

## Hopkins, Debbie

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**From:** Al Simon <asimon@scag.gov>  
**Sent:** Friday, January 26, 2018 11:47 AM  
**To:** Hopkins, Debbie  
**Subject:** RE: Marion Bowman, Motion for Stay of Execution filed in federal court  
**Attachments:** ECF No. 6, Order Granting Motion for Stay of Execution (01577860xD2C78).pdf

Chief District Judge Wooten for the US District of South Carolina just entered a stay of execution. A copy of the Order granting the stay is attached.

Sincerely,

Al Simon

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JAN 26 2018

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**From:** Hopkins, Debbie [mailto:DJHopkins@sccourts.org]  
**Sent:** Friday, January 26, 2018 11:21 AM  
**To:** Al Simon  
**Subject:** RE: Marion Bowman, Motion for Stay of Execution filed in federal court

S.C. SUPREME COURT

Thank you.

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**From:** Al Simon [mailto:asimon@scag.gov]  
**Sent:** Friday, January 26, 2018 11:19 AM  
**To:** Hopkins, Debbie <DJHopkins@sccourts.org>  
**Subject:** Marion Bowman, Motion for Stay of Execution filed in federal court

Good morning Ms. Hopkins.

Please find attached the Motion for Stay of Execution and Appointment of Counsel that were filed in federal court last week. I am also attaching our response to the motion. To date, the district court has not ruled upon the motion. I will let you know when we hear something from the district court.

Please let me know if you have any questions.

Sincerely,

Al Simon

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

Marion Bowman, Jr.,  
PETITIONER

v.

Bryan Stirling, *Commissioner, South Carolina  
Department of Corrections*; and Willie Davis,  
*Warden, Kirkland Correctional Institution*,  
RESPONDENTS

Case No. 9:18-mc-00016-TLW-BM

Order

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S.C. SUPREME COURT

This matter is before the Court on Petitioner’s Motion for Stay of Execution and Appointment of Counsel.<sup>1</sup> ECF No. 1. The South Carolina Attorney General’s Office, on behalf of Respondents, filed a response stating that they have no objection to either a stay of execution or the appointment of two attorneys to represent Petitioner, as long as the appointed attorneys meet the statutory requirements. ECF No. 5.

**I. Motion to Stay**

Petitioner’s execution date has not yet been set. *See* ECF No. 1 at 1; ECF No. 5 at 1. However, he states in his motion that his execution will be imminently scheduled. ECF No. 1 at 1. Thus, he asks for a stay to provide his counsel with sufficient time to prepare, present, and litigate on his behalf a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. *Id.*

In Respondents’ response, they state that they do not oppose a stay, but they request that

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<sup>1</sup> In the motion, counsel state that they intent to also submit, but have not yet submitted, an *in forma pauperis* motion to the Court. *See* ECF No. 1 at 1 n.1.

the stay be limited to 90 days pursuant to 28 U.S.C. § 2251(a)(3), with the allowance that Petitioner may seek a further stay pursuant to subsection (a)(1). ECF No. 5 at 7–9.

A federal court has jurisdiction to issue a stay of execution once a capital defendant invokes his right to counsel under § 2251. *See* 28 U.S.C. § 2251(a)(3); *McFarland v. Scott*, 512 U.S. 849, 858 (1994) (“[O]nce a capital defendant invokes his right to appointed counsel, a federal court also has jurisdiction under § 2251 to enter a stay of execution.”). As noted, Petitioner has filed a request for appointment of counsel. ECF No. 1. Thus, this Court has jurisdiction to enter a stay of execution. *McFarland*, 512 U.S. at 858. The length of the stay is addressed by § 2251(a)(3), which provides that the stay “shall terminate” not more than 90 days after the appointment of counsel or after the application for appointment is withdrawn or denied. Once he files his habeas petition, § 2251(a)(1) gives the Court authority to stay any state proceedings pending consideration of the petition.

Having carefully reviewed the record, briefing, and relevant authority, and without objection from Respondents, the Court finds that Petitioner should be granted a stay of execution. The stay terminates 90 days after the appointment of counsel, as required by 28 U.S.C. § 2251(a)(3). Once he files his habeas petition, he may seek an additional stay of execution pursuant to § 2251(a)(1) to allow for full consideration of his petition.

## **II. Motion to Appoint Counsel**

Petitioner’s motion to appoint counsel (including any subsequently-filed *in forma pauperis* motion) is hereby referred to the Magistrate Judge for disposition.

**IT IS SO ORDERED.**

*s/ Terry L. Wooten* \_\_\_\_\_  
Terry L. Wooten  
Chief United States District Judge

January 26, 2018  
Columbia, South Carolina