

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

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Certiorari to Spartanburg County

Paul M. Burch, Circuit Court Judge

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RECEIVED

MAY 28 2013

S.C. Supreme Court

MARION ALEXANDER LINDSEY,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

Appellate Case No. 2012-206087

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REPLY TO THE RETURN TO THE PETITION FOR WRIT OF CERTIORARI

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ATTORNEYS FOR PETITIONER

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## ARGUMENT IN REPLY

The State's return undervalues and trivializes the seriousness of this case and the importance of collateral review in capital cases. After Lindsey's petition raised the issue of the PCR court's wholesale adoption of the State's proposed order, the State, with what can only be called hubris, copied the PCR court's order/State's proposed order **as its return**. Almost no new analysis or response to the arguments made by petitioner exist in the return. In fact, since the Court must read the PCR court's order/State's proposed order, it need not even read the State's return since they are virtually identical. This cavalier attitude reinforces petitioner's argument that the findings of the PCR court should not be accorded any deference by this Court. The documents included by the State in its supplement to the appendix further prove this point. Since petitioner's case has not been taken seriously by either the PCR court or the State, this Court need not apply any deferential standard when reviewing the issues raised.

As such, this argument in reply will be brief. Petitioner fully addressed the errors made by the PCR court in its petition. Since the return and the PCR court's order are almost identical, petitioner will not rehash points which have essentially gone unchallenged by the State. This reply will address the relatively little new information in the return and concessions made by the State.

Issue 5 of the Petition: The State Failed to Rebut the Assertion that the PCR Court did not Review the State's Proposed Order Before Signing It

In the fifth ground raised in his petition, Lindsey asserts that because the evidence unfortunately suggests that the PCR court did not review the State's proposed order before signing it, this Court should disregard any deferential standard of review with respect to the other issues raised in the petition. Alternatively, in the event the Court does not grant a new sentencing hearing on any of the grounds raised by Lindsey, the PCR court's failure to review the proposed order is a violation of due process that requires a new PCR hearing before a different judge.

The State hides behind error preservation in an attempt to prevent the Court from addressing whether the process accorded Lindsey was even minimally fair. Where issues concern significant public interest and the fundamental fairness of the process accorded a criminal defendant, this Court has relaxed its error preservation requirements. See State v. Langford, 400 S.C. 421, 432-33, 735 S.E.2d 471, 477 (2012). In Langford, this Court addressed the constitutionality of the solicitors' control of the criminal docket even though it was not raised in the appellant's brief or before the circuit court. Id. The Court recognized a narrow exception to the normal rules of error preservation and reached the issue. Id. Just as in Langford, the issue presented here deals with the impartiality of the tribunal. Id. at 437, 735 S.E.2d at 479-80 ("A criminal defendant has a due process right to have his case heard by a fair and impartial judge.").

The issue presented here is also of grave importance to South Carolina's judicial system. Twice, this Court has warned circuit court judges about the dangers of proposed orders in PCR cases. Pruitt v. State, 310 S.C. 254, 255-56, 423 S.E.2d 127, 128 (1992); Hall v. Catoe, 360 S.C. 353, 365, 601 S.E.2d 335, 341 (2004). In Hall, this Court expressly told circuit court judges

that they should draft their own orders in capital PCR cases. Hall was decided a full seven years before Judge Burch signed the State's proposed order *in toto*. It is apparent that this Court's instructions were disregarded by the PCR court.

The defiance of this Court's instructions regarding capital PCRs is a systemic issue that justifies a relaxation of traditional error preservation rules. Not only has this occurred in Lindsey's case, but it occurs in other capital PCR cases. See Charles O. Shuler v. State, CA No. 2003-CP-38-0359, Order filed Jan. 9, 2013, Denying Rule 59 SCRCP/Motion to Alter or Amend Judgment. Shuler was a capital PCR. Shuler raised the issue of the PCR court's wholesale adoption of the State's proposed order. Id. at 4-5. Shuler passed away before an appeal from his PCR could be heard. It is manifestly clear that the problems recognized by this Court in Pruitt and Hall persist and are not unique to Lindsey's case. See Sammie Louis Stokes v. State, CA No. 2001-CP-38-1240, Order filed Feb. 19, 2013, Denying Rule 59 Motion and Denying Motion to Appoint New Counsel at 3-7 (addressing wholesale adoption of State's proposed order).

