

Hopkins, Debbie

From: Charles Grose <charles@groselawfirm.com>
Sent: Tuesday, November 19, 2019 2:08 PM
To: Hopkins, Debbie
Cc: Caroline Scrantom; Joseph Perkovich; Lindsey Vann; Emily Paavola; Laura Wingard
Subject: Re: Stanko v. Stirling, 1:19-mc-00380-RMG-SVH
Attachments: 2019 11 19 Order Granting Stay.pdf

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

Dear Ms. Hopkins,

Attached please find the order of the District Court of today's date granting a stay of execution. Please let me know if you have any questions or require additional information.

Best,
Charles

E. Charles Grose, Jr.
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S.C. SUPREME COURT

From: Charles Grose <charles@groselawfirm.com>
Date: Wednesday, November 6, 2019 at 1:32 PM
To: "Hopkins, Debbie" <DJHopkins@sccourts.org>
Cc: Caroline Scrantom <cscrantom@scag.gov>, Joseph Perkovich <j.perkovich@phillipsblack.org>, Lindsey Vann <lindsey@justice360sc.org>, Emily Paavola <emily@justice360sc.org>, Laura Wingard <laura@groselawfirm.com>
Subject: Stanko v. Stirling, 1:19-mc-00380-RMG-SVH

Dear Ms. Hopkins,

I wanted to make sure that Court is aware of these filings in the District Court regarding Supreme Court Appellate Case No.2017-002281.

Thank you for your attention to this matter. Please let me know if you have any questions or require additional information.

Best,
Charles

E. Charles Grose, Jr.
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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
AIKEN DIVISION

Stephen C. Stanko,)
)
Petitioner,)
)
v.)
)
Bryan P. Stirling, *Director, South Carolina*)
Department of Corrections, and Michael)
Stephan, *Warden, Broad River Correctional*)
Institution,)
)
Respondents.)
_____)

Case No.: 1:19-mc-00380-RMG-SVH

ORDER GRANTING STAY
OF EXECUTION

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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. (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).

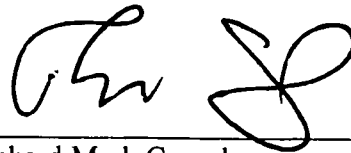
2. Motion for Appointment of Counsel and Motion to Proceed *in forma pauperis*

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