

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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Mar 31 2022

S.C. SUPREME COURT

BRAD KEITH SIGMON,

Petitioner,

v.

STATE OF SOUTH CAROLINA,

Respondent.

Appellate Case No. 2002-024388

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

By letter dated March 18, 2022, the State, through Attorney General Alan Wilson, advised this Court that the Department of Corrections now has the capability of carrying out an execution either by electrocution or firing squad. In light of this notice, Petitioner, Brad Keith Sigmon, has moved “to stay the setting of an execution date.” (Motion, dated March 21, 2022).¹ Respondent opposes the motion. Respondent submits that the only impediment to proceeding with execution has been resolved. The convictions and sentences are final, and it is appropriate for the Clerk of this Court to issue a new execution notice. In support of this position, Respondent would respectfully show the Court:

¹ This Court does not set the date of execution. Rather, the Clerk’s notice to the Department of Corrections puts into motion the statutory provisions for setting a date of execution. *See* S.C. Code § 17-25-370 (when judgment is affirmed, or appeals abandoned, “the clerk of the Supreme Court . . . shall notify the Commissioner of the prison system or his duly appointed officer in charge of the State Penitentiary of the final disposition of such appeal and, on the fourth Friday after the receipt of such notice the sentence appealed from shall be duly carried out as provided by law . . .”). Consequently, Respondent construes Sigmon’s motion as a motion to prohibit the issuance of a notice.

1. Sigmon’s sentence has been repeatedly affirmed through challenges in both state and federal courts.² The Clerk has previously issued notices in this case. The Clerk last issued a notice on May 27, 2021, but this Court stayed the execution in an order dated June 16, 2021. In that order, this Court provided, in pertinent part:

... in response to an inquiry from the Clerk of the Court, the Director has provided an explanation as to why two methods of execution under section 24-3-530, lethal injection and firing squad, are currently unavailable.

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.

(*State v. Sigmon*, Appellate Case No. 2001-024388, and *Sigmon v. State*, Appellate Case No. 2021-000584, June 16, 2021 Order).

² Sigmon has challenged his convictions and sentences through multiple levels of review. After his jury trial, he pursued a direct appeal, a post-conviction relief (PCR) action, a PCR appeal, a successive PCR action and appeal, a district court federal habeas review, and appeal from the denial of federal habeas relief. He has been consistently denied relief. *See Sigmon v. Stirling*, 956 F.3d 183 (4th Cir. 2020), *as amended* (Apr. 15, 2020), *cert. denied*, 141 S. Ct. 1094 (2021) (recounting procedural history and affirming denial of habeas relief). Sigmon was sentenced to death for the murders of David and Gladys Larke in the Larke’s home on April 27, 2001. *Id.* at 189. Sigmon had planned to “get ahold of” the Larke’s daughter, Rebecca Barbare, who had recently ended her relationship with Sigmon and moved in with her parents. *Id.* Surprising Mr. Larke in the kitchen area of the home, Sigmon brutally beat Mr. Larke in the head with a baseball bat, then “chased Gladys Larke into the living room and struck her several times in the head.” *Id.* Sigmon returned to each victim and continued the beating because they were “still moving.” *Id.* The Larkes “died within minutes.” *Id.* Sigmon then waited for Ms. Barbare to return home, “forced her into her car and drove her away.” *Id.* Ms. Barbare was able to escape from the car, but Sigmon shot her. *Id.* Ms. Barbare survived the ordeal.

2. In compliance with the June 16, 2021 Order, the State has notified this Court that the Department of Corrections now has the capability to carry out executions by either electrocution or firing squad. (March 18, 2022 Letter of the Attorney General, with copy of Letter from Director Stirling). Thus, the condition that served as the basis for the restriction on the Clerk has been satisfied, and the Clerk should issue a notice. *See Roberts v. Moore*, 332 S.C. 488, 488, 505 S.E.2d 593 (1998) (“it is a ministerial duty of the Clerk of this Court to issue an execution notice pursuant to § 17-25-370”). Sigmon made a similar request to the Clerk to prevent issuance of the May 27, 2021 notice, and, by letter of that same date, the Clerk explained:

Based on the recent amendment to S.C. Code Ann. § 24-3-530, the State of South Carolina, through the South Carolina Department of Corrections, has advised me that it now has the ability to carry out the execution in this case. While I understand that you dispute whether this is correct, this notification has dissolved the stay under this Court’s order dated February 4, 2021, and I now have a ministerial duty to issue an execution notice in this case. *Roberts v. Moore*, 332 S.C. 488, 505 S.E.2d 593 (1998) (“We take this opportunity to state that it is a ministerial duty of the Clerk of this Court to issue an execution notice pursuant to [S.C. Code Ann.] §17-25-370.”); *In Re Stays of Execution in Capital Cases*, 321 S.C. 544, 471 S.E.2d 140 (2020).

(May 27, 2021 Letter, The Honorable Daniel E. Shearouse to counsel (enclosing notice of execution), *State v. Sigmon*, Appellate Case No. 2002-024388).

Respondent submits that this is the same path to follow again here. The March 18, 2022 letter fulfills the one condition set in the June 16, 2021 Order, thus, under S.C. Code § 17-25-370, the Clerk must issue a notice.

