

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

---

FREDDIE EUGENE OWENS,  
*Petitioner,*

v.

STATE OF SOUTH CAROLINA,  
*Respondent.*

---

Appellate Case No. 2008-026520

---

### MOTION FOR A STAY OF EXECUTION

Freddie Eugene Owens (aka, Khalil-Divine Black Sun-Allah),<sup>1</sup> an indigent prisoner under sentence of death, respectfully requests that this Court issue a temporary stay of any execution order that it enters in the above-captioned matter. Mr. Owens seeks this stay because, as this Court has recognized in two recent cases, the State admittedly lacks the “ability to perform the execution as required by law,”<sup>2</sup> thus rendering his execution “impossible,”<sup>3</sup> and in light of this Court’s recent order indicating that it might change its method of reviewing the proportionality of a death sentence.<sup>4</sup>

---

<sup>1</sup> By order of the Dorchester County Family Court, Mr. Owens’s legal name was recently changed to Khalil Allah. However, all previous pleadings in this case have been filed under the name Freddie Owens.

<sup>2</sup> Order, *State v. Moore*, Appellate Case No. 2001-021895 (Nov. 30, 2020) (“Moore Stay Order”);

<sup>3</sup> Order, *State v. Sigmon*, No. 2002-024388 (Feb. 4, 2021) (“Sigmon Stay Order”) (vacating execution notice until, inter alia, until “the State notifies this Court that the Department of Corrections has the ability to carry out the execution by lethal injection....”).

<sup>4</sup> Order, *Moore v. Stirling*, Appellate Case No. 2020-001519 (January 28, 2021).

RECEIVED

APR 21 2021

S.C. SUPREME COURT

### Relevant Procedural History

In February 1999, Mr. Owens was convicted and sentenced to death for his role in the 1997 armed-robbery of a Speedway convenience store in Greenville that resulted in the death of Ms. Irene Graves, its cashier. At the time of the crime, Mr. Owens was nineteen years old. This Court twice reversed Mr. Owens's death sentences, *State v. Owens*, 346 S.C. 637, 552 S.E.2d 745 (2001); *State v. Owens*, 362 S.C. 175, 607 S.E.2d 78 (2004), before affirming his third sentence, *State v. Owens*, 378 S.C. 636, 664 S.E.2d 80 (2008).

Eight days after the United States Supreme Court denied certiorari on January 21, 2009, *Owens v. South Carolina*, 555 U.S. 1141 (2009), Mr. Owens filed a pro se initial application for post-conviction relief in the state trial court. Following amendments and an evidentiary hearing, the trial court denied post-conviction relief, and this Court denied review on July 23, 2015. Order, *Owens v. State*, Appellate Case No. 2013-001026 (S.C.) (denying rehearing after denying petition for writ of certiorari).

---

On July 27, 2015, Mr. Owens initiated federal habeas proceedings pursuant to 28 U.S.C. § 2254 in the United States District Court for the District of South Carolina. Motion, *Owens v. Stirling*, No. 0:16-cv-02512 (July 27, 2015, D.S.C.), ECF No. 1. Upon consideration of Mr. Owens's Amended Petition, ECF No. 117, the district court issued an order on May 29, 2018, accepting the Report and Recommendation of the Magistrate Judge and granting Respondent's motion for summary judgment. Order, ECF No. 216.

Mr. Owens appealed the District Court's ruling to the United States Court of Appeals for the Fourth Circuit. The Court heard oral argument on the appeal, and on July 22, 2020, upheld the District Court's ruling. *Owens v. Stirling*, 967 F.3d 396 (4th Cir. 2020). The Court of Appeals issued the mandate on August 26, 2020. Mandate, *Owens v. Stirling*, No. 18-8 (4th Cir. Aug. 26,

2020), ECF No. 62.

Mr. Owens filed a petition for a writ of certiorari in the Supreme Court of the United States on January 15, 2021; the Court docketed the case on January 22, 2021. *Owens v. Stirling*, No. 20-975. The Director filed a response on February 22, 2021, to which Mr. Owens replied on March 26, 2021. On April 19, 2021, the Court denied Mr. Owens's petition for a writ of certiorari. The Attorney General then requested that this Court set a date for Mr. Owens to be executed.

### **Reasons to Enter a Temporary Stay of Execution**

Per this Court's rubric, there are two ongoing "exceptional circumstances," *In Re Stays of Execution in Capital Cases*, 321 S.C. 544, 548, 471 S.E.2d 140, 142 (1996), that warrant the entry of a stay of execution in this case. The first is that the South Carolina Department of Corrections (SCDC) lacks the means to carry out a lawful execution by lethal injection. Pursuant to South Carolina Code § 24-3-530, a prisoner may make "in writing" an election between electrocution and lethal injection as his method of execution. If the prisoner fails to make an election within fourteen days of his execution date, he must be executed by lethal injection. *Id.* On November 30, 2020, and again on February 4, 2021, this Court stayed executions for prisoners who declined to elect a method of execution after SCDC reported that it did not have, and would not be able to obtain, the drugs necessary to carry out an execution by lethal injection. Moore Stay Order; Sigmon Stay Order. The stay in *Moore* remains in effect until SCDC informs this Court that it has the "ability to perform the execution as required by law." Moore Stay Order. In *Sigmon*, the Court instructed the Clerk "not to issue another execution notice in [Sigmon's] case until the State notifies this Court that the Department of Corrections has the ability to carry out the execution by lethal injection, that the petitioner has made an election to be electrocuted, or that there has been some change in the law which will allow the execution to take place." Sigmon Stay Order.

