

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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Apr 28 2021

S.C. SUPREME COURT

FREDDIE EUGENE OWENS,

Petitioner,

v.

STATE OF SOUTH CAROLINA,

Respondent.

Appellate Case No. 2006-038802

RESPONSE TO MOTION FOR A STAY OF EXECUTION

On April 22, 2021, the Clerk of this Court issued an Execution Notice pursuant to S.C. Code § 17-25-370. Owens has moved for a stay of execution. Since moving for a stay, Owens has elected lethal injection for the method of execution. Given that the South Carolina Department of Corrections has advised this Court that it will not be able to conduct an execution by lethal injection on the date currently set, May 14, 2021, Respondent does not object to a stay akin to that issued in *State v. Richard Bernard Moore*, Appellate Case No. 2001-021895, Order dated November 30, 2020 (granting a stay “until the South Carolina Department of Corrections advises the Court it has the ability to perform the execution as required by the law.”); or disposition as in *Brad Keith Sigmon v. State of South Carolina*, Appellate Case No. 2002-024388, Order dated February 4, 2021 (vacating notice, directing Clerk not to issue “another ... until the State notifies this Court that the Department of Corrections has the ability to carry out the execution by lethal injection” or the death-sentenced inmate has elected electrocution, or “there has been some change in the law which will allow the execution to take place.”). In support of its position, Respondent respectfully submits:

1. S.C. Code § 17-25-370 provides that a date of execution must be set for the fourth Friday after receipt of the execution notice. In this case, that calculates to May 14, 2021.

2. S.C. Code § 24-3-350 provides that the death sentenced inmate may elect lethal injection over electrocution if the election is made fourteen days before the execution date.

3. On April 23, 2021, Owens elected lethal injection. (Attachment 1).

4. By letter dated April 27, 2021, the South Carolina Department of Corrections has advised this Court “that it will not be able to obtain the required drugs prior to May 14, 2021.”

5. This Court has stayed the notice issued in *Richard Bernard Moore* (see Appellate Case No. 2001-021895, Order, dated November 30, 2020), and also vacated the notice in *Brad Keith Sigmon*, for the same reason, (Appellate Case No. 2002-024388, Order dated February 4, 2021). Respondent will not object to similar disposition here in light of the Department’s letter.

6. Given this development, Owens’s remaining arguments need not be addressed. Respondent would assert, however, the remaining arguments do not meet the heightened standard for last minute stays of execution.

First, Owens argues that the lawful execution should be stayed because the parties must continue to litigate and the Department must continue to prepare for an execution that likely will not happen. However, there is little doubt that the actions taken to this point are mandated by statute and/or have been matters of standard procedure due to the nature of the sentence. *See generally Roberts v. Moore*, 332 S.C. 488, 488, 505 S.E.2d 593 (1998) (“[I]t is a ministerial duty of the Clerk of this Court to issue an execution notice pursuant to § 17-25-370.”). In fact, it is because the procedures have been followed that an election was made, which, in turn, prompted the Department’s acknowledgment that it will not be able to carry out a May 14, 2021 lethal

injection execution. These events are foundational for this Court to consider a stay on that narrow ground.

Second, Owens argues that a stay is warranted due to this Court granting additional proceedings to consider proportionality review issues in the original jurisdiction action filed by Richard Bernard Moore. (Appellate Case No. 2020-001519). However, Owens does not have a petition for review pending or attached to his motion that presents a proportionality review issue or, for that matter, any other issue. He fails to show “exceptional circumstances” for a stay. *See generally In re Stays of Execution in Capital Cases*, 321 S.C. 544, 548, 471 S.E.2d 140, 142 (1996) (“A request for a stay of execution at any later time, to include a request for a stay pending the filing of a successive action for post-conviction relief or habeas corpus in the circuit court or in the original jurisdiction of this Court ... must demonstrate that there are exceptional circumstances warranting the issuance of the stay.”).¹ Even so, proportionality review is not a constitutional right

