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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Original Jurisdiction

FREDDIE EUGENE OWENS,

Petitioner,

v.

STATE OF SOUTH CAROLINA,

Respondent.

Appellate Case : _____

RETURN TO PETITION FOR WRIT OF HABEAS CORPUS

Petitioner Freddie Eugene Owens's execution is scheduled for Friday, September 20, 2024. On September 5, 2024, Owens, through counsel, filed a petition for writ of habeas corpus in this Court's original jurisdiction. In that petition, Owens attempts to raise two stale claims based on jury instructions and essentially the form of verdict from the 1999 trial jury. He also requests a second statutory proportionality review citing *Moore v. Stirling*, 436 S.C. 207, 871 S.E.2d 423 (2022). Owens has failed to show any error much less constitutional error warranting the exercise of original jurisdiction.

RELEVANT LAW

"Habeas relief" in this Court's original jurisdiction "will be granted only for a constitutional claim," so great that "in the setting," it "constitutes a denial of fundamental fairness shocking to the universal sense of justice." *Green v. Maynard*, 349 S.C. 535, 564 S.E.2d 83 (2002) (citing

Gibson v. State, 329 S.C. 37, 39, 495 S.E.2d 426, 428 (1998) (citing *Butler v. State*, 302 S.C. 466, 468, 397 S.E.2d 87, 88 (1990)). "Habeas relief is seldom used and acts as an ultimate ensurer of fundamental constitutional rights." *Williams v. Ozmint*, 380 S.C. 473, 477, 671 S.E.2d 600, 602 (2008). The standard is high, and it is anticipated the need for such review will be accordingly rare. "At some juncture judicial review must stop, with only the very rarest of exceptions, when the system has simply failed a defendant and where to continue the defendant's imprisonment without review would amount to a gross miscarriage of justice." *Id.*, 380 S.C. at 480, 671 S.E.2d at 603.

CLAIMS IN THE PETITION FOR WRIT OF HABEAS CORPUS

In his newest filing, Owens alleges:

> (1) there is a "burden shifting of the element of malice" in the 1999 jury instructions, (Pet., at 7);
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> (2) that his death sentence is "inherently disproportionate because there has been no finding that he killed, intended to kill, or showed reckless disregard for human life, " (Pet., at 12); and
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> (3) that he "has a right to have this Court conduct comparative proportionality review under the standard announced in *Moore v. Stirling.*" (Pet., at 18).

He requests a stay to litigate these claims, which Respondent also opposes primarily because Owens had failed to show the petition for review should be granted.

ARGUMENT THE PETITION SHOULD BE DENIED

The most obvious hurdle to Owens's most recent filing is that the first two issues, though non-meritorious, were nonetheless available from 1999 forward yet Owens did not raise the issues in the normal course of proper litigation. In no sense can it be said that the "system" failed a petitioner where the fault in not raising these claims earlier lies with him. *See Williams, supra.* Further, his request for an additional proportionality review is not warranted. Owens has received

one and is not entitled to another. *See State v. Owens*, 378 S.C. 636, 641, 664 S.E.2d 80, 82 (2008). Moreover, that request, too, is late to the extent that *Moore* could be the "new law" supporting a new proportionality review as Owens suggests, *Moore* was issued on April 6, 2022. This petition filed on September 5, 2024, nearly on the eve of execution, shows unconscionable delay. *See generally Bucklew v. Precythe,* 587 U.S. 119, 150 (2019) ("Courts should police carefully against attempts to use such challenges as tools to interpose unjustified delay. Last-minute stays should be the extreme exception, not the norm....").

Again, as the State asserted in response to the August 30, 2024 motion for stay to re-enter PCR,[1] Owens has had ample opportunity to litigate claims regarding his conviction and sentence – a trial, three sentencing proceedings, a 2009 PCR action, C/A 2009-CP-23-074, a PCR action appeal,[2] a federal habeas corpus action and appeal, an attempted successive PCR action filed in 2016 on alleged mitigation evidence denied as improperly successive and untimely, and a 2021 petition for writ of habeas corpus in this Court's original jurisdiction that this Court denied in April 2022.[3] Notably, this is a second attempt to enter into additional litigation and delay the September

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[1] The first two issues could potentially have been litigated through related ineffective assistance claims in his 2009 PCR action. Owens does not contend otherwise; he simply wants to raise these stale claims at this late date. That delay should not be countenanced. *See generally Nelson v. Campbell*, 541 U.S. 637, 650 (2004) ("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"). *See also State v. Torrence*, 305 S.C. 45, 65, 406 S.E.2d 315, 326 (1991) (holding back claims for later use "frustrates the goals of our criminal justice system—which is designed not only to protect the innocent but to punish the guilty"). (Toal, J., concurring).

[2] A record of the PCR proceedings may be found in Appellate Case No. 2013-001026.

[3] Appellate Case No. 2021-000609. Owens wishes to rely on some of the same materials submitted in his last original jurisdiction filing. (*See* Pet., at 26-28 and n. 15 and 16, materials from Dr. Hunter and Dr. Gur). As set out in the State's response in Owens's 2021 original jurisdiction petition, Dr. Hunter was a "new" expert (though he relied on old materials), and the Dr. Gur materials were submitted in the federal habeas action. (*See* Appellate Case No. 2021-000609,

20, 2024 execution. Owens also has filed a successive PCR action and seeks a stay to litigate those separate claims. He did not include the jury instruction or fact-finding claim in the PCR action which implicitly concedes that the issues are barred. At any rate, Owens has exhausted his ordinary remedies, both state and federal, and received no relief. Owens has failed to show in his newest filing any constitutional claims in this case (*i.e.*, this "setting") warranting the extraordinary exercise of original jurisdiction habeas corpus review. Concomitantly, he cannot show the "exceptional circumstances" required to obtain a stay at this late date. *In re Stays, supra.* The petition and motion for stay should be denied.

A. The Facts of Record are Already Contained in Multiple Opinions and in the Transcript of Record. Owens Attempt to Reshape the Case Fails.

The State begins with this basic principle because Owens makes several erroneous assertions and assumption attempting to show a basis for seeking relief. He is wrong.[4] Again,

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Return at 3-4, filed June 21, 2021). This is truly a matter of repackaging old materials. Moreover, the gist of Owens's argument is again an "aspect of youth" in regard to sentencing. (*See* Pet., at 27). Respondent again submits, just as in 2021, that evidence of youth was fully investigated and presented in Owens's re-sentencing, then investigated again in PCR, then investigated again in federal habeas corpus proceedings. Owens was denied relief at each stage of review. He has shown no circumstances to support extraordinary relief for additional argument on the same facts.

