

Mar 28 2022**S.C. SUPREME COURT****THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT**

THE STATE,**Respondent,**

v.

GARY DUBOSE TERRY,**Appellant.**Appellate Case No. 2000-25085

**RESPONSE IN OPPOSITION TO MOTION
TO STAY ISSUANCE OF EXECUTION NOTICE**

On January 10, 2022, Petitioner Terry filed a Motion to Stay the Setting of an Execution Date Pursuant to *State v. Sigmon*, No. 2000-024388 (June 16, 2021), and *State v. Owens*, 2006-038802 (June 16, 2021),¹ Respondent opposes the motion because the State has complied with the directive of the Court in the June 16, 2021, Orders in *Owens* and *Sigmon*. Thus, by operation of statute, it is appropriate for the Clerk of this Court to issue an execution notice given the Terry has exhausted his ordinary appeal and collateral action remedies. His death sentence is final, and the notice should be issued. In support of this response, Respondent would respectfully show the Court that:

1. The State notified this Court on January 10, 2022, that Terry's federal habeas corpus

¹ Although Petitioner's Certificate of Service indicates that the undersigned was served electronically via email, that email was not received by the undersigned or others within the South Carolina Attorney General's Office. Nor does the Office mail log reflect that a copy was received by mail. As a result, the undersigned was unaware of the Motion until the Court contacted this Office and inquired about a Return on March 21, 2022.

proceedings had concluded, and that he did not currently have any then-pending action challenging either his conviction or sentence in State court. On the same date, Terry filed the above-styled motion seeking a stay of execution based on this Court's Orders in *Sigmon* and *Owens*. His reliance is now moot.

2. In the Court's June 16, 2021, Orders in *Owens* and *Simon*, the Court stated that:

According to the Director's response, lethal injection is unavailable due to circumstances outside of the control of the Department of Corrections, and firing squad is currently unavailable due to the Department of Corrections having yet to complete its development and implementation of necessary protocols and policies.

Under these circumstances, in which electrocution is the only method of execution available, and due to the statutory right of inmates to elect the manner of their execution, we vacate the execution notice. See S.C. Code Ann. § 24-3-530 (2021). We further direct 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.

3. The State advised the Court in a March 18, 2022 letter that the South Carolina Department of Corrections now has the capability of carrying out an execution by either electrocution or by firing squad. See March 18, 2022 Letter of the Attorney General, with copy of Letter from the Commissioner. The State has complied with the only limitations previously imposed by the Court. Thus, the Court should authorize the Clerk to issue the notice.

4. Further, at this advanced point in the litigation after repeated review, Terry must show "exceptional circumstances warranting the issuance of the stay." *In re Stays of Execution in Capital Cases*, 321 S.C. 544, 548, 471 S.E.2d 140, 142 (1996). His sentence has been repeatedly affirmed through challenges in both state and federal courts.²

² As this Court found on direct appeal:

5. Finally, Terry has not requested a stay based upon his involvement in *Freddie Eugene Owens, et al. v. Bryan P. Stirling, et al.*, 2021-CP-40-02306. Nor has he requested a stay so that he can litigate a second successive PCR action in *Gary Dubose Terry v. State*, 2022-CP-32-00924. If he subsequently moves for a stay based on either of these actions, he must show “exceptional circumstances warranting the issuance of the stay.” *In re Stays of Execution in Capital Cases*, 321 S.C. at 548, 471 S.E.2d at 142.

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

Respectfully Submitted,

The victim in this case, 47 year old Urai Jackson, was found beaten to death in her Lexington County home on May 24, 1994. The window on the carport door to her home had been broken out and the telephone wires had been pulled from the phone box. Victim's mostly nude body was found in the living room, and semen was found in her vagina. She had several blunt trauma wounds to the head, and a number of defensive wound injuries. The cause of death was blunt trauma with skull fracture and brain injury.

State v. Terry, 339 S.C. 352, 354, 529 S.E.2d 274, 275-76 (2000).

Following his 1997 conviction, Terry has been afforded almost a quarter century within which to fairly contest his convictions and sentence in state and federal courts. Specifically, he has had direct review by this Court, a state PCR hearing, certiorari review of the order denying PCR relief by this Court and the United States Supreme Court, and federal habeas review by a magistrate judge, the district court, the Fourth Circuit, and the United States Supreme Court. Additionally, the magistrate judge granted Terry's previously filed motion for a stay, to exhaust previously unexhausted claims in a successive state PCR action on December 10, 2012. Over repeated objections, the stay was not lifted until several years later, when the state court action was dismissed. “[J]ustice, though due to the accused, is due to the accuser also. The concept of fairness must not be strained till it is narrowed to a filament. We are to keep the balance true.” *Payne v. Tennessee*, 501 U.S. 808, 827 (1991) (quoting Justice Cardozo in *Snyder v. Massachusetts*, 291 U.S. 97, 122 (1934)). The need for finality and justice for the State and the victim's family demands an end to his efforts to further challenge either his conviction or sentence.

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s/Melody J. Brown

By: _____

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March 28, 2022.

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CERTIFICATE OF SERVICE

I Angela Brown, an employee of the Respondent, hereby certify that as per the March 20 2020 order of the Chief Justice, Respondent's *Response in Opposition to Motion to Stay Issuance of Execution Notice* and Certificate of Service has been forwarded to Appellant's counsel via email today, March 28, 2022, as follows:

Hannah Freedman, Esquire – hannah@justice360sc.org
Brandan Van Winkle, Esquire – brendan@justice360sc.org
John H. Blume, Esquire – jb94@cornell.edu
Elizabeth Franklin-Best, Esquire – elizabeth@franklinbestlaw.com

A courtesy copy has been forwarded to Barton J. Vincent, General Counsel, South Carolina Department of Corrections, at Vincent.Barton@doc.sc.gov.

I further certify that all parties required by Rule to be served have been served.

This 28th day of March, 2022.

s/ Angela Brown _____
Angela Brown
Administrative Coordinator