

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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Appeal from Horry County  
Steven H. John, Circuit Court Judge

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**RECEIVED**

APR 16 2013

STATE OF SOUTH CAROLINA,

Appellant, S.C. SUPREME COURT

v.

STEPHEN CHRISTOPHER STANKO,

Respondent

Appellate Case No. 2010-154746

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**RETURN TO MOTION FOR STAY OF EXECUTION**

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Appellant, Stephen C. Stanko, is a death row inmate previously sentenced to death in Horry County. His convictions and death sentence were recently affirmed by this Court. State v. Stanko, \_\_\_ S.E.2d \_\_\_, 2013 W.L. 696816 (February 27, 2013). Appellant has now filed a Petition for Stay of Execution with this Court, seeking a stay of execution in order that he may seek certiorari review with the United States Supreme Court. Respondent, the State, by and through the undersigned attorneys, hereby responds to the Appellant's Petition for Stay of Execution to Petition the United States Supreme Court for certiorari review.

In his Petition for Stay of Execution, Appellant sets forth that he intends to raise several issues to the United States Supreme Court. In particular, he claims the following:

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(a)

Whether petitioner was denied his right to a fair trial by an impartial jury pursuant to Wainwright v. Witt, 469 U.S. 412 (1985); Witherspoon v. Illinois, 391 U.S. 510 (1968) and Ross v. Oklahoma, 487 U.S. 81 (1988) where a juror was qualified to serve, and served, despite her (1) prior knowledge of petitioner's prior murder convictions; (2) her unequivocal testimony that she would vote to impose the death penalty in every instance in which the State proved an aggravating circumstance, and (3) where it was readily foreseeable she would infect the entire jury panel with her knowledge of petitioner's prior murder conviction?

(b)

Whether qualifying a death prone juror simply because she stated she would "follow the law" as instructed while being "rehabilitated" by the trial court satisfies the dictates of Morgan v. Illinois, 504 U.S. 719 (1992), and Wainwright v. Witt, 469 U.S. 412 (1985), where the juror unequivocally stated she would vote to impose the death penalty in every instance where the State proved an aggravating circumstance?

(c)

Whether petitioner's execution would violate the Eighth Amendment's proscription against cruel and unusual punishment where petitioner presented expert testimony of his diminished capacity by reason of his brain dysfunction caused by complications ini childbirth, and which were exacerbated by a subsequent head injury?

Respondent has reviewed the Stay Petition and record in this case, and at least one (1) of the issues Appellant states he intends to raise on certiorari to the United States Supreme Court was preserved below, raised to this Court, addressed by this Court in its Opinion in this case, and raises a claim under the United States Constitution or its Amendments. As a result, pursuant to In Re Stays of Execution in Capital Cases, 321 S.C. 544, 471 S.E.2d 544 (1996), Respondent, does not oppose the granting of a Stay of Execution so that Appellant may pursue certiorari with the United States Supreme Court.

Respectfully submitted,

ALAN WILSON  
Attorney General

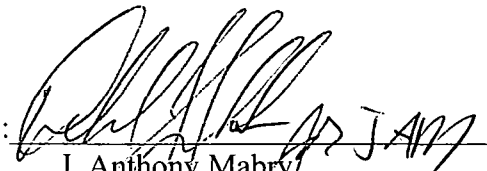
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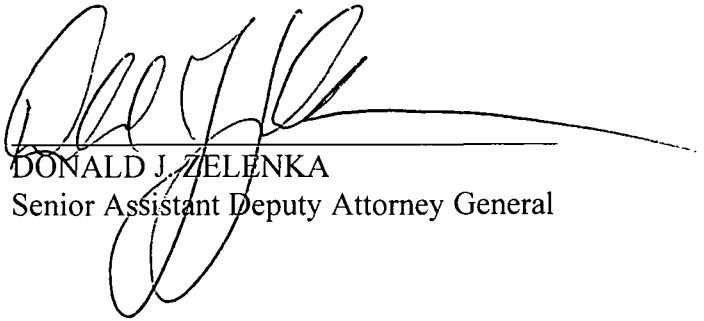
By:  J. Anthony Mabry

**ATTORNEYS FOR RESPONDENT**  
P.O. Box 11549  
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April 15, 2013

**CERTIFICATE OF SERVICE**

**I, Donald J. Zelenka**, hereby certify that I have served the *Return to Motion for a Stay of Execution* in the foregoing action by depositing copy in the Inter Agency mail to Robert M. Dudek, Chief Appellate Defender, Division of Appellate Defender, 1330 Lady Street, Suite 401, Columbia, SC 29201 this 15<sup>th</sup> day of April, 2013.



DONALD J. ZELENSKA  
Senior Assistant Deputy Attorney General