

or after the application for appointment is withdrawn or denied. Section 2251(a)(1) gives the Court additional authority to further stay state proceedings for a pending habeas corpus proceeding.

Having carefully reviewed the briefing and relevant authority, the Court will grant Petitioner a stay of execution. The stay shall terminate ninety days after the appointment of counsel or after the application for appointment of counsel is withdrawn or denied, as required by 28 U.S.C. § 2251(a)(3). Therefore, prior to the expiration of the ninety-day stay of execution, Petitioner must seek a longer stay of execution pursuant to 28 U.S.C. § 2251(a)(1) in order to allow this Court to rule on the merits of the habeas petition. *See Lonchar v. Thomas*, 517 U.S. 314, 320 (1996) ("If the district court cannot dismiss the petition on the merits before the scheduled execution, it is obligated to address the merits and must issue a stay to prevent the case from becoming moot.").

II. Motion for Appointment of Counsel and Motion to Proceed *in forma pauperis*

The Court will refer Petitioner's motions to appoint counsel and to proceed *in forma pauperis* (ECF Nos. 1 & 5) to the assigned United States Magistrate Judge for disposition.

Conclusion

For the foregoing reasons, the Court

- (1) **GRANTS** Petitioner's Motion for Stay of Execution (ECF No. 1), which shall expire ninety days from the date that counsel is appointed, pursuant to 28 U.S.C. § 2251(a)(3);
- (2) **ORDERS** Petitioner to file his habeas petition within the ninety-day stay of execution;¹
- (3) **DIRECTS** the Clerk to notify the undersigned to review the stay of execution twenty days before the expiration of the ninety-day stay of execution;

¹ Before the expiration of the ninety-day stay of execution, Petitioner must seek a longer stay of execution pursuant to 28 U.S.C. § 2251(a)(1) in order to allow this Court to rule on the merits of the habeas petition.

- (4) **DIRECTS** the Clerk to assign a civil action number to this case;
- (5) **REFERS** this matter to the assigned United States Magistrate Judge for all preliminary proceedings, including Petitioner's motions to appoint counsel and to proceed *in forma pauperis* (ECF Nos. 1 & 5).²

IT IS SO ORDERED.

Florence, South Carolina
June 7, 2018

s/ R. Bryan Harwell
R. Bryan Harwell
United States District Judge

² Petitioner's initial petition (i.e., the one that he must file within ninety days) will be a "placeholder" petition. The Magistrate Judge will separately enter a scheduling order setting forth, *inter alia*, the deadline for Petitioner to file an amended petition.