

THE STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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Jan 10 2022

S.C. SUPREME COURT

The State,  
*Respondent,*

v.

Gary DuBose Terry  
*Appellant.*

Appellate Case No. 2000-25085

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Motion to Stay the Setting of an Execution Date Pursuant to *State v. Sigmon*, No. 2002-024388 (June 16, 2021) and *State v. Owens*, No. 2006-038802 (June 16, 2021)

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Appellant, Gary D. Terry, is under a sentence of death. This morning, the Supreme Court of the United States denied his Petition for Writ of Certiorari following denial of federal habeas corpus relief. *Terry v. Stirling*, No. 21-6151, 595 U.S. \_\_\_\_ (mem.) (Jan. 10, 2022). Under ordinary circumstances, at this stage of Mr. Terry’s legal proceedings, jurisdiction over his case would be remitted to this Court, the clerk would “notify the Commissioner of the prison system . . . of the final disposition of such appeal” and the clerk would set an execution date for “the fourth Friday after the receipt of such notice.” S.C. Code Ann. § 17-25-370. At present, however, the clerk is under two direct orders from this Court not to issue any new execution notices until the Department of Corrections (SCDC) and the State notify this Court that they are able to carry out executions by means other than electrocution. *State v. Sigmon*, No. 2002-024388 (June 16, 2021); *State v. Owens*, No. 2006-038802 (June 16, 2021) (jointly, “the June Orders”). Because SCDC and the State have not notified the Court of any changed circumstances since this Court entered the June Orders, and because Mr. Terry is similarly situated to the *Sigmon* and *Owens* appellants, Mr. Terry is covered

by the June Orders and no execution notice should issue until this Court lifts the stays imposed by the June Orders.

As this Court is aware, the Legislature amended the state's methods-of-execution statute in May of 2021, making electrocution the default method but also permitting a condemned prisoner to select between electrocution, lethal injection, or the firing squad. 2021 S.C. Acts No. 43, R-56, S. 200, *codified at* S.C. Code Ann. § 24-3-530 (2021). Before the condemned prisoner makes a selection between those three methods, the Director of SCDC must certify to this Court which—if any—of the methods are “available.” *Id.* § 24-3-530(B). Litigation regarding the constitutionality of the new statute, both on its face and as SCDC has interpreted it, is ongoing. *See Owens v. Stirling*, No. 3:21-cv-03564-JD, *removed from Owens v. Stirling*, No. 2021-CP-40-02306 *and Owens v. Stirling*, No. 2021-CP-40-04851.

Since the Legislature amended the statute, two death-sentenced individuals other than Mr. Terry—Sigmon and Owens—received execution notices for June 18 and 25, respectively. On June 3, Bryan Stirling, the Director of SCDC, filed an affidavit with this Court certifying that electrocution was “the only statutorily approved method of execution available in South Carolina.” *See June Orders*. On June 16, two days before Sigmon's scheduled execution, this Court vacated his and Owens's execution notices, confirming that condemned individuals in South Carolina possess a “statutory right . . . to elect the manner of their execution.” *Id.* Because as of June 3 there was only one “available” method of execution, Sigmon and Owens could not exercise their right to elect and this Court therefore “direct[ed] the Clerk of this Court not to issue another execution notice until the State notifies the Court that the Department of Corrections, in addition to maintaining the availability of electrocution, has developed and implemented appropriate protocols and policies to carry out executions by firing squad.” *Id.* Since this Court issued the June

Orders, the State has not, to undersigned counsel's knowledge, notified the Court that SCDC "has developed and implemented appropriate protocols and policies to carry out executions by firing squad." *Id.*

Mr. Terry is now in the same situation that Sigmon and Owens were in late May and early June, with the same "statutory right . . . to elect the manner of [his] execution." *See id.* Because nothing has changed since the Court issued the June Orders, and because Mr. Terry is similarly situated to Sigmon and Owens, the June Orders apply to him with equal force. *But see* Execution Notice, *State v. Dickerson*, No. 2009-133266 (Oct. 13, 2021) (setting an execution date after this Court issued the June Orders in a case where the condemned inmate had remaining appellate review in federal court).

To treat Mr. Terry differently than Sigmon and Owens is not an insignificant matter. When this Court issues an execution notice in a case like Mr. Terry's, where an inmate has exhausted his federal appeals, the condemned person and his counsel must treat that date as an active date that will result in an execution in a matter of weeks. The condemned person faces what the Supreme Court of the United States has described as "one of the most horrible feelings to which [a person] can be subjected," namely, "the uncertainty during the whole of [the period leading up to an execution]." *In re Medley*, 134 U.S. 160, 172 (1890). At the same time, an execution notice causes significant disruption to other legal proceedings involving attorneys for the condemned and the State because counsel must prioritize a case with an active execution date above all others. This imposes delays in other cases; adds to the cost of representation; and disrupts normal prison operations, as the person subject to the execution notice is moved from their normal cell and held apart from other inmates in solitary confinement, with constant monitoring from prison guards.

Given that Mr. Terry is in the same legal situation as Sigmon and Owens, with the same statutory rights; given that nothing has changed since this Court issued the June Orders; and given that the issuance of an execution notice imposes costs on the parties, on counsel, on SCDC, and on the judicial process, this Court should, in reliance on the June Orders, order the clerk to refrain from issuing an execution notice in Mr. Terry's case.

Respectfully submitted,

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