appearance by Alphonso Simon, Jr on behalf of Joseph McFadden, Bryan P Stirling (Simon, Alphonso) (Entered: 04/06/2017)
04/10/2017	<u>9</u>	ORDER granting <u>1</u> Motion to Stay; holding in abeyance <u>1</u> Motion to Appoint Counsel pending briefing and further order of this Court. 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. Petitioner's execution is STAYED until ninety days after the Court rules on Petitioner's motion for the appointment of counsel. Signed by Honorable Mary Geiger Lewis on 4/10/2017. (ssam,) (Entered: 04/10/2017)
04/17/2017	<u>11</u>	RESPONSE in Support re <u>1</u> MOTION to Stay MOTION to Appoint Counsel <i>Petitioner's Supplemental Brief</i> Response filed by Bobby Wayne Stone. (Paavola, Emily) (Entered: 04/17/2017)
04/24/2017	<u>12</u>	RESPONSE to Motion re <u>1</u> MOTION to Stay MOTION to Appoint Counsel Response filed by Joseph McFadden, Bryan P Stirling.Reply to Response to Motion due by 5/1/2017 Add an additional 3 days only if served by mail or otherwise allowed under Fed. R. Civ. P. 6. (Simon, Alphonso) (Entered: 04/24/2017)
05/04/2017	<u>13</u>	ORDER granting as modified <u>1</u> Motion to Appoint Counsel. Attorneys John Blume and Emily Paavola are appointed as Petitioner's habeas counsel. In addition, attorney John Warren is appointed as independent counsel to conduct an investigation into whether Petitioner has any potential Martinez claims he wishes to raise in his federal habeas corpus petition. Signed by Honorable Mary Geiger Lewis on 5/4/2017. (ssam,) Modified to attach document on 5/4/2017 (ssam,). (Entered: 05/04/2017)
05/04/2017	<u>14</u>	TEXT CJA 30 APPOINTMENT ORDER appointing Emily Paavola, John H. Blume, and John LaFitte Warren, III, to represent Bobby Wayne Stone. Entered at the direction of Honorable Mary Geiger Lewis on 5/4/2017. (ssam,) (Entered: 05/04/2017)

- 05/11/2017 **15 ORDER that (1) Petitioner's counsel shall submit a confidential proposed litigation budget within thirty (30) days of the date of this Order; (2) Respondents' counsel shall file a complete record of state court proceedings related to this matter within thirty (30) days of the date of this Order; and (3) The Clerk of Court shall assign a civil action number to this case. Further details set forth in Order. Signed by Magistrate Judge Mary Gordon Baker on 5/10/2017. (ssam,) (Entered: 05/11/2017)**
- 05/11/2017 17 NOTICE OF CHANGE OF CASE NUMBER from Miscellaneous Case Number 2:17-mc-00136-MGL-MGB to Civil Action Number 2:17-cv-01221-MGL-MGB. Please use the new case number on all future filings. (ssam,) (Entered: 05/11/2017)
- 06/09/2017 **19 NOTICE of Appearance by Sherrie Ann Butterbaugh on behalf of Joseph McFadden, Bryan P Stirling (Butterbaugh, Sherrie) (Entered: 06/09/2017)**
- 06/09/2017 **20 COUNTY COURT RECORD from Sumter. (Attachments: # 1 State Court Documents attach no 1 - appendix - vol 1 (pages 1-238), # 2 State Court Documents attach no 1 - appendix - Vol 1 (pages 239-496), # 3 State Court Documents attach no 1 - appendix - vol 2 (pages 497-734), # 4 State Court Documents attach no 1 - appendix - vol 2 - (pages 735-992), # 5 State Court Documents attach no 1 - appendix - vol 3 - (pages 993-1230), # 6 State Court Documents attach no 1 - appendix - vol 3 (pages 1231-1488), # 7 State Court Documents attach no 1 - appendix - vol 4 (pages 1489-1726), # 8 State Court Documents attach no 1 - appendix - vol 4 - (pages 1727-1984), # 9 State Court Documents attach no 1 - appendix - vol 5 - (pages 1985-2222), # 10 State Court Documents attach no 1 - appendix - vol 5 (pages 2223-2480), # 11 State Court Documents attach no 1 - appendix - vol 6 (pages 2481 - 2709), # 12 State Court Documents attach no. 1 - appendix - Vol 6 (pages 2710-2975))(Simon, Alphonso) Modified to add additional attachments 21 , 22 , 24 , 25 on 6/9/2017 (ssam,). Modified to add link to 38 Supplement on 11/3/2017 (ssam,). (Entered: 06/09/2017)**