[4] To the extent he infers some uncertainty with the strength of the evidence in referencing the direct appeal reversals, (*see* Pet., at 3), that would be wrong, as well. This Court summarized the cause for the reversals as follow:

> [Owens] was convicted of murder, armed robbery, using a firearm during the commission of a violent crime, and conspiracy to commit armed robbery, and received a death sentence for murder, thirty years for armed robbery, and five years for each of the other two offenses. On his first appeal, the convictions were affirmed, but his death sentence reversed and his five year sentence for firearm possession vacated. *State v. Owens,* 346 S.C. 637, 552 S.E.2d 745 (2001). Following a bench resentencing proceeding, appellant again received a death sentence. This Court vacated that sentence, finding the trial judge's comments to appellant in regard to his right to a jury

though Owens apparently attempts to avoid it, his massive litigation record follows him. That record shows his current claims lack merit. For instances, Owens asserts he was convicted on accomplice liability, and "[r]ecognizing that the 1999 jury had not found Mr. Owens to be the shooter, the 2006 re-sentencing judge included for the jury's consideration the mitigating circumstance that "[t]he defendant was an accomplice in the murder committed by another person and his participation was relatively minor." (Pet., at 2). Owens greatly overreaches in making such leaps. There is no basis to assert that the 1999 guilt phase jury did not find him to be the shooter – the evidence certainly supported that he was by multiple admission and identification by type of mask.[5] Respondent sets out the relevant, record based facts in its discussion below.

B. The Murder Jury Instruction from the 1999 Trial Shows Repeated Instructions on Permissive Inferences Undermining Any Suggestion of Reversible Error, however, There Could Be No Reversible Error in this Case When Malice was Not at Issue.

At the outset, it is inescapable that Owens could have raised a challenge to the 1999 jury trial instructions at any point over the twenty-plus years he has been in litigation. Moreover, the

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> trial constituted reversible error. *State v. Owens,* 362 S.C. 175, 607 S.E.2d 78 (2004)
>
> This second resentencing was tried to a jury which returned a death sentence, finding two aggravating circumstances: (1) the murder was committed in the commission of robbery while armed with a deadly weapon and (2) the murder was committed while in the commission of larceny with use of a deadly weapon. S.C. Code Ann. § 16–3–20(C)(a)(1)(d) and (e).

State v. Owens, 378 S.C. 636, 637–38, 664 S.E.2d 80, 80–81 (2008).

[5] Petitioner asserts the "[v]ideo of the shooting shows two unidentifiable, masked assailants, both holding guns." (Pet., at 4). However, as more fully set out below, the masks were different – one from hosiery, one a ski mask – and Owens was identified as wearing the ski mask at that robbery. Yet the larger point is one he concedes by this observation – both individuals were armed major participants. Malice was not at issue, only identity, and a death sentence is constitutional for either of the two-armed men who killed Ms. Graves during the armed robbery. *See Tison v. Arizona,* 481 U.S. 137, 158 (1987) ("major participation in the felony committed, combined with reckless indifference to human life, is sufficient" to allow a death sentence).

evidence at trial showed thtough multiple admissions, including his own, that he was responsible for Ms. Graves being shot. Even so, he is wrong to assert that the jury instructions for murder in 1999 trial contained a mandatory presumption on malice that created reversible error. (Pet., at 1). Owens fails to account for a standard principle of review: "jury instructions should be considered as a whole, and if as a whole they are free from error, any isolated portions which may be misleading do not constitute reversible error." *State v. Aleksey*, 343 S.C. 20, 27, 538 S.E.2d 248, 251 (2000). Read as a whole, he cannot show "there is a reasonable likelihood that the jury applied the challenged instruction in a way that violates the Constitution." *Id.* Moreover, any potential error could only be harmless as malice was not contested and was overwhelming. Even so, the trial instructions show that the judge explained permissive inferences to the jury, but also left the jury with the sound direction that it was their province to accept or reject any such inference. That the jury was tasked for fact-finding was repeatedly in focus.

In the 1999 trial, the trial judge first instructed on intent generally. (Attachment 1, ECF No. 15-2 at 15).[6] Notably, that instruction began, "Intent includes those consequences which represent the very purpose for which an act is done or are known to be substantially certain to result regardless of desire" and also included, "A person who causes a particular result is said to act purposefully if he consciously desires that result whatever the likelihood of that result happening from his conduct. A person is said to act knowingly if he is aware that the result is practically certain to follow from his conduct, whatever his desire may be to that result." (Attachment 1, ECF No. 15-2 at 15-16). The instruction on the elements of murder followed. (Attachment 1, ECF No. 15-2 at 19). Those instructions began with reading the indictment

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[6] The transcript pages have multiple numbers. For citation to the record in this portion of the return, Respondent is relying on the header from federal district court that is set at the top of each page.

allegations that Owens "while aiding, abetting and assisting Steven Andra Golden in the commission of armed robbery killed one Irene Graves by means of shooting her....". (Attachment 1, ECF No. 15-2 at 19-20). The trial judge described malice and the state's burden. (Attachment 1, ECF No. 15-2 at 20-21). The trial judge also instructed:

> Malice may be implied or inferred if it is proved beyond a reasonable doubt that there was a wil[l]ful, deliberate and intentional doing of an unlawful act without just cause or excuse. Proof of this act, however, is merely a piece of evidence from which the inference may be simply an evidentiary fact to be taken into consideration by you, the jury, along with other evidence in the case. And you may give it such weight as you term it should receive.

(ECF No. 15-2 at 21).

Further, the judge instructed:

> ... if it is proved beyond a reasonable doubt that one intentionally killed another with a deadly weapon or with a dangerous instrumentality such as a gun, an implication of malice may arise. Use of a deadly weapon permits you to infer malice but does not require you to infer malice.
>
> If one intentionally kills another during the commission of a felony an implication of malice may arise. If facts are proved beyond a reasonable doubt sufficient to raise an inference of malice to your satisfaction, this inference would be simply an evidentiary fact to be taken into consideration by you along with other evidence in the case. And you may give it such weight as you, the jury, determine it should receive. If facts prove beyond a reasonable doubt sufficient to raise an inference of malice to your satisfaction this malice would be an evidentiary fact to be taken by you, the jury, along with other evidence in the case and you may give it such weight as you find it should receive.
>
> You as jurors are free to accept or reject this permissive inference depending upon your view of the facts. In other words, if such conduct results directly in the death of another and if such conduct was so culpable and inexcusable, so aggravated and grossly reckless as to show an active, intentional disregard of the consequences of human life, thus denoting a malignant spirit, a heart devoid of social duty and fatally bent on mischief, an implication of malice may arise.

