No. 24A723

IN THE
SUPREME COURT OF THE UNITED STATES

MARION BOWMAN, JR.,

***Applicant*,**

VS.

BRYAN P. STIRLING, Commissioner,
South Carolina Department of Corrections,

***Respondent*.**

CAPITAL CASE

*** EXECUTION SCHEDULED: FRIDAY, JANUARY 31, 2025, 6:00 P.M. ***

RESPONSE IN OPPOSITION TO EMERGENCY APPLICATION FOR STAY OF EXECUTION

Applicant, Marion Bowman, Jr., is a South Carolina death-sentenced inmate. His execution is scheduled for Friday, January 31, 2025, to begin at 6:00 p.m.

Bowman currently has a pending petition for writ of certiorari which he submitted to this Court on January 23, 2025. (Docket No. 24-6376). That same day, Bowman submitted an application for a stay of execution to allow for the consideration of the petition. Respondent now makes this response and submits that

the petition should be denied. Therefore, a stay based on the request to litigate should be denied. In support of this position, Respondent would respectfully show the Court:

PETITION AND BRIEF IN OPPOSITION

In his petition, Bowman presented the following question for consideration:

> Did trial counsel provide prejudicially deficient assistance of counsel by repeatedly introducing and amplifying noxious racial stereotypes about Bowman, as condemned by this Court in *Buck v. Davis*, 580 U.S. 100, 121-22 (2017), and in contravention of this Court's precedents seeking the eradication of racial prejudices in the criminal justice system.

In the Brief in Opposition submitted this same day, Respondent has submitted that Bowman cannot meet the jurisdictional requirement for review. (BIO at 19-24). Bowman asks this Court to review the denial of a petition submitted to the Supreme Court of South Carolina requesting that it exercise its original jurisdiction. The state supreme court, under its own well-established state law test, declined to exercise its original jurisdiction. Consequently, Bowman cannot meet the jurisdictional limitation requiring a federal law-based ruling for review given the denial was based on an independent state law ground. *See* 28 U.S.C. § 1257(a). *See also Coleman v. Thompson,* 501 U.S. 722, 729 (1991) ("In the context of direct review of a state court judgment, the independent and adequate state ground doctrine is jurisdictional."). Notably, the Supreme Court of South Carolina further found jurisdiction would not be exercised for additional procedural reasons: "Even if there were evidence to support Bowman's claim, the claim would fail" procedurally since he could have raised the claim in prior litigation and nothing showed "conduct on the part of trial

counsel that was shocking to the universal sense of justice." (Pet. App. 5a). Again, the state court applied a state test and found Bowman failed to make the case for the exercise of original jurisdiction. Therefore, Bowman cannot meet the jurisdictional requirements for review here.

Additionally, Respondent has asserted that Bowman, who attempts to complain about issues he submits would have been evident at his **May 2002 trial**, is seeking little more than a successive federal habeas action without the procedural and substantive limitations imposed by the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA). (BIO at 24-25). Bowman would undoubtedly be barred from filing a successive action under any fair application of the 28 U.S.C. § 2244(b) as the claim against counsel, though non-meritorious, was nonetheless available to raise in his prior federal habeas action. He did not raise such a claim, most likely, because he never raised a similar claim during his state collateral proceedings. If the allegations could actually show such "noxious racial stereotypes" as he now claims before this Court, it is inexplicable why the claims were not previously raised and litigated.

Further, even if a general basis for jurisdiction could be found, Respondent has submitted that Bowman's claim lacked a factual basis. (BIO at 26-38). Bowman presented, as the Supreme Court of South Carolina phrased it, a "meritless narrative" based on parsed and modified quotes attributed to counsel from counsel's collateral hearing testimony to support his claim that counsel "fail[ed] to adequately represent Bowman in trial and sentencing due to his own racism and biases." (Pet. App. 5a).

The Supreme Court acknowledged Bowman referenced "comments and arguments made by trial counsel during trial" and portions of counsel's collateral hearing testimony; however, as to Bowman's argument that these portions "support[ed]" his allegation of error, it concluded: "We flatly disagree. There is no evidence trial counsel exhibited racism during his representation of Bowman or during the PCR hearing." (Pet. App. 5a). Rather than *inject* racism, counsel worked "*to defuse any racial animus they jury may have had against Bowman*…" (Pet. App.5a) (emphasis added). Bowman's position wholly lacks factual support.

STAYS OF EXECUTION

Stays of executions are not granted as "a matter of course." *Hill v. McDonough*, 547 U.S. 573, 583-84 (2006). A stay of execution is "an equitable remedy" and "equity must be sensitive to the State's strong interest in enforcing its criminal judgments without undue interference from the federal courts." *Id*, at 584. There is a "strong equitable presumption against the grant of a stay where a claim could have been brought at such a time as to allow consideration of the merits without requiring entry of a stay." *Nelson v. Campbell*, 541 U.S. 637,650 (2004). Thus, "[a] court may consider the last-minute nature of an application to stay execution in deciding whether to grant equitable relief" especially where a claim could have been brought substantially earlier. *Gomez v. U.S. Dist. Ct. for N. Dist. of California*, 503 U.S. 653, 654 (1992)

This Court has underscored the State's and the victims' interest in the timely enforcement of the death sentence. *Bucklew v. Precythe*, 587 U.S. 119, 149-151 (2019); *Calderon v. Thompson*, 523 U.S. 538, 556 (1998) ("[b]oth the State and the victims of

crime have an important interest in the timely enforcement of a sentence."). The people of" the State as well as "the surviving victims … and others like them deserve better" than the "excessive" delays that now typically occur in capital cases. *Bucklew,* at 149. The Court has instructed that lower courts should "police carefully" against last-minute claims being used "as tools to interpose unjustified delay" in executions. *Id,* at 150. This Court has also stated that last-minute stays of execution should be the "extreme exception, not the norm." *Id,* at 150.