It appears that this Court's instructions to circuit judges in capital PCR cases continue to be ignored. Without some adverse consequence, circuit judges and the State have no incentive to see that orders in capital cases are drafted by the court. This case, unfortunately, presents this Court with the necessity of addressing this issue.

The State carefully avoids contending in its return that the PCR court actually read the proposed order. Instead, the State asserts that the PCR court had time to review the proposed order. To support this weak rebuttal, the State supplemented the Appendix with correspondence from the PCR judge. Supp. App. 1 – 7. This correspondence actually supports Lindsey's claim that the PCR judge did not review filings from Lindsey. In an email dated May 12, 2011, Judge Burch revealed that he did not even know whether Lindsey had submitted a proposed order.

Judge Burch stated that “Because of it’s size, I thought the packet you sent in October included a proposed order.” Supp. App. 3. The inference to be drawn is that the PCR court did not even review materials submitted by Lindsey for nearly eight months.

The State also mischaracterizes Lindsey’s argument concerning the adoption of the proposed order, stating the objection is that it was done with “limited corrections.” Return, p. 109. This understates Lindsey’s position. Lindsey’s position is that **no** changes were made. The State also complains that Lindsey did not identify the identical grammatical and spelling errors in the proposed order and the order signed by the PCR court. Return, p. 110. Lindsey provided examples of the errors in the original petition both because of the voluminous quantity of errors and in an effort to avoid needlessly embarrassing the parties involved. Since the State has questioned this assertion, Exhibit A to this reply catalogues the identical errors in both documents. That a circuit judge would sign an order replete with this many errors—unless he had not read it—defies belief.<sup>1</sup> Certainly no justice of this Court would sign such a document if it were presented by a law clerk or staff attorney.

Finally, the State’s assertion that it would somehow be inappropriate to submit proposed orders in a computer format that would allow a trial judge to make changes is wholly without merit. The State’s assertion also contradicts its own practice, as it has submitted proposed orders in malleable formats since at least 2010, as shown in an email from the State to the PCR judge in Stokes in which the State provided a proposed order “with attachments in pdf and Word and Wordperfect.” See Stokes, at 3-4, n.1. Circuit judges every day throughout this state ask attorneys to submit documents in a word processing format so that they can alter them. This argument ignores a technological reality of modern practice that has existed since the late 1990s.

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<sup>1</sup> The PCR judge did not initial every page of the order.

Therefore, this Court should give no deference to the findings made by the PCR court and consider the issues raised by Lindsey *de novo*.

*This Court's Inquiry Should Focus on Strickland's Prejudice Prong*

It seems apparent after a review of the State's return that the deficient performance prong of Strickland v. Washington, 466 U.S. 668, 687 (1984) is all but conceded on the issues raised in Lindsey's petition. Therefore, this Court's inquiry is narrowed to the question of whether Lindsey was prejudiced by the deficiencies of trial counsel. Whether the Court applies a *de novo* review or a deferential standard of review, Lindsey demonstrated ample prejudice and a new sentencing hearing is required.

The State unintentionally stressed the importance of mitigation in Lindsey's case. In an attempt to manufacture a reasonable trial strategy that would excuse trial counsel's errors, the State asserts that "Lindsey's counsel were between a rock and a hard place in determining the best way to spare him a death sentence, given the overwhelming evidence of guilt." Return, p. 20. The State is correct that the evidence of Lindsey's guilt was overwhelming. He shot his wife in the parking lot of a police station in front of multiple witnesses. These facts were known immediately by anyone connected to the case. Since there was little question of a guilty verdict, this made the mitigation case the only truly important function of defense counsel. Despite its immense importance, trial counsel utterly failed to prepare a mitigation case.

The State does not contest that preparation for mitigation began in April 2004, barely one month before trial. This was deficient performance. Lindsey showed ample prejudice from the late start. Lindsey showed how the late start resulted in no comprehensive mitigation strategy, the failure to retain a social work expert, the failure to prepare the psychiatrist who was

destroyed on cross-examination, the failure to build rapport with Lindsey's family members and uncover the long history of violence and mental illness in the family.