> Furthermore, it is not just carelessness, it is not mere recklessness or a passive indifference to the safety of others. This conduct when it shows deliberate intentional design to so use or employ or handle a deadly weapon or dangerous instrumentality so as to endanger the life of another or of others without just cause or excuse may be sufficient to raise this implication. However, it is for you, the jury, to decide beyond any reasonable doubt whether upon all the facts and circumstances of this case the defendant's alleged use of a deadly weapon demonstrated such an intentional disregard for human life that malice may be inferred or implied from the use of that deadly weapon. It is for you, the jury, to decide what weight if any to give this fact.

(ECF No. 15-2 at 22-23).

In further explaining "express" or "implied" malice, the judge instructed:

> Malice is said to be expressed where there is manifested - - where there is manifested a violent, deliberate intention unlawfully to take away the life of an other human being. Malice is implied where one intentionally and deliberately does an unlawful act which he knows to be wrong and in violation of his duty to another and where no excuse or legal provocation appears when the circumstances attending a killing show an abandoned heart, a malignant heart fatally bent upon mischief.
>
> If the evidence should show under what circumstances a shot was fired or a blow delivered that took the life of another then you, the jury, would have to determine whether under such circumstances or whether under such circumstances [sic] the act was malicious.

(ECF No. 15-2 at 24).

In instructing on hand of one, hand of all, the trial judge explained:

> If persons kill another in doing or attempting to do[] an act amounting to a felony, the killing is murder and if a culpable homicide results from the pursuant common purpose or the conspiracy, all are alike criminally responsible. This is commonly described as the hand of one is the hand of all.

(ECF No. 15-2 at 25-26).

There was no objection to the charge. Read as a whole, the record supports that the jury could not reasonably believe that they were required, without thought or consideration, to find murder because of the evidence of armed robbery. Despite the careful instructions from the 1999 trial underscoring the permissive inference concept, Owens claims the jury instructions show "burden shifting of the element of malice." (Pet., at 7). Owens relies on this Court's precedent, including the recent case, *State v. Brown*, 904 S.E.2d 448 (2024), to make his argument to the contrary. (*See* Pet., at 9 and 10, n. 5). *Brown* is instructive here; it just does not aid Owens.

In *Brown,* this Court did not find any presumption, but found error because the charge "elevated ... a particular fact," *i.e.,* "the commission of a felony." *Id.,* at 449. Addition, this Court found the error "did not contribute to the verdict and was ... harmless beyond a reasonable doubt," specifically because "the case was one of mistaken identity" with the defendant challenging the evidence identifying him as one of the participants. *Id.,* at 450. As this Court observed, "at no point did Petitioner dispute that the armed robbery and murder of the victim occurred or that the victim's death was the result of malice." *Id.* It is the same here. Malice was not at issue. Any error could only be considered likewise harmless. But again, the charge, as a whole, rebuts Owens's claim of reversible error.

To further make his argument, Owens relies on *Lowry v. State*, 376 S.C. 499, 657 S.E.2d 760 (2008). (Pet., at 8). Again, this does not help him. The instruction in *Lowry* was a supplemental instruction that expressly did not call attention to the permissive nature of inferences as the trial judge did here and underscored "felony murder" as absolute. 376 S.C. at 503–04, 657 S.E.2d at 762; *see also id,* at 507, 657 S.E.2d at 764 ("The fact that the burden-shifting charge occurred in a supplemental instruction is also relevant.").

In contrast, here, less than absolute, the trial judge referenced "a culpable homicide" as well, and a "common purpose." Moreover, the evidence reviewed in *Lowry* to determine the error was not harmless was different with no admission from the defendant about having shot the victim. *Id.*, at 509-510, 657 S.E.2d at 765-766. *See also id,* at 508, 657 S.E.2d at 765 ("Harmless error review looks to the basis on which the jury actually rested its verdict.").

Again, malice was not at issue here; there was clearly malice. And the video itself shows each robber was armed, each a major participant, and Owens uniformly taking credit for the shooting. No finding of the "actual shooter" was necessary at the 1999 trial, and, contrary to Owens's position, (*see* Pet., at 11), no precedent requires that finding to be made and returned by the jury. The issue of sentencing cannot be blended with review of the 1999 charge, as the 2006 sentencing jury clearly did not hear that charge. No reversible error could possibly exist for the sentencing based on the 1999 instructions.

1. The Evidence at Sentencing Showed Owens was the Shooter, and that Both Individuals were Major Participants and Owens Demonstrated a Remarkable Level of Indifference to Human Life.

As noted above, Owens is simply wrong to assert the conviction rested on accomplice liability theory. (*See* Pet., at 2). The facts consistently showed Petitioner was the triggerman, not the least of which came through Owens's admissions that he was the shooter. Though he could have been convicted on accomplice liability, the evidence consistently supported that he was the shooter – a fact he took great pride in. Owens rests his argument in large measure on general sentencing provisions. (*See* Pet., at 12). However, there is no doubt that Owens received individualized sentencing. *See, e.g., Woodson v. North Carolina*, 428 U.S. 280 (1976). It simply remains that the character evidence received further solidified the intentional violence Owens inflicts. This is best shown by review of the evidence presented at the final sentencing proceeding.

The November 2006 Re-Sentencing Proceeding

The re-sentencing began with the court confirming that Owens had been convicted of murder on February 15, 1999.[7] (Attachment 2, JA 1169, 1180).[8] The court outlined that "the State must prove to you beyond a reasonable doubt that this murder was committed while the defendant committed a statutory aggravating circumstance" and explained "the State alleges that this murder was committed while the defendant was committing a robbery and that he was armed with deadly weapon, possessed a deadly weapon, and that a larceny was committed by the defendant at the time of this murder while he possessed a deadly weapon." (Attachment 2, JA 1181).

