

Serial: **228759**

IN THE SUPREME COURT OF MISSISSIPPI

No. 2015-DR-00954-SCT

DAVID DICKERSON

Petitioner

v.

STATE OF MISSISSIPPI

Respondent

EN BANC ORDER

Now before the Court, *en banc*, is the Motion to Re-impose Stay Pending Collateral Appeal filed by David Dickerson. A Response in Opposition was filed by the State of Mississippi. The Court then granted Dickerson leave to file a Rebuttal to the State's Response. After due consideration, the Court finds the motion should be denied.

IT IS THEREFORE ORDERED that the Motion to Re-impose Stay Pending Collateral Appeal filed by David Dickerson is hereby denied.

SO ORDERED, this the 15th day of January, 2020.

/s/ Josiah Dennis Coleman

JOSIAH DENNIS COLEMAN, JUSTICE
FOR THE COURT

TO AGREE: RANDOLPH, C.J., COLEMAN, MAXWELL, BEAM, CHAMBERLIN,
ISHEE AND GRIFFIS, JJ.

KITCHENS, P.J., OBJECTS TO THE ORDER WITH SEPARATE WRITTEN
STATEMENT JOINED BY KING, P.J.

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KITCHENS, PRESIDING JUSTICE, OBJECTING TO THE ORDER WITH SEPARATE WRITTEN STATEMENT:

¶1. I would grant the Motion to Re-Impose Stay Pending Collateral Appeal filed by David Dickerson. On October 14, 2016, Dickerson filed a Motion for Leave to Proceed in the Trial Court with a Petition for Post-Conviction Relief and a Motion to Hold Post-Conviction Proceedings in Abeyance Due to Petitioner's Incompetency. On August 17, 2017, this Court granted the Motion to Hold the Post-Conviction Proceedings in Abeyance and remanded the case to the Circuit Court of Copiah County for a determination of whether Dickerson was mentally competent to proceed on his post-conviction relief motion.

¶2. Now, Dickerson has appealed the circuit court's decision finding him competent. At this point, Dickerson is awaiting the result of this appeal. If this Court holds that the circuit court erred and deems Dickerson mentally incompetent to proceed on post-conviction relief, then, in accordance with our precedent, Dickerson's post-conviction motion would be stayed pending his mental health treatment and a determination by the circuit court of his mental competency to proceed. *See Order, Goff v. State*, No. 2009-DR-01394-SCT (Miss. Apr. 25, 2012). Because the question of whether Dickerson is mentally competent to proceed with his

PCR is as yet unresolved, an appreciable risk exists that Dickerson is being compelled to proceed on post-conviction relief when he is, in fact, not mentally competent to do so. For that reason, I agree with Dickerson's argument that lifting the stay and requiring him to proceed on his post-conviction relief motion before his appeal has been decided is a waste of judicial resources. Therefore, I respectfully disagree with this Court's order.

KING, P.J., JOINS THIS SEPARATE WRITTEN STATEMENT.