

THE STATE OF SOUTH CAROLINA
In the Supreme Court

Case No. 2001-021895
Original Jurisdiction Case No. 2020-001519

RICHARD BERNARD MOORE
Petitioner,

v.

BRYAN P. STIRLING,
Respondent.

SECOND MOTION FOR STAY OF EXECUTION
PENDING RESOLUTION OF PETITION FOR WRIT OF HABEAS CORPUS

Petitioner, Richard Moore, through undersigned counsel requests this Court convert the stay of execution currently in place to a stay of execution pursuant to *In re Stays of Execution in Capital Cases*, 321 S.C. 544, 548, 471 S.E.2d 140, 142 (1996), pending this Court’s resolution of his petition for writ of habeas corpus, the merits of which were heard by this Court on May 5, 2021.

By way of reference, on November 19, 2020, Moore filed a petition for writ of habeas corpus and a corresponding motion for stay of execution. On November 30, 2020, after receiving a notification that the South Carolina Department of Corrections (SCDC) could not obtain the “drugs required for execution by lethal injection,” this Court stayed Moore’s then-pending execution date “until the South Carolina Department of Corrections advises the Court it has the ability to perform the execution as required by law.” Order, *State v. Moore*, No. 2001-021895 (Nov. 30, 2020).

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On January 28, 2021, this Court ordered additional briefing and oral argument on the merits of whether Moore’s death sentence is “disproportionate to the penalty imposed in similar cases.” Order, *Moore v. Stirling*, No. 2020-001519 (Jan. 28, 2021). At the time, the Court denied Moore’s habeas-related motion for stay as mooted by the Court’s November 30th order. Since then, the parties completed the additional briefing and this Court held oral argument on Moore’s habeas claim on May 5, 2021.

Today, SCDC filed with the Court a letter stating that, with amendments to South Carolina Code Section 24-3-530, it “is now able to carry out executions by electrocution.”¹ Neither the Court’s November 30th stay order nor *In re Stays* indicate that SCDC’s letter requires this Court to issue an execution notice, but out of an abundance of caution, Moore asks the Court to formally stay his execution pending the resolution of his habeas proceedings.

A stay is warranted pending the resolution of Moore’s habeas petition. To allow otherwise evades this Court’s authority and decision to review this matter. Moreover, allowing Moore’s execution to proceed while this question remains unresolved risks an unjust execution that could not be remedied given the irrevocability of the punishment. *See Murray v. Giarratano*, 492 U.S.

¹ SCDC sent the letter in reference to the cases of Moore, Brad Sigmon, and Freddie Owens, apparently based on language in stay orders in each case requesting SCDC inform the Court if circumstances related to its ability to carry out executions changed.

Moore submits that SCDC’s letter does not satisfy the Court’s stay order requesting SCDC advise the Court when it can perform the execution as required by law because: (1) SCDC’s indication that it can carry out executions only by electrocution runs contrary to the General Assembly’s intent to maintain a choice of execution method—some combination of lethal injection, electrocution, or firing squad—in its amendments to the statute, and (2) legality of retroactively applying the amended statute to individuals previously sentenced to death is unclear and the subject of currently-pending litigation in the Richland County Court of Common Pleas. *See Owens v. Stirling*, No. 2021-CP-40-02306 (asserting the amended statute is unconstitutional because it: (1) violates Due Process by applying retroactively, (2) violates the prohibition against *Ex Post Facto* legislation, (3) violates Due Process as it is void for vagueness, and, (4) violates the non-delegation doctrine of the South Carolina constitution).

1, 8–9 (1989) (“The finality of the death penalty requires ‘a greater degree of reliability’ when it is imposed.” (citing *Lockett v. Ohio*, 438 U.S. 586, 604 (1978))).

Because the Court is currently considering the merits of a claim for habeas relief, “there are exceptional circumstances warranting the issuance of a stay,” *See In re Stays of Execution*, 321 S.C. at 548, 471 S.E.2d at 142, and Moore requests the Court enter a stay pending the resolution of his petition for a writ of habeas corpus.²

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² In the alternative, the Court should maintain the November 30, 2020 stay of execution, and decline to set an execution date, pending the resolution of legal issues surrounding the applicability of the amended South Carolina Code Section 24-3-530 to Moore and those similarly situated.

Respectfully submitted,

s/ Whitney B. Harrison

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May 20, 2021.