The State echoed that fact in its opening and explained: "we are going to give you an overview of that murder, because you are going to need to know the facts and circumstances of the crime in order to determine what punishment to impose," told the jury it would see a recording of the murder from the convenience store, told the jury that it would hear from Owens's girlfriend that "he admitted to her that he had done this, that he had robbed the place," other evidence supportive of the aggravating circumstances. (Attachment 2, JA 1187-1191). The State advised that the sentencing would also be about the defendant's character. (JA 1191). The defense in

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[7] As set out in response to the first motion for stay, (September 5, 2024), a review of the procedural history shows the solid evidence of guilt against Owens, and the overwhelming evidence in aggravation that included the murder of his cellmate and a lengthy history of violence in prison, has been reviewed through multiple actions on both the state and federal level. *See Owens v. Stirling,* 967 F.3d 396, 403–04 (4th Cir. 2020); *State v. Owens,* 346 S.C. 637, 646–47, 552 S.E.2d 745, 750 (2001). As this Court is exceedingly familiar with the multiple reviews, Respondent does not again set out the facts in each of the cited opinions once again in this response.

[8] There are multiple page numbers on the copies as these transcripts have been submitted at multiple levels of review. Respondent is using the most distinctive, the "JA" number at the bottom, center of the page.

opening did not indicate any contest to malice or identity; its opening focused on a case for mitigation based primarily on background evidence. (*See* JA 1193).

As to the evidence, the pathologist testified that "Ms. Graves died as a result of a single gunshot wound to the head" and died almost instantly (JA 1201, 1204). The store video was played showing both men were armed, both weapons visible on the screen. (JA 1223, 1225). Owens's admissions to investigators (Officers Joe Wood and Ken Evett) was proof not only of Owens's identity at the scene, but also specifically, evidence of Owen's guilt, his malice, and his character:

> Q: We were at the point where you told Mr. Owens that what he was telling you was not adding up, or something to that effect?
>
> A: That's correct.
>
> Q: And did he say anything to you in response to that?
>
> A: He did.
>
> Q: What did he say?
>
> A: He said "the only thing I'm here for is to eat, sleep, shit and piss. I don't give a shit. I was born to be in jail."

(Attachment 2, JA 1240).

When Owens was asked if he was aware that Owens's mother "had indicated that she was going to turn him in," Owens responded "if my mom says anything, tell her I said adios, to kiss her ass too. She can kiss my ass too." (Attachment 2, JA 1240).[9] He added, "Tell Ian and the rest

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[9] During the guilt phase in 1999, the State presented Owens's mother's statement to law enforcement, after Owens had been arrested for murder of a store clerk off Laurens Road, that Owens had told her that "he had killed a lady" and did not want his mother "to hate him for it...." (Attachment 3, ROA 2066-2081).

of them assholes to fuck themselves. If I to jail, I go to jail. I don't give a shit." (Attachment 2, JA 1240-1241). As Officer Wood was writing the information down, Owens:

> just continued on from that point and he said "people tend to think I have a sick and evil mind, but I have a very educated mind. I would like to take the blame for all of this, but I'm not going to take it all myself. I made my mark on Hall Street after I got out of jail selling lots of drugs. I made lots of money. Yeah, I want to be remembered as the one who killed the most people in Greenville. I'm a real menace."

(Attachment 2, JA 1241).

When asked to describe Owen's "demeanor during this conversation," Officer Wood testified, "He was cocky. He had a don't-care attitude. He smiled a lot when he was saying this." (Attachment 2, JA 1241). Officer Wood testified, that Owens was "one of two people out of probably 25 years in homicide that I have interviewed that actually gave me cold chills." (Attachment 2, JA 1241). When advised that this case may be a capital case, Owens "said 'I don't give a shit about that either.'" (Attachment 2, JA 1242).

Owens's former girlfriend, Aish Austin, testified Owens said to her, "they went in the store and the lady didn't open up the safe, so he just shot her." (Attachment 2, JA 1262). Owens stated "he went in and he kept asking her to open the safe. She kept throwing up her hands and said she couldn't open the safe, so he just said, 'I shot the bitch.'" (Attachment 2, JA 11262). (*See also* Attachment 2, JA, referencing written statement, "he said they went in and took the money and the lady behind the counter started talking junk and got smart, so he shot her in the head.").[10]

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[10] Ms. Graves's co-worker testified that Ms. Graves would occasionally "kind of tell them off" if people were "running their mouth" or "wanting to start some trouble...." (Attachment 2, JA 1251-1252).

The convenience store manager confirmed that Ms. Graves did not have the authority to open the safe. (Attachment 2, JA 1277). She also testified that a total of $37.29 was not accounted for from the register. (Attachment 2, JA 1277).

Owens's co-defendants Steven Golden and Nakeo Vance, who testified at the initial trial, did not testify at the 2006 resentencing. Vance was brought to court but refused to testify. His prior testimony, however, was read into the record and that confirmed Owens was in the ski mask, while Golden wore a stocking to obscure his face. (Attachment 2, JA 1333). Further, his testimony related that Golden and Owens ran back to the car where Vance and Lester Young, another co-defendant in the spree of robberies the four embarked on, were. Owens asked if they heard the gunshot, and stated, "He shot that bitch in the head," while Golden complained that he did not get to shoot his gun. (Attachment 2, JA 1329). Vance's testimony also reflected that Owens had explained that the victim "wasn't opening the safe, so he shot the whore" in Owens's words. (Attachment 2, JA 1329-1340). Owens and Vance had switched guns so that Vance could use the gun that could be heard when pulling the hammer back since Vance would be in the more crowded robbery site and the sound "let everybody know it is a pistol." (Attachment 2, JA 1326). Vance got rid of the gun Owens used to shoot Ms. Graves by throwing it from a bridge. He did so because Owens had admitted using the gun to shoot Ms. Graves. (Attachment 2, JA 1335-1336). Before he threw it away, Vance checked and confirmed that a bullet had been shot leaving an empty shell in his gun where it had been fully loaded. (Attachment 2, JA 1337).

The Solicitor argued Owens made "an intentional and willful choice to kill" Ms. Graves. (Attachment 2, JA 1706). He argued Owens "made the intentional and calculated choice to kill and his punishment should reflect the degree and the magnitude of that choice." (Attachment 2, JA 1706). The defense argued to disregard Owens's statements related by Ms. Owens and

essentially all of the Vance testimony as to Owens being the shooter. (Attachment 2, JA 1724-1725). This shows, however, the two stark choices the arguments and evidence presented – either he was the shooter or disbelieve all the evidence (and his own admissions) and find Owens was not in the store. The jury's verdict was consistent with the first – the one the evidence supported – that Owens was the shooter. Further, the violence in his nature was expanded upon further in sentencing.

