

The Supreme Court of South Carolina

The State, Respondent,

v.

Gary Dubose Terry, Appellant.

Appellate Case No. 1997-006197

ORDER

Appellant was convicted of murder, first degree burglary, first degree criminal sexual conduct, and malicious injury to a telephone system and was sentenced to death. This Court affirmed appellant's convictions and sentences on direct appeal, and the United States Supreme Court denied Appellant's request for a writ of certiorari. *State v. Terry*, 339 S.C. 352, 529 S.E.2d 274, *cert. denied*, 531 U.S. 882 (2000). Appellant's application for post-conviction relief (PCR) was denied, and this Court affirmed the order of the PCR court. *Terry v. State*, 394 S.C. 62, 714 S.E.2d 326 (2011). Appellant's request for federal habeas corpus relief was denied, and the United States Supreme Court denied Appellant's petition for a writ of certiorari. *Terry v. Stirling*, 854 Fed. App'x 475 (4th Cir. 2021), *cert. denied*, 142 S. Ct. 745 (2022).

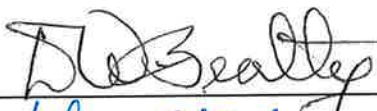




Appellant asks the Court to stay the setting of an execution date, as it has in two other cases¹ where stays were issued until the South Carolina Department of Corrections developed and implemented appropriate protocols and policies to carry out executions by firing squad under the recent amendments to S.C. Code Ann. § 24-3-250 (Supp. 2021). Because the State has advised the Court these protocols and procedures have been developed, we deny the request for a stay on that ground.

While we recognize the duty of the Clerk of this Court to issue an execution notice

¹ *State v. Sigmon*, Appellate Case No. 2002-024388, and *State v. Owens*, Appellate Case No. 2006-038802. Today, we denied the appellants' requests to stay the setting of an execution date.

is ministerial,² Appellant has filed a second PCR application in the circuit court alleging he has an intellectual disability that renders him ineligible for the death penalty under *Atkins v. Virginia*, 536 U.S. 304, 321 (2002) (holding the Eighth Amendment bars the execution of a person with an intellectual disability). Pursuant to *In re Stays of Execution in Capital Cases*, 321 S.C. 544, 546, 471 S.E.2d 140, 141 (1996), Appellant would be entitled to a stay of execution while he pursues this PCR action. Accordingly, we direct the Clerk of Court not to issue a notice of execution and allow the PCR matter to proceed as set forth in *In re Stays of Execution in Capital Cases*.

The Honorable Robert E. Hood is hereby assigned to the PCR action Appellant has filed. Judge Hood shall retain jurisdiction over this case regardless of where he may be assigned to hold court and may schedule such hearings as may be necessary at any time without regard to whether there is a term of court scheduled. Judge Hood shall conduct a hearing on Appellant's desires regarding counsel within thirty days of the date of this order. Within sixty days of the date of this order, Judge Hood shall issue a scheduling order setting forth the schedule that shall be followed in this matter, including the date of the hearing on the merits. The scheduling order may be amended as necessary. A copy of the scheduling order and any amended scheduling order shall be provided to counsel, this Court, and Court Administration. In addition to Appellant's obligation to notify the Clerk of this Court of the status of this matter every sixty days under *In re Stays of Execution in Capital Cases*, Judge Hood is requested to provide the Clerk of this Court and Court Administration with an update on the status of this matter every one hundred and twenty days.

	_____	C.J.
	_____	J.
	_____	J.
	_____	J.
	_____	J.

² See *Roberts v. Moore*, 332 S.C. 488, 488, 505 S.E.2d 593, 593 (1998) (holding it is a ministerial duty of the Clerk of the Supreme Court to issue an execution notice pursuant to S.C. Code Ann. § 17-25-370 (2014)).

Columbia, South Carolina

April 6, 2022

cc:

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The Honorable Robert E. Hood