The State does not contest Lindsey's assertions that failure to preserve the Tullis answering machine tape and failure to call Tullis as a witness was deficient performance, but only argues that Lindsey was not prejudiced. Return p. 24-25; 30. Since the State asserts that the most damning piece of evidence against Lindsey was the recording of the 911 call during the shooting, its position that a tape—made the same day—of Lindsey sounding distressed, distraught, and asking for help from his lawyer would not be among the most powerful mitigating evidence available is contradictory. What is good for the goose is good for the gander. Lindsey has proven prejudice sufficient to require reversal with respect to this issue alone.

The State does not contest that Bartosh did not attend Lindsey's mental evaluation with Dr. Narayan. Return, p. 49. This was deficient performance. Bartosh's failures with respect to how Lindsey's mental health was handled directly led to the defense's inability to deal with the "Jimmy" issue at trial. The accusation of malingering, which blindsided Melikian, undoubtedly weighed heavily against Lindsey. Had Bartosh been minimally competent and hired his mental health experts at the beginning of his representation of Lindsey, the defense would have either prevented the creation of Jimmy or been prepared to explain it as a symptom of his severe depression and low IQ, as Melikian did at the PCR hearing.

The State admits that Lindsey's family members testified in much greater detail at the PCR hearing than at trial. Return, p. 42 (Virginia Lindsey and Bessie Smith); p. 46 (Steven Pilgrim). But despite this concession, the State amazingly speculates that Bartosh made a strategic decision not to present this evidence either through these witnesses or through a social

work expert like Vogelsang. Return p. 64 (“It was Mr. Bartosh’s decision not to present the greater detail.”) Even if Bartosh’s testimony were available and he claimed that he made conscious decisions to not present this evidence, such decisions could not be defended as reasonable trial strategy. To the extent a mitigation strategy existed, it appeared to include presenting evidence of the family’s mental health issues. Trial counsel attempted to ask questions of the family at the sentencing hearing about their mental health. App. 2056, ll. 3 – 16; App. 2082, ll. 6 – 12; App. 2079, l. 15 – 2080, l. 16. No reasonable strategy could exist that would include asking some questions about the family’s mental health history, but not others. This was not a strategic decision. It was a failure to prepare. Lindsey was prejudiced as a result.

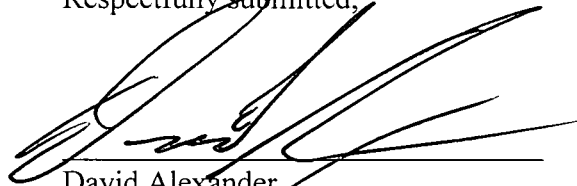
As for the specific issues with respect to Vogelsang (Issue 2), Melikian (Issue 3), and prison adaptability (Issue 4), the errors made by the PCR court with respect to these grounds were fully addressed in Lindsey’s petition. The State’s return is nearly identical to the PCR court’s order and this reply will not needlessly repeat Lindsey’s petition. Therefore, Lindsey refers the Court to the original petition for his substantive arguments regarding this issues. On each of them, Lindsey proved deficient performance and prejudice. This Court may reverse on any or all of them.

### **CONCLUSION**

The Court should ignore the PCR court’s order and apply a *de novo* standard of review in this case. Under either a *de novo* standard or any other standard, the PCR court erred in holding that Lindsey did not satisfy his burden of proof under Strickland. This case presents clear examples of deficient performance by trial counsel in a capital sentencing proceeding that prejudiced Lindsey. Therefore, this Court should grant certiorari with the ultimate relief of a new sentencing proceeding. In the event the Court cannot determine that Lindsey is entitled to

relief, then this Court should order a new PCR hearing before a different judge because of the PCR judge's failure to review the order of dismissal before signing it.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'David Alexander', written over a horizontal line.

David Alexander  
Appellate Defender

Robert M. Dudek  
Chief Appellate Defender

ATTORNEYS FOR PETITIONER

This 28th day of May, 2013.