As the Solicitor argued, Owens killed again in prison. Owens had been evaluated by Dr. Brunetti by the defense in a prior action and he testified that after the prison murder (where Owens beat his victim brutally, stabbed him with a pen, burned him with a lighter, among other things) that he was not impulsive but more "predatory." (Attachment 2, JA 1445-1446). As Dr. Brunetti testified "[p]redatory aggression" differed from impulsive, "it's a type of aggression where an individual may actually either plan harming someone or continue beyond what's necessary essentially to stop what appears to them as an insult or an attack on them." (Attachment 2, JA 1446). Owens's statement detailing the attack was admitted. (Attachment 2, JA 1481-1484). The agent who testified concerning taking the statement noted there was no difficulty in Owens talking about the murder, "he was very willing to talk, almost bragging ... In a bragging sense of wanting to talk with us." (Attachment 2, JA 1468).

Further, the State introduced a listing of major disciplinaries from the Department of Corrections. (*See* Attachment 2, JA 1534-1536, including stabbings, striking others, throwing hot water on another inmate, weapons charges, spitting, throwing feces, setting fires).[11] The correctional officer who testified at sentencing from Lieber Correctional, formerly the location of

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[11] The public record for his disciplinary sanctions shown his violence continues, with threats to harm, striking others, throwing substances, and assault and battery of an employee with intent to kill/injury, among others internal charges. (Attachment 4).

Death Row, opined of Mr. Owens: "He's assaultive, destructive, and damaging. He's - - he's, within that housing unit, bar none, my most problematic inmate." (Attachment 2, JA 1537).

Owens complains in his latest petition that without a reported finding from the jury that he was the shooter, his sentence cannot be said to be constitutional under *Edmund v. Florida*, 458 U.S. 782 (1982), *Tison v. Arizona*, 481 U.S. 137 (1987), and *State v. Johnson*, 306 S.C. 119, 135, 410 S.E.2d 547 (1991). (*See* Pet., at 2 and 5). Two points completely undermine Owens's position.

First, Owens relies on the charge that could be required under *State v. Peterson*, 287 S.C. 244, 335 S.E.2d 800 (1985), and *State v. Johnson*, 306 S.C. 119, 410 S.E.2d 547 (1991). Both cases are immediately distinguishable as to the *Peterson* holding because *Peterson* was issued before the Supreme Court modified the *Enmund* holding in *Tison.* This Court recognized that important fact in *State v. Hughes:* "We note the United States Supreme Court specifically modified *Enmund* in *Tison v. Arizona*, 481 U.S. 137, 107 S.Ct. 1676, 95 L.Ed.2d 127 (1987), wherein it held the *Enmund* culpability requirement is satisfied by major participation in the underlying felony combined with reckless indifference to human life." 336 S.C. 585, 596, 521 S.E.2d 500, 506 (1999). *Hughes* is instructive here given its remarkable similarity:

> ...the sentence in this case does not rest on moral culpability established solely by accomplice liability. Statements by appellant admitted in the guilt and sentencing phases of trial indicated he was the triggerman. This evidence of direct moral culpability in the killing of Officer McCants supports the imposition of death based on the aggravating circumstance found by the jury.

336 S.C. at 596, 521 S.E.2d at 506.

Second, major participation – which cannot be denied here, with both using guns and Owens walking the victim to the safe area and demanding at gunpoint that the victim open the safe

– is sufficient to support a death sentence.[12] *See State v. Longworth*, 313 S.C. 360, 363, 438 S.E.2d 219, 220 (1993) (co-defendant to Rocheville sentenced to death, *see State v. Rocheville*, 310 S.C. 20, 425 S.E.2d 32 (1993)). Even so, Owens can point to no case that requires reported fact-finding to adhere to *Tison.* This late argument lacks merits for all the above reasons.

C. Owens Fails to Allege a Deficiency in Structure of his Proportionality Review Appropriately conducted on Direct Appeal. The Statutory Provision Limits to the Direct Appeal Process and Owens has Received the One Review Allowed.

This Court is required to conduct a proportionality review pursuant to S.C. Code 16-3-25(C)(3). The Court fulfilled its duty and made a proportionality review as part of the 2008 direct appeal following the third sentencing proceeding. *State v. Owens,* 378 S.C. 636, 641, 664 S.E.2d 80, 82 (2008). Owens posits that he should receive a new S.C. Code § 16-3-25(C)(3) proportionality review pursuant to *Moore v. Stirling*, 436 S.C. 207, 871 S.E.2d 423 (2022). Owens is wrong.

Moore v. Stirling

After exhaustion of ordinary state and federal remedies, Moore filed a petition in this Court's original jurisdiction claiming that "the proportionality review conducted at the time of his *direct appeal in 2004* was insufficient" and relied upon both "current precedent" and on his proposed "extension of that precedent." *Moore,* at 217, 871 S.E.2d at 428-29 (emphasis added). This Court ordered briefing on two issues: whether Moore's "death sentence" was "disproportionate to the penalty imposed in similar cases," and, when conducting a S.C. Code § 16-3-25 (C) proportionality review, "should similar cases in which the death penalty was not imposed be considered[.]" 436 S.C. at 214, 871 S.E.2d at 427.

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[12] In a further point that Owens could have made this challenge earlier, the *Tison* argument was actually referenced in the Return in the federal habeas proceedings. (*See* C/A 0:16-cv-02512-TLW-PJG, ECF No. 148 at 161-162 n. 138, filed May 17, 2017).

In evaluating the argument on his particular sentence, the Court considered Moore's assertions that "since the time of his direct appeal, the death sentences in three of the four cases cited for comparison ... were overturned," that the facts in the listed comparison cases were "more severe than his own" with the similarity relying on merely showing the shared armed robbery aggravating circumstance; and, that the pool of cases for comparison should be expanded. *Id.*, at 224-225, 436 S.E.2d at 432-33. Moore asserted that the facts in his case show that "he did not enter the premises with a gun," thus, did not initially intend to commit an armed robbery, and he did not murder more than one person. *Id.,* at 227-28; 871 S.E.2d at 434-35.

As to jurisdiction, the initial question to answer, this Court found Moore's "petition alleging an inadequate comparative proportionality review" was, under the State Constitution right to due process, "a cognizable constitutional claim" for a "state habeas proceeding." *Id.,* at 223, 871 S.E.2d at 432.

In turning to the issues briefed, the Court modified *State v. Copeland*, 278 S.C. 572, 300 S.E.2d 63 (1982),[13] and held that the statute did not require "comparison of only cases in which a sentence of death was imposed." *Moore*, at 211, 436 S.C. at 425. However, on review of Moore's specific factual arguments, the Court rejected Moore's position and denied habeas relief. *Id.*

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[13] In *Copeland,* this Court had previously determined:

> In our view, the search for "similar cases" can only begin with an actual conviction and sentence of death rendered by a trier of fact in accordance with § 16–3–20 of the Code. We consider such findings by the trial court to be a threshold requirement for comparative study and indeed the only foundation of "similarity" consonant with our role as an appellate court.