- 06/09/2017 **21 Additional Attachments to Main Document 20 County Court Record,,,,. First attachment description: attach no 1 - appendix - Vol 7 (pages 2976-3213) . (Attachments: # 1 State Court Documents attach no 1 - appendix - Vol 7 (pages 3214-3473), # 2 State Court Documents attach no 1 - appendix - Vol 8 (pages 3474-3711), # 3 State Court Documents attach no 1 - appendix - Vol 8 (pages 3712-3969), # 4 State Court Documents attach no 1 - appendix - vol 9 (pages 3970-4205), # 5 State Court Documents attach no 1 - appendix - vol 9 (pages 4206-4463), # 6 State Court Documents attach no 1 -appendix - vol 10 (pages 4464-4579), # 7 State Court Documents attach no 1 - appendix - vol 10 (pages 4580-4695), # 8 State Court Documents attach no 1 - appendix - vol 10 - (pages 4696-4942), # 9 State Court Documents attach no 1 - appendix - vol 10 (pages 4943-4959), # 10 State Court Documents attach no 1 - appendix - vol 11 (pages 4960-5134), # 11 State Court Documents attach no 1 - appendix - vol 11 (pages 5135-5250), # 12 State Court Documents attach no 1 - appendix - Vol 11 (pages 5251-5411), # 13 State Court Documents attach no 1 - appendix - vol 11 (pages 5412-5455))(Simon, Alphonso) (Entered: 06/09/2017)**
- 06/09/2017 **22 Additional Attachments to Main Document 20 County Court Record,,,,. First attachment description: attach no 1 - appendix - vol 12 (pages 5456-5596) . (Attachments: # 1 State Court Documents attach no 1 - appendix - vol 12 - (pages 5597-5802), # 2 State Court Documents attach no 1 - appendix - vol 12 - 5803-5951, # 3 State Court Documents attach no 1 - appendix - vol 13 (pages 5952-6086, # 4 State Court Documents attach no 1 - appendix - vol 13 - (pages 6087-6191), # 5 State Court Documents attach no 1 - appendix - vol 13 (pages 6192-6297), # 6 State Court Documents attach no 1 - appendix - vol 13 (pages 6298 - 6407), # 7 State Court Documents attach no 1 - appendix - vol 13 (pages 6408-6447), # 8 State Court Documents attach no 1 - appendix - vol 14 (pages 6448 - 6591, # 9 State Court Documents attach no 1 - appendix - vol 14 (pages 6592 - 6779), # 10 State Court Documents attach no 1 - appendix - vol 14 (pages 6780 - 6943), # 11 State Court Documents attach no 1 - appendix - vol 15 (pages 6944 - 7099), # 12 State Court Documents attach no 1 - appendix - vol 15 (pages 7100 - 7291), # 13 State Court Documents attach no 1 - appendix - vol 15 (pages 7292 - 7372))(Simon, Alphonso) (Entered: 06/09/2017)**
- 06/09/2017 **24 Additional Attachments to Main Document 20 County Court Record,,,,. First attachment description: attach no. 2 - supplemental appendix - Vol 1 (pages 1-301) . (Attachments: # 1 State Court Documents attach no 2 - supplemental appendix - vol 1 (pages 302-500), # 2 State Court Documents attach no 2 - supplemental appendix - vol 2 (pages 501-766), # 3 State Court Documents attach no. 2 - supplemental appendix - vol 2 (pages 767-1017), # 4 State Court Documents attach no 2 - supplemental appendix - vol 2 (pages 1018-1053), # 5 State Court Documents attach no 3 - final brief of respondent, # 6 State