

STATE OF SOUTH CAROLINA
In the Supreme Court

CAPITAL CASE

Appeal from Horry County
Larry B. Hyman, Circuit Court Judge

RECEIVED

OCT 16 2018

S.C. SUPREME COURT

Luzenski Allen Cottrell,

Appellant,

v.

State of South Carolina,

Respondent.

Appellate Case No. 2015-000731

**RETURN TO MOTION FOR A STAY OF EXECUTION AND
FOR APPOINTMENT OF A POST-CONVICTION RELIEF JUDGE**

Respondent State of South Carolina hereby makes a Return to Petitioner's motion for a stay of execution and for appointment of a post-conviction relief judge. Based on the representations in the motion, it appears Petitioner can meet the conditions for the granting of a stay as outlined *In Re Stays of Execution In Capital Cases*, 321 S.C. 544, 471 S.E.2d 140 (1996); thus, Respondent does not oppose the motion. Further, Respondent does not oppose the assignment of a judge. In support of this position, Respondent would respectfully show the Court:

1. In *In Re Stays of Execution In Capital Cases*, 321 S.C. 544, 471 S.E.2d 140 (1996), this Court set out the circumstances under which such a stay would be appropriate. The Court will generally grant a motion for stay requested "within ten (10) days of the date of the issuance of the execution notice" that "set[s] forth the issues intended to be raised in the

application for post-conviction relief...” *Id.*, 321 S.C. at 546, 471 S.E.2d at 141.¹ The Court will also “assign a circuit judge to the case” who will hold a hearing not more than thirty (30) days from the stay of execution to “determine the defendant’s desires regarding counsel and issue an order” regarding appointment of counsel. *Id.*

2. While the execution notice has not yet been issued, the direct appeal concluded when the Supreme Court of the United States denied Petitioner’s petition for writ of certiorari on October 1, 2018. There is no further step available for direct appeal review; however, Petitioner does have post-conviction remedies available should he choose to pursue them. Petitioner has offered at least one potential issue of ineffective assistance of trial counsel in his motion which he asserts will be raised in an application for post-conviction relief. (See Motion, p. 2). Generally, these types of claims are appropriate for post-conviction relief actions under the

¹ The relevant portion is quoted below with the addition of the bracketed phrase which is not included in the Westlaw copy, but is part of the original Order:

If the defendant desires a stay to pursue state post-conviction relief, the defendant must, within ten (10) days of the date of the issuance of the execution notice, file a motion to stay with this Court, setting forth the issues intended to be raised in the application for post-conviction relief. **[If the general nature of the issues are appropriate for post-conviction relief]**, this Court will assign a circuit judge to the case and issue a stay of execution. Within thirty (30) days of the date of the stay order, the judge shall determine the defendant’s desires regarding counsel and issue an order which either sets forth the name of the counsel that the defendant has retained, appoints counsel for the defendant if he or she is indigent, or determines that the defendant will be allowed to proceed *pro se* based on a knowing and intelligent waiver of the right to counsel after being warned of the dangers and disadvantages of proceeding *pro se*...

Uniform Post-Conviction Relief Act. *See, e.g., Al-Shabazz v. State*, 338 S.C. 354, 367, 527 S.E.2d 742, 749 (2000) (discussing jurisdiction pursuant to S.C. Code § 17-27-20(a), and finding “A typical PCR claim of ineffective assistance of counsel falls into this category....”). Therefore, having generally met the requirements for a stay as set forth in *In re Stays*, Respondent does not oppose Petitioner’s motion for a stay of execution.

3. Moreover, as *In re Stays* provides for the appointment of a post-conviction relief judge, Respondent likewise does not oppose this portion of Petitioner’s motion.

THEREFORE, for all the foregoing reasons, Respondent does not oppose the requested stay of execution and appointment of a post-conviction relief judge.

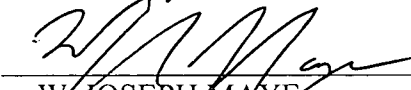
Respectfully submitted,

ALAN WILSON
Attorney General

DONALD J. ZELENKA
Deputy Attorney General

MELODY J. BROWN
Senior Assistant Deputy Attorney General

W. JOSEPH MAYE
Assistant Attorney General

BY: 
W. JOSEPH MAYE
SC Bar No. 100851

Office of the Attorney General
Post Office Box 11549
Columbia, South Carolina 29211
(803) 734-6305

October 16, 2018.
Columbia, South Carolina.

ATTORNEYS FOR RESPONDENT

