

November 10, 2020

The Honorable Daniel E. Shearouse
Clerk of Court, South Carolina Supreme Court
P.O. Box 11330
Columbia, S.C. 29211

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S.C. SUPREME COURT

Re: *State v. Richard Bernard Moore #6003*
No. 2001-021895

Dear Mr. Shearouse,

Counsel for Richard Moore submit the following in reply to the State's response to Mr. Moore's supplemental authority filed on November 9, 2020.

Contrary to the State's response, this Court is the logical body to grant or deny a stay. This Court issued the execution notice from which Mr. Moore requests a stay. As this Court has demonstrated for decades, it can issue a stay at "any later time" after state post-conviction proceedings if the petitioner "demonstrate[s] that there are exceptional circumstances warranting the issuance of a stay." *In re Stays of Executions in Capital Cases*, 321 S.C. 544, 548, 471 S.E.2d 140, 142 (1996). The Court included two examples of when such a stay may be warranted (during the pendency of a successive post-conviction or a habeas corpus action) but did not purport to provide an exhaustive list. *Id.* The current global pandemic is unprecedented and is an "exceptional circumstance[]" warranting the issuance of a stay." *Id.*

The State further asserts that the South Carolina Department of Corrections (SCDC) "is currently drafting and/or completing guidelines for safely attending the execution." With less than four weeks remaining before Mr. Moore's scheduled execution, these guidelines have not been provided to this Court or undersigned counsel for review. Thus, there is no way to ascertain if the purported guidelines are reasonable or likely to keep all involved safe or allow for medically informed decision-making by counsel, witnesses, spiritual advisors, and family members. Indeed, Federal Correctional Institution Terre Haute purported to carry out federal executions with COVID-19 safety protocols, but data later showed their testing, contact tracing, and failure to ensure adequate use of personal protective equipment likely resulted in a COVID-19 outbreak at the prison and at least three deaths.¹ With no information from SCDC about its planned safety precautions, the currently available information related to the size and layout of the execution chamber and the number of people statutorily and procedurally involved in or present during an execution demonstrates that protection measures are unlikely to be effectual.

¹ *FOIA Data Reveal Inadequate Testing and Precautions, Followed by COVID-19 Outbreaks and Deaths*, ACLU (Sept. 21, 2020), <https://www.aclu.org/press-releases/bop-data-show-federal-executions-likely-caused-covid-19-spike>.

This Court should issue a stay of execution to avoid these unnecessary risks and because the pandemic has inhibited the work necessary to prepare and present an application for executive clemency and potentially prepare and file an original habeas petition.

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

Very truly yours,



Lindsey S. Vann

Cc: Donald Zelenka, Esq.
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Via email