# EXHIBIT A

## Catalogue of Identical Errors in the State's Proposed Order and Order Signed by PCR Court

| ERROR NUMBER | PAGE NUMBER OF ERROR IN PROPOSED ORDER | PAGE NUMBER OF ERROR IN PCR COURT'S ORDER | TYPE OF ERROR             | TEXT OF ERROR OR EXPLANATION OF ERROR   |
|--------------|--|---|---------------------------|---|
| 1            | 4                                      | 4   | Missing Comma             | "The Petitioner, through counsel Dudek[,] made a...."   |
| 2            | 7                                      | 7   | Misspelled word           | "adulteress relationship"   |
| 3            | 9                                      | 9   | Typographical             | Inconsistent use of periods   |
| 4            | 10                                     | 10  | Typographical             | Inconsistent use of periods   |
| 5            | 11                                     | 11  | Typographical             | Inconsistent use of periods   |
| 6            | 13                                     | 13  | Citation                  | Citation errors with Supreme Court decisions  |
| 7            | 14                                     | 14  | Citation                  | Citation errors with Supreme Court decisions  |
| 8            | 15                                     | 15  | Misspelled word           | "th" instead of "the"   |
| 9            | 16                                     | 16  | Typographical             | Unmatched quotation mark  |
| 10           | 17                                     | 17  | Citation                  | Emphasis added or in original?  |
| 11           | 17                                     | 17  | Subject-verb disagreement | "Petitioner points to the ABA guidelines to suggest it is per se ineffective assistance of counsel to fail to do as it commands." |
| 12           | 17                                     | 17  | Grammatical               | Sentence indicates that Doctor Freeman, not Lindsey, was on Celexa  |
| 13           | 18                                     | 18  | Typographical             | "and accident"  |
| 14           | 20                                     | 20  | Cut-and-paste             | "within this pleading" in footnote.   |
| 15           | 20                                     | 20  | Incorrect word choice     | "Injected" instead of "ingested"  |
| 16           | 20                                     | 20  | Capitalization            | "tylenol"   |
| 17           | 21                                     | 21  | Incorrect word choice     | "he was tires"  |
| 18           | 21                                     | 21  | Missing apostrophe        | "mother-in-law[']s"   |
| 19           | 22                                     | 22  | Subject-verb disagreement | "he tried to saw it"  |
| 20           | 24                                     | 24  | Incorrect word choice     | "She described that her son as slow"  |
| 21           | 26                                     | 26  | Incorrect word choice     | "and described it a 'desperate poverty'"  |
| 22           | 27                                     | 27  | Mismatched quotes         | "the picture of politeness'   |
| 23           | 27                                     | 27  | Incorrect word choice     | "befits" instead of "benefits"  |
| 24           | 31                                     | 31  | Typographical             | "somebody else id back there"   |
| 25           | 32                                     | 32  | Misplaced                 | "drivers side"  |

