

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM SUMTER COUNTY
Court of General Sessions

R. Markley Dennis, Jr., Circuit Court Judge

Appellate Case No. 1997-004151

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NOV 14 2017

S.C. SUPREME COURT

The State, Respondent,

v.

Bobby Wayne Stone, Appellant.

REPLY TO RESPONDENT'S RETURN IN OPPOSITION TO THE MOTION FOR STAY OF
EXECUTION

DEATH PENALTY CASE – EXECUTION SCHEDULED DECEMBER 1, 2017

Mr. Stone files this Reply to briefly address a number of affirmative misstatements made by the State in its Return.

First, the State claims that Mr. Stone could have simply sought an extension of the original 90-day stay of execution prior to filing a petition. That is simply not true. As the federal Magistrate Judge informed the State at a telephonic hearing, it (the federal court) has no power to enter a stay until Mr. Stone files a petition for writ of habeas corpus. Similarly, the State neglected to inform this Court that it has opposed similar requests in other cases and has affirmatively taken the position that the Court cannot extend the 90-day stay without a petition being filed. *See, e.g., Mahdi v. Stirling*, Case No. 8:16-3911-TMC-JDA, ECF No. 41 (Feb. 6, 2017 D.S.C.) (State's Response to Motion to Extend the Stay of Execution) ("Respondent opposes the motion for a stay because

the provisions of 28 U.S.C. Section 2251 do not allow a court to extend a stay **absent the filing of a petition.**" (emphasis in original)). The State's claim to the contrary in this case is transparent and demonstrates its intention to attempt to use an artificial execution date to circumvent the federal statutory limitations period.

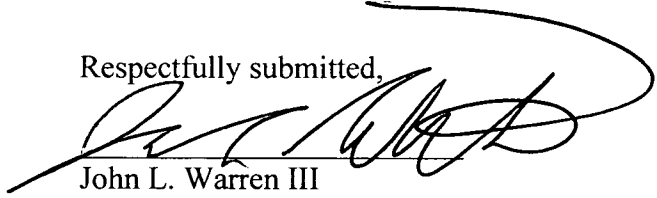
Second, the recent telephonic hearing presided over by the federal Magistrate Judge is not relevant to the issue(s) pending before this Court. In fact, Magistrate Judge Baker acknowledged that Mr. Stone is in a procedural dilemma and delayed the date for filing an incomplete "placeholder" petition until November 21, 2017, so that this Court could rule on Mr. Stone's Motion for a Stay. Judge Baker also acknowledged that procedure would be unnecessary if this Court grants Mr. Stone's Motion, and only scheduled the federal filing date due to the upcoming holidays (during which the federal court will be closed for three days) out of an abundance of caution.

Third, this case presents the archetypal "extraordinary circumstance" that was not contemplated by *In re Stays*. There is a clear gap in the federal statutory scheme which the State is attempting to exploit for the purpose of forcing the premature filing of a federal petition for writ of habeas corpus. This Court should exercise this opportunity to fix that problem and allow for orderly process once a death sentenced inmate, such as Mr. Stone, has invoked the federal court's jurisdiction and is conducting steps necessary to file an informed, adequately investigated, and well-researched and drafted petition for writ of habeas corpus. It makes no sense, and is a waste of judicial and attorney resources, for the State to use an artificial execution date to manipulate that process.

In conclusion, this Court has the opportunity to give meaning to AEDPA's one-year statute of limitation¹ by modifying *In re Stays* so that death-sentenced inmates can obtain a stay of execution in state court in order to develop and file their habeas petition without the specter of impending execution. This Court should reject the State's gamesmanship and enter a stay of execution until Mr. Stone files his habeas petition, at which time he can obtain a stay in federal court.

November 14, 2017

Respectfully submitted,



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¹ 28 U.S.C. § 2244(d).

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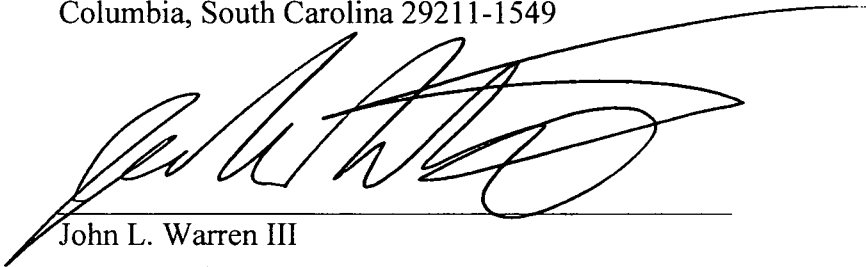
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CERTIFICATE OF SERVICE

I, John L. Warren III, certify that I have served a copy of the Reply to Respondent's Return in Opposition to the Motion for Stay of Execution by depositing the same in the United States Mail, postage prepaid, this 14th day of November, 2017, addressed to:

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