State v. Copeland, 278 S.C. 572, 591, 300 S.E.2d 63, 74 (1982), *holding modified by Moore v. Stirling*, 436 S.C. 207, 871 S.E.2d 423 (2022).

Moore did not establish that all allegations regarding proportionality review would warrant original jurisdiction habeas proceedings. This Court determined that the claim *that Moore's 2004 proportionality review* was "inadequate" implicated due process under the state constitutional, therefore, his claim "present[ed] a cognizable constitutional claim in the contest of this state habeas proceeding." *Id.*, at 223, 871 S.E.2d at 432. Unlike Moore, Petitioner largely asks for a new type of review, a complete re-working of the review. That does not fall under the narrow cognizable claim described in *Moore*. But even if generally cognizable, Petitioner cannot show a violation of a constitutional right that "in the setting" has resulted in "a denial of fundamental fairness shocking to the universal sense of justice." *Green., supra.*

In *Moore*, this Court considered the statute's wording – specifically, the meaning of "similar cases" for its proportionality review – and found that the Legislature's choice of the phrase "similar cases" alone does not *require* limiting the review to cases where the death penalty was imposed. Petitioner goes further than this Court in assuming that proportionality review now *requires* looking at cases other than ones where the death penalty was imposed. Petitioner's error rests in his assuming meaning that is not warranted by the text of the statute. The phrase "similar cases" does not command Petitioner's interpretation any more than it restricts the pool to other capital cases. That the Court now recognizes a permissive opportunity for a capital appellant to churn the records and provide additional cases is in no way an obligation to do so. The best evidence for this point is that this Court has not required non-death penalty cases – either chosen by the Court or submitted by the appellant – in either of the two proportionality reviews following the *Moore* decision.

In *State v. Jenkins*, 436 S.C. 362, 394–95, 872 S.E.2d 620, 637 (2022), a case issued the same day as *Moore*, this Court, directly referencing its holding in *Moore*, conducted the required review under 16-3-25(C)(3) as follows:

> ...we hold the death penalty is neither excessive nor disproportionate to the sentences imposed in similar capital cases. We recently held that in conducting this proportionality review "subsection 16-3-25(C)(3) does not limit the pool of comparison cases to only those in which the defendant actually received a sentence of death." *Moore v. Stirling*, 436 S.C. 207, 871 S.E.2d 423 (2022) (clarifying *State v. Copeland*, 278 S.C. 572, 591, 300 S.E.2d 63, 74 (1982)). Thus, we must consider "similar cases in which the sentence of death has been upheld," *State v. Inman*, 395 S.C. 539, 567, 720 S.E.2d 31, 46 (2011) (citing *Wise*, 359 S.C. at 28, 596 S.E.2d at 482), and other "death-eligible cases for which a record is available for our review," *Moore*, 436 S.C. at 226, 871 S.E.2d 423; *see also* S.C. Code Ann. § 16-3-25(E) ("The court shall include in its decision a reference to those similar cases which it took into consideration.").
>
> In capital cases where the State proceeded on the same aggravating circumstances and in which there were similar circumstances, we have affirmed the sentence of death. In *State v. Moore*, 357 S.C. 458, 593 S.E.2d 608 (2004), the Court upheld Moore's death sentence in connection with an armed robbery of a convenience store in which Moore killed a store clerk and shot at a witness in the store. 357 S.C. at 460-61, 465, 593 S.E.2d at 609-10, 612, *aff'd*, *Moore*, 436 S.C. at 229, 871 S.E.2d 423 (reaffirming the holding from the direct appeal and finding, again, "Moore has not established that his capital sentence is disproportionate"). Moore entered the store without a gun, took the store clerk's gun away from him, shot and killed the store clerk, shot at a witness with the purpose of killing him, and robbed the store before he left. 357 S.C. at 460-61, 593 S.E.2d at 609-10. Moore's crimes are less egregious than those Jenkins admitted to committing in this case because Jenkins entered each convenience store with a gun.
>
> In *State v. McWee*, 322 S.C. 387, 472 S.E.2d 235 (1996), the Court upheld McWee's death sentence under similar circumstances. McWee and an accomplice shot and killed a store clerk in a convenience store and robbed the store before they left. 322 S.C. at 390, 472 S.E.2d at 237. During the sentencing phase, the State introduced evidence McWee and his accomplice committed another murder one week after the first. *Id.* McWee admitted shooting the

> victim in the first robbery and denied killing the victim in the second robbery, *id.*, just as Jenkins did at his trial.
>
> Jenkins admitted he entered the first Sunhouse convenience store, shot and killed Paruchuri, shot at McZeke, and robbed the store before he left. The jury found him guilty of murder, attempted murder, and armed robbery. Jenkins' crimes are highly similar to the murder we reviewed in *McWee* and more egregious than the murder we reviewed in *Moore*. Jenkins' admission to those crimes coupled with the aggravating circumstances of Jenkins' future dangerousness and the evidence that Jenkins committed two more armed robberies and a murder just weeks later leads us to conclude the death sentence was neither excessive nor disproportionate.

436 S.C. at 394–95, 872 S.E.2d at 637.

Notably, while the review included introductory language that comparison would be conducted with death-sentence cases and others, it was not. This Court took care to consider the exact circumstances of the crime, then compared those circumstances to the facts in two other capital cases. That is precisely what the Legislature has tasked this Court with doing:

> (C) With regard to the sentence, the court shall determine:
> ...
>
> (3) Whether the sentence of death is excessive or disproportionate to the penalty imposed in similar cases, considering both the crime and the defendant.

S.C. Code § 16-3-25 (C)(3).

In *State v. Jones*, this Court conducted the required review under 16-3-25(C)(3), as follows:

> With the possible exception of *State v. Wilson*, 306 S.C. 498, 413 S.E.2d 19 (1992) in which the defendant was sentenced to death for murdering two eight-year-old girls on an elementary school campus, there is not a comparable case to the one before us. Frankly, the horrific murders perpetrated by Jones are incapable of comparison in this state. *Cf. Kornahrens*, 290 S.C. at 283-84, 290-91, 350 S.E.2d at 182-83, 186-87; *Moore v. Stirling*, 436 S.C. 207, 229, 871 S.E.2d 423, 435 (2022); *State v. Bell*, 302 S.C. 18, 21-22, 39-40, 393 S.E.2d 364, 366-67, 376 (1990); *State v. Passaro*, 350 S.C. 499, 501-02, 508-10, 567 S.E.2d 862 -64, 867-68 (2002). Therefore, Jones's death sentence is neither excessive nor disproportionate.