|    |    |    |                            |   |
|----|----|----|----------------------------|---|
|    |    |    | apostrophe                 |   |
| 26 | 32 | 32 | Cut-and-paste              | Reference to “arguments” made by the Court. Courts make conclusions and findings. |
| 27 | 33 | 33 | Mismatched quotation mark  | “Nell Lindsey[”]”   |
| 28 | 33 | 33 | Citation                   | “ROA [p.] 1908”   |
| 29 | 34 | 34 | Sentence fragment          | “A violent tempered criminal involved in the drug trade.”                         |
| 30 | 40 | 40 | Typographical              | “is” instead of “his”   |
| 31 | 40 | 40 | Grammatical                | “he bad in school”  |
| 32 | 44 | 44 | Typographical              | “she” instead of “[he] had contact visits”  |
| 33 | 48 | 48 | Misspelling                | “Dr. Abshur”  |
| 34 | 49 | 49 | Typographical              | “9sic”  |
| 35 | 51 | 51 | Misspelling                | “8 <sup>th</sup> grad”  |
| 36 | 51 | 51 | Singular instead of plural | “subtest”   |
| 37 | 52 | 52 | Missing period             | “-delayed verbal learning for stories[.]”   |
| 38 | 55 | 55 | Typographical              | “on” instead of “or”  |
| 39 | 56 | 56 | Incorrect word choice      | “subpoenaed from [for] trial”   |
| 40 | 57 | 57 | Incorrect pronoun usage    | “[s]he would have eliminated”   |
| 41 | 61 | 61 | Subject-verb disagreement  | “This was not neglect by counsel, but a reflect a conscious decision....”         |
| 42 | 62 | 62 | Typographical              | Period missing after “proffer”  |
| 43 | 64 | 64 | Typographical              | “witness es”  |
| 44 | 64 | 64 | Typographical              | “for mercy and the he not”  |
| 45 | 65 | 65 | Cut-and-paste              | “we are not aware” instead of “the Court is not aware”                            |
| 46 | 65 | 65 | Typographical              | “Steve Pilgrim state post-conviction testimony....”                               |
| 47 | 65 | 65 | Typographical              | “Bessie Smith state PCR testimony is summarized....”                              |
| 48 | 67 | 67 | Subject-verb disagreement  | “that she found Applicant possess.”   |
| 49 | 67 | 67 | Typographical              | “the material she additional would”   |
| 50 | 67 | 67 | Incorrect usage            | “two edge” instead of “two edged”   |
| 51 | 67 | 67 | Subject-verb disagreement  | “the summaries . . . does not”  |
| 52 | 71 | 71 | Grammatical                | “he bad in school”  |
| 53 | 72 | 72 | No Possessive              | “Dr. Melikian PCR testimony”  |
| 54 | 72 | 72 | Typographical              | “Jimmy can to him”  |
| 55 | 81 | 81 | Incorrect word choice      | “Injected” instead of “ingested”  |
| 56 | 81 | 81 | Capitalization             | “tylenol”   |
| 57 | 82 | 82 | Incorrect word choice      | “he was tires”  |
| 58 | 82 | 82 | Missing apostrophe         | “mother-in-law[']s”   |
| 59 | 87 | 87 | Typographical              | “Top the contrary”  |
| 60 | 87 | 87 | Cut-and-paste              | “Respondent” instead of “Applicant”   |
| 61 | 89 | 89 | Possessive                 | “members['] mental health”  |
| 62 | 89 | 89 | Citation                   | “([ROA] 2082)”  |

|    |       |       |                              |  |
|----|-------|-------|------------------------------|--|
| 63 | 92    | 92    | Incorrect word choice        | "any seasonal prosecutor"  |
| 64 | 93    | 93    | Incorrect word choice        | "he relief upon"   |
| 65 | 93    | 93    | Grammatical                  | "when he was incarcerated" – pronoun refers back to James Aiken, who was not incarcerated                      |
| 66 | 93    | 93    | Incorrect verb               | "admitted that he have reviewed"   |
| 67 | 94    | 94    | Grammatical                  | Incorrect pronoun usage: "[Aiken] indicated his opinion was based upon the fact that he had done time before." |
| 68 | 94    | 94    | Incorrect tense              | "risks . . . was presented"  |
| 69 | 95    | 95    | Singular/plural disagreement | "gassing an inmate in a fights"  |
| 70 | 96    | 96    | Incorrect word choice        | "did not retain and expert"  |
| 71 | 97    | 97    | Incorrect word choice        | "defense tam" instead of "defense team"  |
| 72 | 97    | 97    | Grammatical                  | "on why he not specifically retain a correctional expert"  |
| 73 | 97-98 | 97-98 | Missing article              | "created [a] witness list"   |
| 74 | 98    | 98    | Incorrect usage              | "two-edge" instead of "two edged"  |
| 75 | 98    | 98    | Grammatical                  | "and emphasis by a prosecutor lay in wait for"   |
| 76 | 98    | 98    | Typographical                | "the Aiken's opinion"  |
| 77 | 98    | 98    | Subject-verb disagreement    | "opinion . . . were based"   |
| 78 | 99    | 99    | Cut-and-paste                | "We note" instead of "The Court notes"   |
| 79 | 102   | 102   | Formatting                   | Heading bunched into the right margin  |
| 80 | 102   | 102   | Capitalization               | Sentence begins: "this Court"  |
| 81 | 104   | 104   | Grammatical                  | "the circumstances from counsel conduct at the time"   |
| 82 | 105   | 105   | Typographical                | "Lindsey's"  |
| 83 | 106   | 106   | Capitalization               | Sentence begins: "she stated"  |
| 84 | 107   | 107   | Grammatical                  | "Virginia has seen the doctor recently and had not ask him to be a witness"                                    |
| 85 | 108   | 108   | Nonsensical sentence         | "claimed he had no clothes and had to wash them out every night"   |
| 86 | 109   | 109   | Misspelling                  | "homesick" is one word, not two  |
| 87 | 110   | 110   | Capitalization               | Sentence begins: "she received"  |
| 88 | 110   | 110   | Erroneous tense              | "he worked at Burger King where his brothers work"   |
| 89 | 111   | 111   | Capitalization               | Sentence begins: "she said"  |
| 90 | 111   | 111   | Incorrect tense              | "He said he also gave his mother-in-law money and fill her car with gas."                                      |
| 91 | 112   | 112   | Capitalization               | Sentence begins: "however, Topp"   |
| 92 | 112   | 112   | Typographical                | "document s during"  |
| 93 | 113   | 113   | Incorrect punctuation        | "was used at trial; it reflects a reasonable decision"   |
| 94 | 114   | 114   | Subject-verb disagreement    | "He now suggest"   |
| 95 | 114   | 114   | Subject-verb disagreement    | "details ... was necessary"  |
| 96 | 114   | 114   | Misspelling                  | "some fo the"  |