¹ To the extent Owens suggests he *may* have an argument later, and *may* want the Court to consider his age and facts of the crime, Owens’s motion only briefly references possible argument and completely fails to even acknowledge the brutal second murder Owens committed while awaiting sentencing. The individualized sentencing proceeding(s) included those facts, as well, and allowed for a fuller picture of Owens than he briefly references in his motion. The facts of this case and evidence of Owens’s character have been heard several times. Owens was convicted and sentenced to death *three times* in the South Carolina courts for the November 1, 1997 murder of Ms. Irene Graves. Ms. Graves was shot and killed during an armed robbery of the convenience store where she worked for not being able to open the safe. The only money taken was \$37.29 from the register. *Owens v. Stirling*, 967 F.3d 396, 404 (4th Cir. 2020), *cert. denied sub nom. Owens, Freddie v. Stirling, Dir., SC DOC et.al.*, No. 20-975, 2021 WL 1520801 (U.S. Apr. 19, 2021). Testimony at trial revealed Owens took credit for the murder by stating that he had “shot that bitch in the head...” *Id.* Owens was indicted for murder, armed robbery, use of a firearm in the commission of a violent crime, and criminal conspiracy. Owens’s first proceeding was a jury trial in February 1999. *State v. Owens (Owens I)*, 552 S.E.2d 745, 753 (2001). After the guilt phase concluded on February 15th, the judge determined that sentencing would not begin until February 17th. *Id.* In the interim, Owens brutally killed a fellow inmate at the detention center, Christopher Lee, and gave a detailed confession. This Court incorporated the graphic confession in a prior opinion. *Id.* In his confession, Owens indicated that Christopher Lee began to taunt him for being convicted. Owens stated he “hit him in the eye,” and when he fell, Owens began to pummel him. Owens then stabbed him in the eye with a pen, and “tried to stab him in his chest,

or requirement; thus, a challenge to this Court’s method of conducting the review is not likely to meet the restricted scope of original habeas action. *See Williams v. Ozmint*, 380 S.C. 473, 477, 671 S.E.2d 600, 602 (2008) (“Habeas relief is seldom used and acts as an ultimate ensurer of fundamental *constitutional rights*.”) (emphasis added); *Pulley v. Harris*, 465 U.S. 37, 50 (1984) (finding no constitutional requirement for “comparative proportionality review by an appellate court”); *State v. Copeland*, 278 S.C. 572, 590, 300 S.E.2d 63, 74 (1982) (“the contours of proportionality review, where it exists, have been left to state determination since the U.S. Supreme Court has declined to impose any specific model of review”). Further still, this Court has already conducted a proportionality review in Owens’s direct appeal under the standards established by this Court’s precedent:

Pursuant to S.C.Code Ann. § 16–3–25(c) (2003), we have conducted a proportionality review and find the death sentence was not the result of passion, prejudice, or any other arbitrary factor. Furthermore, a review of other decisions demonstrates that appellant's sentence was neither excessive nor disproportionate. *See State v. Humphries*, 325 S.C. 28, 479 S.E.2d 52 (1996) (murder of convenience store operator in the commission of attempted armed robbery); *State v. Simpson*, 325 S.C. 37, 479 S.E.2d 57 (1996) (murder of convenience store operator in the commission of armed robbery).

State v. Owens, 378 S.C. 636, 641, 664 S.E.2d 80, 82 (2008); *see also Copeland*, 278 S.C. 572, 591, 300 S.E.2d 63, 74 (1982) (“In our view, the search for ‘similar cases’ can only begin with an actual conviction and sentence of death rendered by a trier of fact in accordance with § 16–3–20 of the Code. We consider such findings by the trial court to be a threshold requirement for

but the pen would not go in” so he “stabbed him in his throat.” Owens then choked him with a sheet, continued to beat him, began to “pound[] his head against the floor,” then “stomped his head and body,” “burned him around the eye and on the left side of his hair,” and “rammed his head into the wall.” Lee was still “moaning and breathing” so Owens attacked again and “rammed the pen up his right nostril,” “closed his left nostril,” and began choking him again. When Owens “finally thought he was dead,” Owens tossed the body on a bed, covered it, and “went to sleep.” *Id.*, 755. It seems unlikely Owens could convince this Court to overlook that vicious killing in any subsequent review.

comparative study and indeed the only foundation of ‘similarity’ consonant with our role as an appellate court.”). Owens fails to show “exceptional circumstances warranting the issuance of the stay.” *In re Stays*, 321 S.C. at 548, 471 S.E.2d at 142.

However, given the assertion in the April 27, 2021 letter filed by the Department of Corrections that the Department is unable to carry out the scheduled execution, Respondent does not object to a stay until such time as the Department has the ability to carry out the execution, Owens elects electrocution, or there is a change in the law. *Sigmon, supra*.

Respectfully Submitted,

ALAN WILSON
Attorney General of South Carolina

DONALD J. ZELENKA
Deputy Attorney General

MELODY J. BROWN
Senior Assistant Deputy Attorney General

J. ANTHONY MABRY
Senior Assistant Attorney General

s/Melody J. Brown

By: _____
MELODY J. BROWN
S.C. Bar No. 14244

Post Office Box 11549
Columbia, South Carolina 29211
(803) 734-6305

April 28, 2021

ATTORNEYS FOR RESPONDENT

ATTACHMENT

1

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

NOTICE OF ELECTION

I, Freddie Eugene Owens #5065, pursuant to Section 24-3-530, South Carolina Code of Laws, 1976 as amended, hereby elect lethal injection as the method for execution.

Freddie Eugene Owens
Freddie Eugene Owens
(Freddie Eugene Owens)

Dated: 4-23-21

WITNESSES:

Willie Dean

TK Ak

Jacqueline Murrell