State v. Jones, 440 S.C. 214, 264–65, 891 S.E.2d 347, 373–74 (2023), *cert. denied,* 144 S. Ct. 1012, 218 L. Ed. 2d 176 (2024).

The Court's one direct reference was to another capital case, *Wilson*. But the analysis is also telling in what is not necessary. It is not necessary to scour records and make a statistical evaluation of somewhat similar factual scenarios. The fact of "horrific murders" even if not given to "comparison" may still be found "neither excessive nor disproportionate." *Id. See also State v. Passaro,* 350 S.C. 499, 509-510, 567 S.E.2d 862, 868 (2002) ("review of case law reveals no factually similar case, i.e., the murder of a person under eleven years of age by arson" but Passaro's crime was "no less gruesome" than others cases where death was imposed and "perhaps more so considering Passaro knowingly and intentionally started the fire, jumped from the van, and failed to inform rescuers that his child was still strapped to a safety seat in the vehicle" also noting "[t]he brutality of the murder [was] underscored by evidence the victim was alive during the fire, succumbing to death only after the intense heat caused her severe pain and suffering."); *State v. Shaw*, 273 S.C. 194, 211, 255 S.E.2d 799, 807 (1979), *overruled on other grounds by State v. Torrence,* 305 S.C. 45, 406 S.E.2d 315 (1991) ("The inability of this Court to compare this case with any other similar cases does not require, however, that appellants' sentences be set aside."). This Court has demonstrated that it is not only the facts of the crime to be considered, but the individual as well. Proportionality review has touched upon both. *Passaro*, at 510, 567 S.E.2d at 868 (2002) (considering "Passaro's individual characteristics show he suffered slight mental or emotional disturbance at the time of the murder and did not have a substantial history of violent criminal conduct."); *Wilson*, at 513-14, 413 S.E.2d at 28 ("Wilson's argument that his death sentence is disproportionate because of his alleged diminished personal culpability is therefore rejected.").

Yet, proportionality review under S.C. Code § 16-3-25(C) remains, in scope, much more limited than Petitioner assumes. It "aims to ensure that a jury's decision was not the result of arbitrariness" but does not vest the Court with authority to act on mere disagreement with the sentence. *Moore*, 436 S.C. at 229, 871 S.E.2d at 435. *Accord State v. Deck*, 303 S.W.3d 527, 550 (Mo. 2010) ("This Court's proportionality review is designed to prevent freakish and wanton application of the death penalty."); *id.*, at 554 ("proportionality review is intended for this Court to identify and correct only the imposition of aberrant death sentences. I do not read the statute as requiring that the Court act as a super-juror by substituting its judgment of the appropriate punishment for that of the jury and the trial court.") (Breckenridge, J., concurring).

In *Moore,* this Court acknowledged not only that "severity and brutality of crimes may vary," but also that juries have the discretion to determine the appropriate sentence for the particular individual before them. *Moore,* at 229, 871 S.E.2d at 435. And it firmly resolved that the "[t]his Court's scope of review does not allow it to disregard the factual findings in the case and pronounce an alternative sentence" when nothing "negate[s] the jury's findings...." *Id.* The reality of that limitation greatly undercuts the entirety of Petitioner's position.

Of further note is that this Court did not address retroactivity with the *Moore* opinion. *See generally Talley v. State*, 371 S.C. 535, 541, 640 S.E.2d 878, 881 (2007) ("In general, the question of whether a decision announcing a new rule should be given prospective or retroactive effect should be addressed at the time of the decision.") (citing *Teague v. Lane*, 489 U.S. 288, 300 (1989)). The most likely reason is because, as explained above, it did not create a new rule that must be followed. *See generally Teague*, 489 U.S. at 301 ("In general, however, a case announces a new rule when it breaks new ground or imposes a new obligation on the States or the Federal Government."); *Griffith v. Kentucky*, 479 U.S. 314, 328 (1987) ("a new rule for the conduct of

criminal prosecutions is to be applied retroactively to all cases, state or federal, pending on direct review or not yet final, with no exception for cases in which the new rule constitutes a 'clear break' with the past"). Even where a state has altered its proportionality review, the court has found the change was not to be applied retroactively. *State v. Nunley*, 341 S.W.3d 611 (Mo. 2011). At any rate, this Court did not express that the statutory interpretation of "similar cases" required for the review created a new "right" or that such a right would be applied retroactively. This is not the first defendant to request a new review pursuant to *Moore*. In 2023, William Dickerson filed a petition for writ of habeas corpus in this Court's original jurisdiction attempting to secure the same review on the same broad argument as Owens. Appellate Case No. 2023-000526. On September 12, 2023, this Court denied the petition. Simply, this Court has not accepted the interpretation of *Moore* as offered by Owens in the case that came before his. It should not do so now.

A difference between Dickerson and Owens presentations, however, is the material offered with the petition. Dickerson requested time to amend his petition to include additional materials, while Owens presents his own materials, but even further away from Moore's argument, Owens hopes to persuade the Court on statistics and surface analysis.

The statistical study has never been challenged for accuracy or bias.[14] Even so, such a "study" offers no evidence regarding Owens's crime and Owens's character. It is of no value at all in reviewing Owens's sentence. It is, at base, an opinion on broad inquiries and subjective data points. In contrast, a Greenville County jury assessed that death was the appropriate sentence after

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[14] It also oddly is cited for a finding of an "absen[ce] a jury finding that [defendants] had killed or intended to kill." (Pet., at 21). Apart from the fact legal a statistical study is not a source for law, since this jurisdiction does not require such findings be reported, that observation is a prime example of a non sequitur fallacy, and is hardly persuasive.

consideration of the individual and his crime. To attempt a cold numerical comparison simply is inadequate:

> ... If only Aristotle, Aquinas, and Hume knew that moral philosophy could be so neatly distilled into a pocket-sized, *vade mecum* " system of metrics." Of course it cannot: Egregiousness is a moral judgment susceptible of few hard-and-fast rules. More importantly, egregiousness of the crime is only one of several factors that render a punishment condign—culpability, rehabilitative potential, and the need for deterrence also are relevant. That is why this Court has required an individualized consideration of all mitigating circumstances, rather than formulaic application of some egregiousness test.
>
> It is because these questions are contextual and admit of no easy answers that we rely on juries to make judgments about the people and crimes before them. The fact that these judgments may vary across cases is an inevitable consequence of the jury trial, that cornerstone of Anglo–American judicial procedure. But when a punishment is authorized by law—if you kill you are subject to death—the fact that some defendants receive mercy from their jury no more renders the underlying punishment "cruel" than does the fact that some guilty individuals are never apprehended, are never tried, are acquitted, or are pardoned.

