



ALAN WILSON
ATTORNEY GENERAL

May 6, 2019

RECEIVED
MAY 13 2019
S.C. SUPREME COURT

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

RE: Stephen Corey Bryant v. State of South Carolina
Appellate Case No: 2019-000610

Dear Mr. Shearouse:

We are in receipt of Mr. Grose's April 24, 2019 letter regarding the transcripts for the above appeal matter. We understand that the following transcripts have now been identified by the parties:

June 21, 2016; (State has received)
September 1, 2016; (State has received)
February 22, 2017; (State has ordered/re-ordered)
April 20, 2017; (State has ordered/re-ordered)
October 25, 2017; (State has received)
June 12, 2018; (State has received)
October 1, 2018; (State has received)
December 21, 2018. (State has received).

Please allow me to correct a mistake in my prior letter regarding transcripts identified. Due to an error in either identification or record keeping, I had previously advised that we had the February 2017, April 2017, and December 2018 transcripts; however, after significant searching, those could not be located as we checked the transcripts again after receiving Mr. Grose's letter. Therefore, I requested the transcripts on an expedited basis. We have already received the December 2018 transcript. We are informed that the court reporter for one of the two remaining transcripts has received our request but is currently assigned a capital trial. It will be approximately three weeks before she will be able to generate one of the short transcripts.

As such, all available transcripts should now be ordered/reorder/or received. (Mr. Grose has advised there was an August 23, 2016 hearing, but a court reporter was not available at that time). When the last two transcripts are received, I will notify the Court.

Page 1 of 2

I would respectfully request the Court consider ordering the appendix be filed fifteen (15) days after receipt of the transcripts in accord with your April 19, 2019 letter to consolidate the matter and have one appendix. I would also suggest the Court consider ordering both petitions be filed (30) days after service of the appendix. The State would appreciate a clear time line from the Court as the habeas proceedings in the 2016 federal action will continue to be stayed until this appeal is concluded. (Order Attached).

Thank you for your time and attention to this matter. I apologize for the mistake in my initial letter regarding the transcripts and have endeavored in this letter to give the Court the best available information on the ordering and receipt of all available transcripts.

If you should need anything further, please do not hesitate to contact me.

Sincerely,



Melody J. Brown
Senior Assistant Deputy Attorney General
S.C. Bar No: 14244

MJB/ab

cc: E. Charles Grose, Jr., Esquire
Diana L. Holt, Esquire
Robert M. Dudek, Esquire
Victim Advocacy Division

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

Stephen Corey Bryant,)
)
 Petitioner,)
)
 v.)
)
 Bryan P. Stirling, Commissioner,)
 South Carolina Department of Corrections;)
 Willie D. Davis, Warden, Kirkland)
 Correctional Institution,)
)
 Respondents.)
 _____)

Case No. 9:16-cv-1423-DCN-BM

ORDER

RECEIVED
 MAY 13 2019
 S.C. SUPREME COURT

The petitioner in this capital habeas corpus matter, Stephen Corey Bryant (“Petitioner”), is a state prisoner convicted of three counts of murder, armed robbery, two counts of first-degree burglary, second-degree burglary, second-degree arson, assault and battery with intent to kill, possession of a stolen handgun, and threatening the life of a public official and sentenced to death. This matter is before the court on Respondents’ Motion to Lift Stay. (ECF No. 68).

Petitioner filed a response to this motion on January 17, 2019 (ECF No. 69), and Respondent replied on January 24, 2019 (ECF No. 70). Accordingly, the motion to lift the stay is ripe for the court’s consideration.

Background

Petitioner pled guilty to three counts of murder, armed robbery, two counts of first-degree burglary, second-degree burglary, second-degree arson, assault and battery with intent to kill, possession of a stolen handgun, and threatening the life of a public official on August 18, 2008. On September 11, 2008, the Court of General Sessions found the existence of an aggravating circumstance and sentenced Petitioner to death. The South Carolina Supreme Court affirmed the

convictions and sentences on January 7, 2011. On May 10, 2011, Petitioner filed his initial application for post-conviction relief (PCR). That application and Petitioner's appeal were both denied. The South Carolina Supreme Court denied Petitioner's petition for writ of certiorari on March 4, 2015, denied the petition for rehearing and issued the remittitur on May 6, 2015, and noticed Petitioner's execution for June 26, 2015. *See In re Stays of Execution in Capital Cases*, 321 S.C. 544, 471 S.E.2d 140, 142 (1996).

