

Post Office Box 6454
Columbia, South Carolina 29260
Voice 803.782.1663
Fax 803.787.0374
Email: DianaHolt@DianaHoltLLC.com

October 27, 2021

The Honorable Donald W. Beatty, Chief Justice
South Carolina Supreme Court
Supreme Court Building
1231 Gervais Street
Columbia, South Carolina 29201
SupCtFilings@SCCourts.org

RECEIVED

Oct 27 2021

S.C. SUPREME COURT

RE: Request to Appoint a Circuit Court Judge to Preside over the capital resentencing of Sammie Louis Stokes, pursuant to the Mandate ordered by the 4th Circuit Court of Appeals, Chief Judge Gregory, and the order issued by the Federal District Court for South Carolina, Chief Judge Bruce Harwell.

Dear Chief Justice Beatty:

I write to request that this Honorable Court issue an order appointing a Circuit Court Judge to preside over the resentencing of Mr. Sammie Louis Stokes, in the case of *State v. Stokes*, 98-GS-38-1246.

Mr. Stokes was before the Federal District Court for South Carolina on a petition for writ of *habeas corpus*, in civil cause number 1:16-cv-00845-RBH. After a lengthy evidentiary hearing regarding evidence that tended to mitigate Mr. Stokes's death sentence, the District Court ultimately denied Mr. Stokes's petition for writ of *habeas corpus*. Thereafter, Petitioner/Appellant Stokes filed an appeal in the 4th Circuit Court of Appeals, cause number 18-6. After briefing was complete, a panel of judges for the 4th Circuit Court of Appeals held an oral argument on May 6, 2021, with Chief Judge Roger Gregory, Judge Harris, and Judge Quattlebaum, presiding.

Chief Judge Roger Gregory, with Judge Harris concurring, issued the opinion of the Court, granting Mr. Stokes's petition for writ of *habeas corpus* reversing death sentence and remanding the matter, by published and authored opinion, *See Stokes v. Stirling*, 10 F.4th 236, 256 (4th Cir. 2021) (reversing and remanding "with instructions that the district court issue the writ of habeas corpus unless the State of South Carolina grants Stokes a new sentencing hearing within a reasonable time").

Thereafter, the State petitioned the 4th Circuit for a rehearing *en banc*. The Court denied the rehearing *en banc*, noting that no judge of the Court requested that the Court be poled. On September 27, 2021, the State made application to stay the mandate. The

4th Circuit denied the application on October 1, 2021.¹

Thereafter, the 4th Circuit entered the mandate and ordered the District Court to issue an order granting the writ on October 12, 2021; that same day the District Court ordered the parties to file a joint status report addressing what constitutes “a reasonable time” for the State’s grant of a new sentencing hearing, which the parties filed. Attachment A. Subsequently the District Court issued an order granting Petitioner “a writ of habeas corpus vacating his death sentence unless the State of South Carolina grants him a new sentencing hearing with one year (365 days) of the date of this Order. If the State of South Carolina has not commenced jury selection in the new sentencing hearing within 365 days (i.e., October 15, 2022), the State must sentence Petitioner to life imprisonment.” Order, Attachment B.

Stokes’s makes this request in light of the fact that he must be prepared to proceed to a sentencing hearing by October 15, 2022. Stokes must do everything to avoid being any cause for the State’s potential inability to proceed to a death penalty resentencing trial by that date. Stokes urges that time is of the essence and prays that the Court appoint a Circuit Court Judge to preside over this resentencing. Undersigned apprised First Judicial Circuit Solicitor David Pascoe of her intent to make this request and the circumstances prompting the request. With highest personal regards, I remain

Sincerely,

s/s Diana Holt

Diana Holt

CC: Ms. Tonnya K. Kohn, State Court Administrator
Solicitor David Pascoe
Senior Deputy Attorney General Melody Brown (Courtesy Copy)

(All CC recipients are via electronic mail.)