|     |     |     |                             |  |
|-----|-----|-----|-----------------------------|--|
| 97  | 115 | 115 | Typographical               | "She stated she still ld with her mother"  |
| 98  | 115 | 115 | Capitalization              | Paragraph begins: "she described"  |
| 99  | 116 | 116 | Word usage                  | "who" used instead of "whom"   |
| 100 | 119 | 119 | Incomplete sentence         | "over to Nell so the children would have good."  |
| 101 | 120 | 120 | Incorrect tense             | "she did not feel they ask her enough questions"   |
| 102 | 122 | 122 | Incorrect use of possessive | "none of her son's finished high school"   |
| 103 | 123 | 123 | Incorrect verb tense        | "Mrs. Lindsey stated she have talked"  |
| 104 | 124 | 124 | Misspelling                 | "with the children having to bather and feed her"  |
| 105 | 127 | 127 | Capitalization              | Sentence begins: "she described"   |
| 106 | 129 | 129 | Incorrect verb tense        | "she shopped all the time and take them to eat"  |
| 107 | 129 | 129 | Capitalization              | Sentence begins: "she said they asked"   |
| 108 | 131 | 131 | Sentence fragment           | "With the assertion that they claim all evidence should have been put into trial."   |
| 109 | 132 | 132 | Typographical               | "Pilgrim found him real depresses"   |
| 110 | 136 | 136 | Nonsensical sentence        | "Sims said he told him not to and asked where he was and told him he's get there."   |
| 111 | 137 | 137 | Typographical               | "after it looked like everything was all rights."  |
| 112 | 137 | 137 | Typographical               | "and Virginia]>"   |
| 113 | 138 | 138 | Unnecessary brackets        | "[Despite his earlier testimony],"   |
| 114 | 139 | 139 | Capitalization              | Sentence begins: "he confirmed"  |
| 115 | 140 | 140 | Grammatical                 | "Bill Burton testified similar to his trial testimony."  |
| 116 | 140 | 140 | Missing word                | "when he learned he would be a character witness, [he] tried to contact"   |
| 117 | 143 | 143 | Unnecessary pronoun         | "that she gave it to a minister"   |
| 118 | 144 | 144 | Quotation marks needed      | "['I did not know him intimately.[']"  |
| 119 | 145 | 145 | Misspelling                 | "Since ne claimed"   |
| 120 | 148 | 148 | Typographical               | "August 200"   |
| 121 | 150 | 150 | Typographical               | "some fo the experiences"  |
| 122 | 152 | 152 | Incorrect word choice       | "mental health stuff" instead of "mental health staff"   |
| 123 | 153 | 153 | Tense disagreement          | "She asserts that when he was around 11 that he sees his family dealing and using drugs."  |
| 124 | 153 | 153 | Typographical               | "3 <sup>rd</sup> shit" instead of "3 <sup>rd</sup> shift"  |
| 125 | 153 | 153 | Sentence fragment           | "The others in the house including Willie who went to prison for 15 years for killing, Paul who got into trouble with drugs and Bessie, Robin, and Steve who got mental health treatment." |
| 126 | 153 | 153 | Incorrect possessive        | "would retreat to neighbors homes"   |
| 127 | 155 | 155 | Grammatical                 | "and other families where there be mental illness"   |