Glossip v. Gross, 576 U.S. 863, 896 (2015) (Scalia, J., concurring).

Additionally, though Owens argues the two cases cited in this Court's review show only "superficial similarities" to Owens's case, (Pet., at 22), the cases show precisely what this Court noted – the death sentence was not excessive considering other similar cases. And, as *Jones* shows, that excessive heinous nature can alone be enough to support the sentence. However, other limitations in Owens's arguments are evident.

First, he suggests a new type of review – "juxtapose Mr. Owens's death sentence to the sentence ultimately received by the comparator case." (Pet., at 22). He argues because the armed robbery sentence in *State v. Simpson*, 325 S.C. 37, 479 S.E.2d 57 (1996) was overturned on a failure-to-disclose-exculpatory-evidence issue, and the prosecution allowed a life sentence

thereafter, that Mr. Owens should benefit from that disposition. (Pet., at 22). There is no such error alleged by Owens and no provision in the law to allow Owens to escape a just sentence based on error in another case.

Second, he argues the facts were "more aggravated" in Simpson's case, because the victim was shot 3 times, and Simpson tried to shoot a nine-year-old witness. (Pet., at 23). That is egregious and likely why Simpson was sentenced to death initially. But as noted above, egregiousness is not easily defined and best left to the jurors. Further, it is the crime and the character of the defendant at issue, not simply one or the other. As to the second case cited in this Court's proportionality review, *State v. Humphries*, 325 S.C. 28, 479 S.E.2d 52 (1996), Owens argues that case differs because "there was no question that Mr. Humphries was the shooter." (Pet., at 23). The evidence here supports that same principle. Even so, nothing in *Humphries* suggest that death is appropriate only when evidence shows that only one of the robbers has a gun, as it appears the facts in *Humphries* showed. 325 S.C. at 30, 479 S.E.2d at 53. *See State v. Shaw,* 273 S.C. 194, 204, 255 S.E.2d 799, 804 (1979) (referencing two of three co-defendants used guns).

Further, Owens is particularly silent about the facts in *Moore* – a case involving armed robbery. Moore insisted his sentence was not warranted because he did not take a gun into the convenience store. *See* 436 S.C. at 224, 871 S.E.2d at 132. Here, Owens took a gun in, with Golden, and used it. Further, this was one of a string of robberies. Even so, this Court essentially affirmed its prior proportionality finding in *Moore*. That is a difficult fact for Owens to avoid.

And, as the Fourth Circuit noted, the evidence at sentencing "included testimony about Owens's killing of his fellow inmate on the eve of his first sentencing trial—the 'elephant in the room,' as" Owens's counsel later described it. *Owens v. Stirling*, 967 F.3d 396, 406 (4th Cir. 2020). On top of the other murder (which is noticeably absent from Owens's offered evaluation of

proportionality) is Owens's nearly uncontrollable behavior in the Department of Corrections, and his continued bent to do violence.

Little need be said about Owens harking back to recycled evidence of youth and "compromised mental health" among "other mitigating circumstances." (Pet., 26). He asks this Court to ignore that the fact-finder did not find his offered evidence persuasive; however, this Court does not substitute its opinion for the jury's. While he argues that it is rare a 19-year-old would be sentenced to death, one would only hope so, but that is not that a basis for finding constitutional error in the imposition of the sentence. And frankly, Mr. Owens has been sentenced to death *three* times – 24 jurors and 1 circuit court judge heard the evidence in individualized sentencing and separately determined that death was the appropriate for this individual. A sentence of death is not a rare occurrence for this defendant.

The jury in this case has spoken, and there is no cause to disturb the sentence. As this Court reasonably found before, the death "sentence was neither excessive nor disproportionate." *Owens*, 378 S.C. at 641, 664 S.E.2d at 82.

Law of the Case, Collateral Estoppel, Res Judicata

"Under the law-of-the-case doctrine, a party is precluded from relitigating, after an appeal, matters that were either not raised on appeal, but should have been, or raised on appeal, but expressly rejected by the appellate court." *Judy v. Martin*, 381 S.C. 455, 458, 674 S.E.2d 151, 153 (2009). *See also Ross v. Med. Univ. of S.C.*, 328 S.C. 51, 62, 492 S.E.2d 62, 68 (1997) ("The law of the case applies both to those issues explicitly decided and to those issues which were necessarily decided in the former case."). The doctrine should apply and Petitioner's request for additional review should be rejected. Additional review is also barred by collateral estoppel and *res judicata.* Indeed, the additional review is barred by a number of separate theories, each equally

applicable, each underscoring the necessary principle that litigants simply cannot continue to litigate a claim that has been presented and ruled upon or could have been presented and ruled upon. *See also State v. Hewins*, 409 S.C. 93, 106 and 111-12, 760 S.E.2d 814, 821 and 823 (2014) (""Collateral estoppel, also known as issue preclusion, prevents a party from relitigating an issue that was decided in a previous action, regardless of whether the claims in the first and subsequent lawsuits are the same,'" and, though it is a civil doctrine, collateral estoppel may even be applied in general sessions matters in discrete circumstances)(quoting *Carolina Renewal, Inc. v. S.C. Dep't of Transp.*, 385 S.C. 550, 554, 684 S.E.2d 779, 782 (Ct.App.2009)); *Plum Creek Dev. Co. v. City of Conway*, 334 S.C. 30, 34, 512 S.E.2d 106, 109 (1999) ("Res judicata bars *subsequent actions* by the same parties when the claims arise out of the same transaction or occurrence that was the subject of a prior action between those parties.") (emphasis added). Respondent specifically asserts the separate theories of collateral estoppel and *res judicata*. The base reasoning remains the same: proportionality was previously determined, there has been no change in the facts, and the claim cannot be considered anew.

CONCLUSION

Based on the foregoing, Respondent submits Owens has failed to show a basis for allowing additional proceedings. A stay at this time would only result in unwarranted delay in carrying out the sentence that every sentencer has found appropriate for this petitioner – death. The State asks this Court to "deny [this] meritless request[] expeditiously." *See Price v. Dunn*, 139 S. Ct. 1533, 1540 (2019) (Thomas, J., concurring in the denial of certiorari).

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