3. Sigmon contends a stay of the issuance of the notice is warranted in order for him to continue litigating an existing challenge to the amended statute, S.C. Code § 24-3-530,³ and the

³ The Legislature passed a bill amending S.C. Code § 24-3-530, which sets out the methods of execution, and the Governor signed the bill into law on May 14, 2021. The amended statute provides that an inmate under a sentence of death “shall suffer the penalty by electrocution,” and then provides a conditional election of the method of execution depending on whether multiple

authorized methods of execution. (Motion, p. 2).⁴ Specifically, Sigmon asserts that he has a pending action filed in Richland County (Case No. 2021-CP-40-4851) questioning the constitutionality of execution by electrocution or by firing squad which should be heard. (Motion, pp. 2-8). He has alleged in the Richland County action that the 2021 amendment to S.C. Code § 24-3-530 “violat[es] state and federal ex post facto, due process and non-delegation doctrines.” (Motion, p. 2 n. 1).⁵ Sigmon also asserts that the Department of Corrections has failed to demonstrate by sufficient evidence that it has made a good faith effort to obtain lethal injection drugs. (Motion, p. 5). He contends that without a stay, the questions posed in the litigation are likely to evade review. (Motion p. 8). Sigmon has shown that civil litigation is pending, but he has not shown circumstances warranting a stay of the issuance of an execution notice.

4. Again, the Clerk’s issuance of a notice is ministerial. *Roberts*, 332 S.C. at 488, 505 S.E.2d at 593. There is no discretion to exercise. Should this Court find that the State has complied

methods are available to the Department at that time. S.C. Code § 24-3-530 (A). The methods provided in the statute now include the firing squad.

⁴ Sigmon is a plaintiff along with death-sentenced inmate Freddie Eugene Owens. On March 20, 2022, Owens filed a similar motion in this Court to prevent the issuance of an execution notice based on the same circuit court litigation. Respondent filed a similar response in opposition to Owens’s motion on March 30, 2022. (*See* Appellate Case No. 2006-038802).

⁵ None of the claims appear meritorious. Respondent notes that the circuit court previously denied a preliminary injunction during the time the prior execution notice was pending based on its finding the plaintiffs were unable to show a likelihood of success on the merits. (Appellate Case No. 2021-000606, Order Denying Plaintiffs’ Motion for Preliminary Injunction received June 11, 2021). The appeal from that denial was abandoned when this Court issued its June 16, 2021 stay. (Appellate Case No. 2021-000606). According to the current pending motion to dismiss in the circuit court action, the plaintiffs “amended their complaint on July 2, 2021, and after sending one set of discovery requests to SCDC, they did nothing more for months to pursue their claims.” (2021-CP-40-02306, Motion to Dismiss, filed March 15, 2022, p. 5).

with its instructions outlined in the June 16, 2021 Order, S.C. Code § 17-25-370 requires the Clerk to issue the execution notice.

5. Further, it is the execution notice that sets into action many of the circumstances Sigmon only generally identifies in his current stay motion.

a. For instance, until the Clerk issues the notice, the Director does not certify which methods are available. *See* S.C. Code § 24-3-350 (B) (“Upon receipt of the notice of execution, the Director of the Department of Corrections shall determine and certify by affidavit under penalty of perjury to the Supreme Court whether the methods provided in subsection (A) are available.”).⁶

b. In another example, until the Clerk issues the notice, Sigmon cannot make the election allowed. *See* S.C. Code § 24-3-350 (E) (“The Department of Corrections must provide written notice to a convicted person of his right to election under this section and the available methods.”).

6. At this point after so many levels of review without relief, Sigmon must show “exceptional circumstances warranting the issuance of [a] stay” of execution. *In re Stays of Execution in Cap. Cases*, 321 S.C. 544, 548, 471 S.E.2d 140, 142 (1996). However, Sigmon cannot seek a stay of execution because the Clerk has not yet issued a new notice and an execution

⁶ Sigmon spends a good portion of his motion questioning whether the Department has made sufficient effort to secure drugs for lethal injection. (Motion, pp. 5-8). The discussion, however, is devoid of any legal basis for a challenge. Nothing in the statute places a burden on the Director or the Department to make any showing about why a method of execution is not available. Moreover, S.C. Code § 24-3-530 does not guarantee or require that lethal injection will be available. In fact, a plain reading of the statute supports that there is no guarantee that all three methods must be available at the same time. An interpretation to the contrary would render superfluous the express provision included by the Legislature that the Director certify whether the listed methods are available at the time he receives the notice from the Clerk. S.C. Code § 24-3-530 (B). In light of the structure of the statute, Sigmon’s complaint appears, on its face, non-meritorious.

has not yet been set. Nothing in *In re Stays* speaks to preventing the ministerial act of issuing the notice. The Clerk should issue the notice as required by S.C. Code § 17-25-370.

CONCLUSION

Sigmon's motion to stay the issuance of an execution notice should be denied.

Respectfully Submitted,

ALAN WILSON
Attorney General of South Carolina

DONALD J. ZELENKA
Deputy Attorney General

MELODY J. BROWN
Senior Assistant Deputy Attorney General

s/Melody J. Brown

By: _____
MELODY J. BROWN
S.C. Bar No. 14244

Post Office Box 11549
Columbia, South Carolina 29211
(803) 734-6305

ATTORNEYS FOR RESPONDENT

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