Since the Court took these actions, nothing has changed regarding the State's ability to lawfully carry out an execution by lethal injection. SCDC has not notified this Court or counsel for Mr. Moore or Mr. Sigmon that it has or can obtain lethal injection drugs. As opposed to Mr. Moore and Mr. Sigmon, moreover, Mr. Owens has not declined to elect his method of execution before the statutory period afforded him—until fourteen days before the scheduled execution date—has passed. On April 19, 2021, Mr. Owens's counsel notified SCDC that Mr. Owens would decline to elect electrocution as his method of execution, and would instead elect lethal injection. Mr. Owens has documented his election in writing, as required by statute, and submits it as Attachment A to this motion.

As Mr. Owens's execution is accordingly impossible, there is no reason to enter an execution order – and every reason to immediately stay any execution order entered under these unusual circumstances – particularly given its consequences for the courts, the staff of SCDC, the parties, and their counsel. Once SCDC receives an execution warrant, it must immediately place the condemned prisoner in isolation and on “execution status,” where he is not permitted to speak with other inmates and security officers must make a physical visit to his cell every 15 minutes. SCDC must place all of death row on lock down, eliminating all recreation and prohibiting inmate interaction until a stay is entered or the prisoner is executed. During that time, the death row psychologist must conduct a mental health evaluation of each inmate. Additionally, SCDC must initiate other execution procedures, such as scheduling the inmate's final visits with family and spiritual advisors, planning for disposal of the inmate's property, and, with the inmate's family, determining the disposition of the inmate's corpse and any funeral arrangements. These required processes place substantial stress and anxiety on SCDC staff and inmates, the condemned person and his family and friends, and all involved in the execution—an unnecessary toll for an execution

that cannot be carried out.

Furthermore, so long as an execution warrant is in place, undersigned counsel must assume that the execution will go forward and initiate any litigation necessary to protect Mr. Owens's rights. The Attorney General's office and counsel for SCDC will have to respond to those actions, and the courts will have to adjudicate them—again, an unnecessary toll for an execution that cannot be carried out.

In sum, this Court should enter a stay of execution for Mr. Owens until SCDC has informed the Court and counsel that it has a lawful means available to carry out his execution by lethal injection, and what it proposes those means to be.

The second exceptional circumstance stems from this Court's January 28, 2021, Order in *Moore v. Stirling*, Appellate Case No. 2020-001519, which directed briefing and requested oral argument on an important question concerning this Court's manner of assessing the proportionality of a death sentence in any given case. In determining whether Mr. Moore's own death sentence was proportional to the penalties imposed in similar cases, the Court indicated it would address whether its proportionality review of death sentences should consider "similar cases in which the death penalty was not imposed." *Id.*

Were this Court to determine that its proportionality review should include such cases, a proper comparative review of Mr. Owens's case would include the circumstances of the crimes and the characteristics of defendants in cases not part of its prior review. Of particular import, the Court could take into account cases in which the death penalty was not imposed for crimes committed by defendants when they were only 19 years old. The Court could also note that its 2008 finding that Mr. Owens's death sentence was not disproportionate relied on "a nullity"—a case in which the death sentence had been vacated. *See State v. Owens*, 378 S.C. 636, 641, 664

S.E.2d 80, 82 (2008). The only two opinions cited by the Court for comparison cases, *State v. Humphries*, 325 S.C. 28, 479 S.E.2d 52 (1996), and *State v. Simpson*, 325 S.C. 37, 479 S.E.2d 57 (1996), involved the imposition of death sentences. But the death sentence in *Simpson* had been overturned at the time the Court considered that case, *Simpson v. Moore*, 367 S.C. 587, 600, 627 S.E.2d 701, 708 (2006), making it “a nullity” and inappropriate for comparative review:

It is axiomatic, of course, that a death sentence infected by prejudicial trial error is a nullity which must be categorically rejected from any comparative review of properly imposed death sentences. Thus our prior decisions vacating and remanding death sentences for retrial must be disregarded in the course of proportionality review.

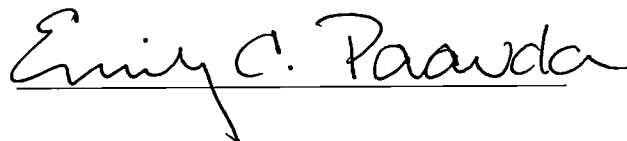
*State v. Copeland*, 278 S.C. 572, 593, 300 S.E.2d 63, 75 (1982). On remand, Simpson was sentenced to life and is eligible for release on parole in 2022. See <https://public.doc.state.sc.us/scdc-public/inmateDetails.do?id=%2000316634> (accessed Apr. 13, 2021).

This Court will hear oral argument in *Moore* on May 5, 2021. In light of the Court’s intention to decide the proper application of its proportionality review within just a few weeks, it is prudent and fair for this Court to enter a stay of execution for Mr. Owens until the Court has indicated whether and to what extent it will modify its proportionality review, and the Court has had an opportunity to properly review his death sentence.

### CONCLUSION

For the reasons stated above, this Court should issue a stay of any execution order that it enters in this matter.

Respectfully submitted,



Emily Paavola  
900 Elmwood Avenue, Suite 200  
Columbia, SC 29201  
(803) 765-1044  
Emily@Justice360.org