

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

RECEIVED

Apr 20 2022

S.C. SUPREME COURT

BRAD KEITH SIGMON,
Petitioner,

v.

STATE OF SOUTH CAROLINA,
Respondent.

Case No. 2002-024388

MOTION TO STAY

Petitioner Brad Keith Sigmon asks this Court to stay his execution, currently scheduled for **May 13, 2022**, as he is identically situated to Richard Bernard Moore, whose April 29 execution was stayed earlier today by this Court. Mr. Moore sought a stay of execution from this Court, *inter alia*, to allow for the expedited consideration of ongoing litigation in the Richland County Court of Common Pleas challenging the state’s amended execution statute and two of its provided methods of execution: the firing squad and the electric chair. *Owens v. Stirling*, No. 2021-CP-40-02306. Mr. Moore contended that the lower court’s consideration of these novel and complex issues of state law constitute “exceptional circumstances warranting the issuance of [a] stay.” *In re Stays of Executions in Capital Cases*, 321 S.C. 544, 548, 471 S.E.2d 140, 142 (1996). To the extent that this Court premised its stay upon that conclusion, Mr. Sigmon, who is also a plaintiff in that litigation, should receive the same relief.

As this Court has been apprised, the action in the lower court advances several open questions now presented by the State’s recently amended execution statute. *Owens v. Stirling*, No. 2021-CP-40-02306. Those questions include whether the firing squad and the electric chair—

which, per the SCDC’s press release earlier today, are the two methods it will make available for Mr. Sigmon’s execution¹—violate the South Carolina Constitution. The action also challenges the statute’s delegation of plenary power to the South Carolina Department of Corrections (SCDC) to determine which of the statute’s authorized methods of execution are available, and asserts that SCDC must make at least two constitutional methods of execution available to satisfy the right to election conferred by the statute. Mr. Sigmon was one of the original plaintiffs who initiated this action last year; Mr. Moore filed an identical complaint consolidated with this action following this Court’s issuance of his execution notice on April 7, 2022.

On April 14, 2022, Judge Jocelyn Newman held a hearing on a motion to dismiss filed by the defendants in that action, SCDC and Governor Henry McMaster. After hearing argument, Judge Newman denied Defendants’ motion and ordered that the case move forward with discovery and factual development, reasoning that it would be improper to bar further inquiry into the novel issues presented by Plaintiffs’ claims. Plaintiffs have subsequently sought Defendants’ consent to an expedited litigation schedule in advance of a status conference scheduled by Judge Newman for April 29, 2022.

Earlier today—April 20, 2022—the clerk of this Court issued a notice for Mr. Sigmon’s execution², and this Court issued an order temporarily staying Mr. Moore’s execution. This Court’s order indicated that it would soon issue “a more detailed order setting forth the parameters of [that]

¹Available at: <https://public.doc.state.sc.us/agency-news-public/homeAction.do?method=view&id=600> (last visited April 20, 2022).

² As this Court held in its April 6, 2022 order denying Mr. Sigmon’s motion to stay the issuance of his execution notice in light of this litigation, “the issuance of an execution notice is a ministerial duty of the Clerk of this Court,” and it would consider staying this matter only “when the issue is ripe for a decision,” as it is now.

stay.” While Mr. Sigmon does not yet know those parameters, he respectfully submits that the litigation below should proceed to allow for expedited but fair consideration of the novel and complex issues it presents. The resolution of those issues should not be rendered moot as to Mr. Sigmon by his execution, particularly as he will be put to death by—and, indeed, forced to choose between—the two methods of execution that he has challenged as unconstitutional.

CONCLUSION

For the reasons stated above, this Court should stay Mr. Sigmon’s execution.

Respectfully submitted,

s/ Joshua Snow Kendrick
Joshua Snow Kendrick
KENDRICK & LEONARD, P.C.
506 Pettigru Street (29601)
P.O. Box 6938
Greenville, SC 29606
(864) 760-4000
Josh@KendrickLeonard.com

Counsel for Petitioner

April 20, 2022.