

IN THE
SUPREME COURT OF SOUTH CAROLINA

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May 27 2021

S.C. SUPREME COURT

ORIGINAL JURISDICTION

RICHARD BERNARD MOORE,

Petitioner,

v.

BRYAN P. STIRLING, Commissioner,
South Carolina Department of Corrections,

Respondent.

RESPONSE IN OPPOSITION TO MOTION FOR STAY

On May 20, 2021, Moore filed a motion captioned second motion for stay. He asserts that a stay is warranted to allow this Court to resolve his original jurisdiction action. The action in this Court's original jurisdiction has been fully briefed, and the parties presented oral argument on May 5, 2021. Respondent opposes the second motion for the following reasons:

1. This action is currently stayed by Order of the Court dated November 30, 2020. In this Court's Order of January 28, 2021, the Court declined to issue a further stay for purposes of this original jurisdiction action.

2. This Court has not yet lifted the stay from November 30, 2020, and the Clerk has not yet issued another notice. The present motion is at best premature.

3. In the prior stay of November 30, 2020, this Court directed "the South Carolina Department of Corrections" (SCDC) to "advise[] the Court [when] it has the ability to perform the execution as required by the law." According to the provisions of the Order, the stay is conditioned

on that act. It is likely that the Clerk of this Court will issue another execution notice since SCDC advised the Court by letter of May 19, 2021, that it is now authorized, by the recent amendment of S.C. Code § 24-3-530, to “carry out executions by electrocution.” However, that has, as of yet, not happened.

4. Further, Respondent maintains for all the reasons previously submitted, that a stay is not otherwise warranted. Primarily, a stay is not warranted because Moore is not entitled to any relief in the original jurisdiction action. He is not entitled to a stay simply to delay a just, legal, and authorized execution.

5. By footnote, Moore requests, in the alternative, to maintain the existing stay to allow for resolution of challenge(s) to the recent amendment of S.C. Code § 24-3-530. (Motion, p. 3 n. 2). Moore has not identified any litigation in which he is a party. If such a challenge exists for Moore in federal proceedings, he is to turn to the federal courts for a stay. *In re Stays of Execution in Cap. Cases*, 321 S.C. 544, 548, 471 S.E.2d 140, 142 (1996). If such a challenge exists for Moore in state court, he offers nothing to support the required showing of “exceptional circumstances warranting the issuance of the stay.” *Id.* That Moore hopes some litigation at some point may be relevant and affect his position, or give rise to an issue that he may be able to litigate, should be insufficient to support a stay.

THEREFORE, for all the foregoing reasons, Respondent submits the motion should be denied.

Respectfully Submitted,

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