To be granted a stay of execution, Bowman must establish three factors: (1) a reasonable probability that the Court would vote to grant certiorari; (2) a significant possibility of reversal if review was granted; and (3) a likelihood of irreparable injury to the applicant in the absence of a stay. *Barefoot v. Estelle*, 463 U.S. 880, 895 (1983).

Notably, the fact that Bowman purportedly relies on the record **from his May 2002 trial** and sentencing greatly undercuts any sense of urgency at this time. If the claims were not worthy of being raised by any of the qualified and multiple attorneys previously representing Bowman, it is difficult to argue they are so utterly plain as Bowman would argue now. Yet, primarily, the petition should be dismissed for want of jurisdiction. Consequently, a stay is not warranted.

Probability of this Court Granting Certiorari Factor

As to the probability factor, Bowman has presented no argument to overcome the jurisdictional bar that prevents this Court from reviewing his claim. Bowman merely assumes a ruling on the merits. However, the Supreme Court of South Carolina, applying its own state-law test in considering the petition, never exercised

jurisdiction. State law required Bowman to demonstrate exhaustion of all his other remedies and establish a constitutional claim that meets the standard delineated in *Butler v. State*, 397 S.E.2d 87, 88 (S.C. 1990). The Supreme Court of South Carolina set out in *Bulter* that "the writ will issue only under circumstances where there has been a 'violation, which, *in the setting*, constitutes a denial of fundamental fairness shocking to the universal sense of justice.'" *Id*, at 468 *quoting State v. Miller*, 16 N.J.Super. 251, 84 A.2d 459 (1951)(emphasis added in *Butler*)). Bowman failed to make that heightened showing in a procedurally available manner.

Essentially, under the two-prong state test, the claim had been considered and denied and no extraordinary circumstances to allow *Butler* review existed. "This Court will not review a question of federal law decided by a state court if the decision of that court rests on a state law ground that is independent of the federal question and adequate to support the judgment." *Coleman,* at 729 (citing *Fox Film Corp. v. Muller*, 296 U.S. 207, 210, 56 S.Ct. 183, 184, 80 L.Ed. 158 (1935); *Klinger v. Missouri*, 13 Wall. 257, 263, 20 L.Ed. 635 (1872)). "This rule applies whether the state law ground is substantive or procedural" and "[i]n the context of direct review of a state court judgment, the independent and adequate state ground doctrine is jurisdictional." *Coleman,* at 729. "Because this Court has no power to review a state law determination that is sufficient to support the judgment, resolution of any independent federal ground for the decision could not affect the judgment and would therefore be advisory" which should be avoided. *Id.* It is undeniable that the state test requires more than consideration of the claim for the exercise of jurisdiction and

that test is a matter solely of state law that will not support jurisdiction here. As such, the probability of this Court granting certiorari is minimal.

Significant Possibility of Reversal Factor

For this factor, the answer must be none. As the Supreme Court of South Carolina observed, Bowman's late attempt to litigate rests on a meritless narrative. (Pet. App. 5a). As submitted in the brief in opposition, the "key tell to the fallacies of Petitioner's argument: nearly all of Bowman's references to the state court record rely upon statements and discussions that took place during the PCR evidentiary hearing, in a setting where counsel was able to speak candidly about the concerns of the trial. Instead of Bowman pointing to actual articulations of racial bias in the trial transcript, what is presented are misrepresentations of and out-of-context references to the record, often with overt efforts by Bowman to inappropriately 'bracket in' racial animus that is absent from the record itself." (BIO at 27-28). The claim lacks factual support.

Moreover, and again, if there was no need to litigate what he claims was apparent at the **May 2002** trial in any of his previous actions, it appears little need for an emergency stay here. *See Bucklew*, 587 U.S. at 150. (Courts "can and should protect settled state judgments from undue interference by invoking their equitable powers to dismiss or curtail suits that are pursued in a dilatory fashion or based on speculative theories."). At any rate, without facts, the claim cannot go forward. Thus, there is no possibility of reversal as Bowman wholly lacks a viable claim.

Irreparable Injury Factor

Irreparable injury absent a stay is inherent in this inquiry in capital cases but it could not be dispositive of this factor. While the execution means Bowman's pending litigation will be rendered moot, that consideration must be balanced by the "strong equitable presumption against granting relief where the claim could have been brought at such a time as to allow consideration of the merits without requiring a stay." *Hill v. McDonough*, 547 U.S. at 574. Again, Bowman wholly lacks a viable claim.

Accordingly, the application for stay of execution should be denied.

Respectfully submitted,

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BY: _____

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January 27, 2025

**counsel of record*

No. 24-6376

IN THE
SUPREME COURT OF THE UNITED STATES

MARION BOWMAN, Jr. Petitioner,

v.

BRYAN P. STIRLING, DIRECTOR, SOUTH CAROLINA DEPARTMENT OF CORRECTIONS Respondents.

PROOF OF SERVICE

I, **W. Joseph Maye**, of counsel for the Respondent, do swear that on this date, January 27, 2025, as required by Supreme Court Rule 29, I have served the enclosed Response in Opposition to Emergency Application for Stay of Execution on all parties required to be served by electronic mail to Teresa L. Norris, Esq., S. Boyd Young, Esq. Lindsey Vann, Esq., and by depositing two copies of the same in the United States Mail, first class postage prepaid, addressed as follows:

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

This 27th day of January, 2025.

s/ W. Joseph Maye
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