

Hopkins, Debbie

From: Melody Brown <MBrown@scag.gov>
Sent: Tuesday, November 19, 2019 10:54 AM
To: Hopkins, Debbie; Barton Vincent (C028988) (Vincent.Barton@doc.sc.gov)
Cc: E. Charles Grose (charles@groselawfirm.com); Caroline Scrantom; Mike Ross
Subject: Stephen C. Stanko v. Stirling: STAY OF EXECUTION ENTERED
Attachments: ECF #10 - 90 day stay of execution- referral to magistrate for motions (02143785xD2C78).pdf

*** **EXTERNAL EMAIL:** This email originated from outside the organization. Please exercise caution before clicking any links or opening attachments. ***

Please find attached a copy of the stay of execution issued by Judge Gergel, United States District Court Judge. The stay is scheduled to end 90 days after the appointment of counsel, though there is a provision for seeking an additional stay thereafter. We will forward a copy of the order of appointment to you when it is received so that the dates may be calendared.

I am copying E. Charles Grose, Esq., as Mr. Grose filed the motion for stay.

Sincerely,

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S.C. SUPREME COURT

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
AIKEN DIVISION**

Stephen C. Stanko,)	Case No.: 1:19-mc-00380-RMG-SVH
)	
Petitioner,)	
)	
v.)	
)	ORDER GRANTING STAY OF EXECUTION
Bryan P. Stirling, <i>Director, South Carolina Department of Corrections</i> , and Michael Stephan, <i>Warden, Broad River Correctional Institution</i> ,)	
)	
Respondents.)	
)	

This matter is before the court on Petitioner’s Motion for Stay of Execution and Appointment of Counsel. (ECF No. 1.) Also pending is Petitioner’s Motion for Leave to Proceed *in forma pauperis*. (ECF No. 2.) Respondents filed a response to Petitioner’s motion on November 7, 2019 (ECF No. 7) and Petitioner replied on November 11, 2019 (ECF No. 8.)

1. Motion for Stay of Execution

Respondents do not oppose Petitioner’s motion to stay his execution, but note the stay should be limited to ninety days pursuant to 28 U.S.C. § 2251(a)(3). (ECF No. 7 at 1, 5–6.) A federal court has jurisdiction to stay state court proceedings when a state prisoner sentenced to death applies for appointment of counsel pursuant to 28 U.S.C. § 3599. *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.”). Petitioner has moved for the appointment of counsel under § 3599. (*See* ECF No. 1 at 2–7.) Accordingly, this court has the authority to grant a stay of execution. Section 2251(a)(3) provides that the stay “shall terminate” not more than ninety days after the appointment of counsel or after

the application for appointment is withdrawn or denied. Section 2251(a)(1) gives the court additional authority to further stay state proceedings once a habeas corpus action is pending.

Having carefully reviewed the briefing and relevant authority, the court finds that Petitioner should be granted a stay of execution. The stay shall terminate ninety days after the appointment of counsel or after the application for appointment of counsel is withdrawn or denied, as required by 28 U.S.C. § 2251(a)(3). Once Petitioner files his habeas petition, he may move for an indefinite stay pending the outcome of his habeas proceeding under § 2251(a)(1).

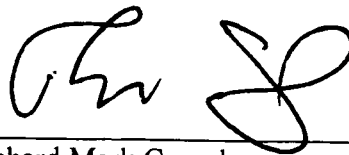
2. Motion for Appointment of Counsel and Motion to Proceed *in forma pauperis*

Petitioner's motions to appoint counsel and to proceed *in forma pauperis* (ECF Nos. 1, 2) are hereby referred to the assigned United States Magistrate Judge for disposition.

3. Conclusion

For the reasons above, Petitioner's Motion for Stay of Execution (ECF No. 1) is **GRANTED**. The stay shall terminate ninety days after the appointment of counsel. The Clerk of Court shall assign a civil action number to this case. This matter is referred to the assigned United States Magistrate Judge for all other preliminary proceedings.

IT IS SO ORDERED.



Richard Mark Gergel
United States District Court Judge

November 18, 2019
Charleston, South Carolina