¹The State made application to Chief Justice Roberts of the U.S. Supreme Court to stay the mandate on October 6, 2021. (Cause 21A61) The Chief Justice requested that Stokes's file a response, which he filed on October 19, 2021. The State filed a reply on October 21, 2021. Thereafter, the Chief Justice denied the State's application by docket entry on October 22, 2021.

ATTACHMENT A

consulted the present solicitor for the circuit. Counsel is informed that there is a significant backlog on the criminal docket due to COVID shutdowns. Further, trials have already been scheduled for the next 90 days. That immediately reduces the actual time available to work on the matter to less than 300 days. Counsel was further advised that the juror panels have been difficult to handle in the circuit due to rather limited facilities and COVID precautions/concerns. Selecting a capital jury is likely to be even more difficult.

3. Counsel for Respondents are filing this report after consultation with opposing counsel, Diana Holt, Esq., who has reviewed the above assertions. Ms. Holt has communicated via email that she consents to filing the above as the parties' joint status report.

Respectfully submitted,

ALAN WILSON
Attorney General, State of South Carolina

DONALD J. ZELENKA
Deputy Attorney General

MELODY J. BROWN
Senior Assistant Deputy Attorney General
Fed. I.D. No. 7979

MICHAEL D. ROSS
Assistant Attorney General

Office of the Attorney General,
State of South Carolina
Post Office Box 11549
Columbia, South Carolina 29211
(803) 734-6305

s/Melody J. Brown

By: _____
ATTORNEYS FOR RESPONDENTS

October 14, 2021

ATTACHMENT B

UNITED STATES DISTRICT COURT
 FOR THE DISTRICT OF SOUTH CAROLINA
 AIKEN DIVISION

Sammie Louis Stokes,)	Civil Action No.: 1:16-cv-00845-RBH
)	
Petitioner,)	
)	
v.)	ORDER
)	
Bryan P. Stirling, <i>Director, South Carolina</i>)	
<i>Department of Corrections; and Lydell</i>)	
<i>Chestnut, Deputy Warden of Broad River</i>)	
<i>Road Correctional Secure Facility,</i>)	
)	
Respondents.)	
)	

This case is before the Court on remand from the United States Court of Appeals for the Fourth Circuit. *See Stokes v. Stirling*, 10 F.4th 236, 256 (4th Cir. 2021) (reversing and remanding “with instructions that the district court issue the writ of habeas corpus unless the State of South Carolina grants Stokes a new sentencing hearing within a reasonable time”). The Fourth Circuit issued the mandate on October 12, 2021, and that same day, the undersigned directed the parties to file a joint status report addressing what constitutes “a reasonable time” for the State’s grant of a new sentencing hearing. ECF Nos. 237 & 238. The parties have now filed the joint status report stating they “report a suggestion of one-year as a ‘reasonable time’ in this matter.”¹ ECF No. 239 at p. 1. The Court agrees one year is a reasonable time.

Accordingly, consistent with the Fourth Circuit’s mandate, the Court **ISSUES** Petitioner a writ of habeas corpus vacating his death sentence unless the State of South Carolina grants him a new

¹ The joint status report explains, “[J]uror panels have been difficult to handle in the [state judicial] circuit due to rather limited facilities and COVID precautions/concerns. Selecting a capital jury is likely to be even more difficult.” ECF No. 239 at p. 2.

The parties also submit that “Respondents’ application to recall and stay the mandate is still pending in the Supreme Court. The Chief Justice has called for a response to be filed not later than 4:00 pm next Tuesday, October 19, 2021. Respondents intend to file a petition for writ of certiorari on or before December 22, 2021.” *Id.*

sentencing hearing with one year (365 days) of the date of this Order. If the State of South Carolina has not commenced jury selection in the new sentencing hearing within 365 days (i.e., October 15, 2022), the State must sentence Petitioner to life imprisonment.

IT IS SO ORDERED.

Florence, South Carolina
October 15, 2021

s/ R. Bryan Harwell
R. Bryan Harwell
Chief United States District Judge