|     |     |     |                           |   |
|-----|-----|-----|---------------------------|---|
| 128 | 157 | 157 | Capitalization            | Sentence begins: "he only found"  |
| 129 | 158 | 158 | Incorrect tense           | "Vogelsang pointed out that is when he threaten to take his life"         |
| 130 | 158 | 158 | Capitalization            | Sentence begins: "she opined"   |
| 131 | 159 | 159 | Capitalization            | Sentence begins: "she denied"   |
| 132 | 160 | 160 | Capitalization            | Sentence begins: "she then"   |
| 133 | 161 | 161 | Capitalization            | Sentence begins: "she confirmed"  |
| 134 | 162 | 162 | Grammatical               | "(or the claims 1000 hours of the ABA average)"                           |
| 135 | 162 | 162 | Subject-verb disagreement | "A review... reveal"  |
| 136 | 163 | 163 | Possessive                | "were aware of Virginia Lindsey background"                               |
| 137 | 164 | 164 | Incorrect tense           | "Virginia had reported that she like and loved Nell"                      |
| 138 | 165 | 165 | Typographical             | "hang round him"  |
| 139 | 166 | 166 | Misspelling               | "broke his hip and gad facial surgery"                                    |
| 140 | 166 | 166 | Modifier disagreement     | "his brother also lost their jobs"  |
| 141 | 167 | 167 | Misspelling               | "hee had"   |
| 142 | 167 | 167 | Punctuation               | No period at end of sentence: "domestic violence order was taken out[.]"  |
| 143 | 169 | 169 | Punctuation               | Quotation marks mismatched before <u>St. Aubin v. Quarterman</u> citation |
| 144 | 169 | 169 | Capitalization            | "due to counsel's death, This Court finds..."                             |
| 145 | 170 | 170 | Citation                  | Missing parentheses after <u>Durr v. Mitchell</u> parenthetical           |
| 146 | 170 | 170 | Grammatical               | "but the it"  |
| 147 | 170 | 170 | Typographical             | "670 S.E>2d 356"  |
| 148 | 170 | 170 | Possessive                | "social worker Vogelsang testimony"                                       |
| 149 | 170 | 170 | Incorrect article         | "with a alleged"  |
| 150 | 170 | 170 | Punctuation-missing comma | "This Court agreed[,] finding that"                                       |
| 151 | 171 | 171 | Nonsensical sentence      | "Lindsey was raised by his mother and an absent father"                   |
| 152 | 177 | 177 | Sentence fragment         | "Under the applicant's assertion... capital defense counsel."             |
| 153 | 181 | 181 | Citation                  | "(C.A.6 (Tenn.),2008)."   |
| 154 | 182 | 182 | Missing word              | "In his tenth argument... contends"                                       |
| 155 | 189 | 189 | Incomprehensible phrase   | "would fortuitous positioning saved their lives"                          |

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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Certiorari to Spartanburg County  
Paul M. Burch, Circuit Court Judge

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MARION ALEXANDER LINDSEY,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

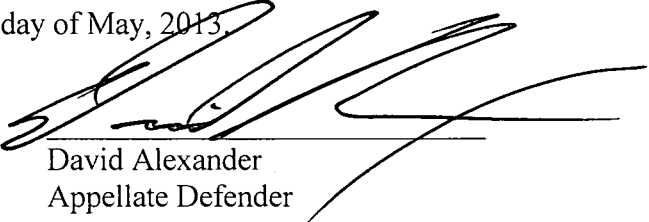
RESPONDENT

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CERTIFICATE OF SERVICE

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I certify that a true copy of the reply to the return to the petition for writ of certiorari in this case has been served on Donald J. Zelenka, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 28th day of May, 2013.



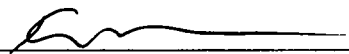
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David Alexander  
Appellate Defender

Robert M. Dudek  
Chief Appellate Defender

ATTORNEYS FOR PETITIONER

SWORN TO BEFORE ME this 28th day  
of May, 2013.



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(L.S.)  
Notary Public for South Carolina  
My Commission Expires: October 2, 2013.