Court Documents attach no 4 - remittitur dated 7-31-02, # 7 State Court Documents attach no 5 - remittitur dated 1-23-08, # 8 State Court Documents attach no 6 - Petition for stay of execution, # 9 State Court Documents attach no 7 - OAG letter filed in lieu of formal return to petition for stay of execution, # 10 State Court Documents attach no 8 - SC Supreme Court Order filed 2-2-108, # 11 State Court Documents attach no 9 - return and motion to dismiss, # 12 State Court Documents attach no 10 - amended return to APCR, # 13 State Court Documents attach no 11 - Return and Motion to dismiss third amended APCR, # 14 State Court Documents attach no 12 - PCR Evidentiary Hearing transcript 2008-CP-43-905, # 15 State Court Documents attach no 13 - Applicant's Post-trial brief 2008-CP-43-905, # 16 State Court Documents attach no 14 - Petition for writ of certiorari)(Simon, Alphonso) (Entered: 06/09/2017)**
- 06/09/2017 **25 Additional Attachments to Main Document 20 County Court Record,,,,. First attachment description: attach no. 15 - Return to Petition for writ of certiorari . (Attachments: # 1 State Court Documents attach no. 16 - Petitioner's reply, # 2 State Court Documents attach no 17 - SC Supreme Court Order dated 7-23-15, # 3 State Court Documents attach no 18 - amended brief of petitioner, # 4 State Court Documents attach no 19 - brief of respondent, # 5 State Court Documents attach no 20 - Petitioner's reply brief, # 6 State Court Documents attach no 21 - SC Supreme Court published opinion filed 2-8-17, # 7 State Court Documents attach no 22 - petition for rehearing, or in the alternative, motion to stay issuance of the remittitur, # 8 State Court Documents attach no 23 - respondent's petition for rehearing, # 9 State Court Documents attach no 24 - reply to respondent's petition for rehearing, # 10 State Court Documents attach no 25 - SC Supreme Court Order March 29, 2017, # 11 State Court Documents attach no 26 - Modified South Carolina Supreme Court published opinion filed 3-29-17, # 12 State Court Documents attach no 27 - remittitur, # 13 State Court Documents attach no 28 - Pgs. 3912, 3913, 5875 and 5914 from Vol. 12 of Appendix, # 14 State Court Documents attach no 29 - pages from first trial transcript, # 15 State Court Documents attach no 30 - Pages from second trial transcript, # 16 State Court Documents attach no 31 - transcript of portion of jury voir dire from second trial)(Simon, Alphonso) (Entered: 06/09/2017)**
- 08/15/2017 **35 STATUS REPORT by Joseph McFadden, Bryan P Stirling. (Simon, Alphonso) (Entered: 08/15/2017)**

- 11/02/2017 38 SUPPLEMENT by Joseph McFadden, Bryan P Stirling to 20 County Court Record. (Attachments: # 1 State Court Documents Attachment No. 32, Petition for Writ of Certiorari to the Supreme Court of South Carolina, # 2 State Court Documents Attachment No. 33, Brief in Opposition, # 3 State Court Documents Attachment No. 34, Reply to Brief in Opposition, # 4 State Court Documents Attachment No. 35, letter from US Supreme Court dated 10-30-17)(Simon, Alphonso) Modified to edit text to link event to correct associated event on 11/3/2017 (ssam,). (Entered: 11/02/2017)
- 11/03/2017 39 STATUS REPORT by Joseph McFadden, Bryan P Stirling. (Attachments: # 1 Exhibit Letter to Clerk of South Carolina Supreme Court dated 11-3-17)(Simon, Alphonso) (Entered: 11/03/2017)
- 11/03/2017 40 NOTICE of Appearance by Melody Jane Brown on behalf of Joseph McFadden, Bryan P Stirling (Brown, Melody) (Entered: 11/03/2017)