Petitioner initiated the instant action on June 19, 2015, by filing a motion for a stay of execution and motion to appoint counsel. (ECF No. 1). He filed a petition for writ of certiorari on January 14, 2016 (ECF No. 30), and he later filed an amended petition for writ of certiorari on April 28, 2016 (ECF No. 37). Also on April 28, 2016, Petitioner filed a motion to stay this action while he pursued several unexhausted grounds for habeas relief via two PCR actions in state court. (ECF No. 38). Following full briefing by the parties, this court granted Petitioner's motion to stay, directing the parties to submit joint status reports every six months and further directing Petitioner to file a motion to lift the stay within thirty days after the decision of the Court of Common Pleas in his pending PCR actions became final. (ECF No. 52).

Discussion

Respondents now move to lift the stay. (ECF No. 68). In their motion, Respondents note that, of the various claims raised in Petitioner's second and third PCR actions, "[o]nly one portion of one action was allowed to go forward—the state court allowed a freestanding claim of Intellectual Disability to be pursued." (ECF No. 68 at 1). On January 4, 2019, the PCR court denied relief on that claim, finding Petitioner had failed to meet his burden of proof. (ECF No. 68 at 1). Of import, Respondents note that "Petitioner has conceded he lacks evidence to support his claim of Intellectual Disability on the first prong of the diagnosis." (ECF No. 68 at 1). Despite

acknowledging that Petitioner's counsel plans to appeal the PCR court's order, Respondents ask that the stay be lifted, arguing that "an appeal would be futile, procedurally and substantively." (ECF No. 68 at 1–2).

Petitioner opposes lifting the stay, noting that he has filed a Rule 59(e) motion in his state PCR action, and if that is denied, he plans to appeal. (ECF No. 69 at 1). Petitioner further indicates that he attempted to amend his PCR application to allege that he suffers from Fetal Alcohol Spectrum Disorder and that his death sentence thus violates the Eighth Amendment, but his motion to amend was denied. (ECF No. 69 at 2). Petitioner contends that the PCR court erred in denying the motion to amend. (ECF No. 69 at 2).

This court initially granted Petitioner's motion to stay based, in part, on the following reasoning:

As the state court has determined that the intellectual disability issue is proper for it to consider in a post-conviction relief action, and as the state court is moving forward with that action, principles of comity and federalism weigh in favor of this Court declining to accept the waiver of exhaustion at this time.

(ECF No. 52 at 8 (citing *Granberry v. Greer*, 481 U.S. 129, 134–35 (1987))). Furthermore, the court concluded that Petitioner had met the *Rhines*¹ factors, and the court thus granted Petitioner's motion to stay the case. (ECF No. 52 at 9–10). The PCR court's denial of the PCR application and Petitioner's concession that he does not have evidence to support one prong of the Intellectual Disability diagnosis calls into question whether Petitioner can still meet all of the *Rhines* factors—in particular, whether his PCR action is not plainly meritless under *Rhines*. See *Rhines*, 544 U.S. at 277 (“[E]ven if a petitioner had good cause for that failure [to exhaust], the district court would abuse its discretion if it were to grant him a stay when his unexhausted claims are plainly

¹ *Rhines v. Weber*, 544 U.S. 269 (2005).

meritless.”). However, in light of the information provided to the court regarding the arguments and claims presently before the state court, the court finds it appropriate to stay the instant action until the PCR court’s order becomes final, in accordance with the initial order staying this case. *See, e.g., Dietz v. Bouldin*, 136 S. Ct. 1885, 1892 (2016) (“[D]istrict courts have the inherent authority to manage their dockets and courtrooms with a view toward the efficient and expedient resolution of cases.”).

Accordingly, Respondents’ Motion to Lift the Stay is DENIED. The parties should continue to submit joint status reports every six months, and as directed in the initial order staying this matter, counsel for Petitioner shall file a supplemental brief and motion to lift the stay within thirty days after the decision of the Court of Common Pleas in Petitioner’s pending PCR action becomes final. Respondents may file a response fourteen days after the filing of Petitioner’s supplemental brief.

IT IS SO ORDERED.



David C. Norton
United States District Judge

April 15, 2019
Charleston, South Carolina