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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

IN THE ORIGINAL JURISDICTION

BRAD KEITH SIGMON,

Petitioner,

v.

BRYAN P. STIRLING, DIRECTOR OF THE SOUTH CAROLINA DEPARTMENT OF CORRECTIONS, AND THE SOUTH CAROLINA DEPARTMENT OF CORRECTIONS,

Respondents.

PETITION FOR A WRIT OF HABEAS CORPUS

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Brad Keith Sigmon, a death-sentenced prisoner, respectfully moves this Court to act within its original jurisdiction to stay his execution, currently scheduled for March 7, 2025,[1] so that it can review carefully the meritorious claims detailed and brought here pursuant to S.C. Const., Art. V, § V and S.C. Code § 14-3-310, and grant a writ of habeas corpus. This Court has specifically reserved such actions within its original jurisdiction for a person sentenced to death who has exhausted all other sources of relief, to prevent an execution that would "constitute[] a denial of fundamental fairness shocking to the universal sense of justice." *Butler v. State*, 302 S.C. 466, 468, 397 S.E.2d 87 (1990). In this instance, Mr. Sigmon's jury, and this Court, were deprived of powerfully mitigating evidence of his severe, inherited mental illness, which, at the time of his crimes and trial, had combined with his childhood trauma and drug abuse to push him into psychosis. Because executing Brad Sigmon would be fundamentally unfair, the Court should stay his March 7, 2025 execution, permit full briefing and argument on the issues raised in this original writ, and ultimately vacate his death sentence.

INTRODUCTION

This Court has twice reviewed Mr. Sigmon's convictions and death sentences—once on direct appeal, and once following post-conviction review. Due to the ineffectiveness of trial counsel, however, this Court has never had the true facts of Mr. Sigmon's case before it. Those facts are heartbreaking.

As detailed herein, the untold story of Mr. Sigmon's case is the emergence of his undiagnosed and inherited mental illness, which combined with his organic brain damage, harrowing childhood trauma, and substance abuse to culminate in tragedy. After Rebecca

[1] Mr. Sigmon seeks this stay of execution within the period of time required by *In re Stays of Execution in Capital Cases*, 321 S.C. 544, 548, 471 S.E.2d 140 (1996); S.C. Code § 17-25-370.

"Becky' Larke ended her three-year relationship with Mr. Sigmon, he succumbed to a manic and irrational episode akin to a psychotic break. Following a night of drinking and smoking crack cocaine, Mr. Sigmon in his fractured mental state, believed that if he just had time alone with Ms. Larke, he could convince her to take him back. He went to her parents' home, where she was staying, intending to tie them up so he could take Becky away. When Becky's father, David Larke, retrieved a gun, Mr. Sigmon beat him to death with a baseball bat, and then did the same to Becky's mother, Gladys. Mr. Sigmon then kidnapped Becky and shot her several times in the foot as she escaped. Fortunately, Becky survived. *Sigmon v. State*, 403 S.C. 120, 124-25 (2013).

This crime was brutal and bizarre. Mr. Sigmon had no prior convictions for crimes involving violence. *See Sigmon*, 403 S.C. at 126 (noting the jury was instructed on this statutory mitigating circumstance). He admitted his guilt to his arresting officers and in court and has never attempted to minimize the gravity of his offense. Accordingly, the critical—and, truly, only—question at trial was whether there were any mitigating circumstances that would persuade at least one juror that Mr. Sigmon was more than the aberrant, uncharacteristic crime he committed, and to vote for a sentence of less than death.

To answer that question, Mr. Sigmon needed competent and effective capital defense lawyers who would conduct the thorough investigation into his background that the Sixth Amendment requires. *Strickland v. Washington* 466 U.S. 668 (1984). But Mr. Sigmon was represented at trial by two attorneys who had no experience whatsoever with death penalty cases.

Many indications of Mr. Sigmon's mental fragility and substance use issues were revealed to his trial counsel. But counsel failed to fully investigate these issues, instead leaping to superficial conclusions about his personality. Consequently, counsel never ascertained just how deeply Mr. Sigmon's mental health and cognitive impairments ran. To make matters worse,

Mr. Sigmon, suffering from bipolar disorder and severe cognitive impairment, was misdiagnosed in prison with depression and was prescribed psychiatric medications, only to have them withdrawn a month prior to sentencing. This almost guaranteed that Mr. Sigmon would suffer a mental health crisis during his trial, and, when he insisted on making a fevered allocution to his jury, they had a front row seat to his mental and cognitive impairments. Having failed to investigate Mr. Sigmon's mental health, however, counsel was ill-equipped to stop his reckless behavior during trial—or to raise the issue of his competency.

As a result, Mr. Sigmon's jury was not only prevented from learning the most critical, mitigating aspects of his background, but, with Mr. Sigmon's unexplained and erratic behavior at trial, were primed to accept the solicitor's uncontested condemnation of him as a "mean and evil person." The true picture of Mr. Sigmon would have revealed this characterization as caricature. The jury never learned of Mr. Sigmon's struggles with his unmedicated and undiagnosed bipolar disorder, compounded by brain damage that caused him to react impulsively in stressful situations. They never learned of his childhood in an abusive and unstable household, where, during his father's drunken rages, Mr. Sigmon often put himself in harm's way to protect his mother. They never learned of the vulnerabilities inherited from his family history of mental illness and substance use disorders. And they never heard powerful testimony from his siblings and friends, particularly those in close relationship with the victims who would have told the jury about Mr. Sigmon's good character, deep remorse, and his ability to adjust well to prison life.

The jury was deprived of this information in violation of Mr. Sigmon's Sixth Amendment rights. As was this Court, on both direct appeal and on postconviction review. As a result, no court, state nor federal, has ever weighed it to determine whether Mr. Sigmon had the effective

trial counsel the Sixth Amendment guarantees or whether a death sentence is the appropriate and proportional punishment under *Moore v. Stirling*, 436 S.C. 207, 871 S.E.2d 423 (2022).

Now, this Court is in a position to act. In these circumstances, the Court simply cannot have confidence in the reliability of the proceedings that led to this point. The solution is not to look away and allow Mr. Sigmon to be executed. Rather, justice and fairness demand that the Court remand this petition for an evidentiary hearing to be certain that no person in South Carolina is put to death based on deficient legal representation and a woefully incomplete picture of their life and background.

JURISDICTION

This Court has original jurisdiction under Article V, Section 5, of the South Carolina Constitution and S.C. Code § 14-3-310. Under these provisions, "an imprisoned individual may obtain a writ of habeas corpus from this Court after exhausting all other sources of relief, 'where there has been a violation, which, in the setting, constitutes a denial of fundamental fairness shocking to the universal sense of justice.'" *State v. Torrence*, 305 S.C. 45, 69, 406 S.E.2d 315 (1991) (Gregory, C.J., and Harwell and Chandler, JJ, concurring) (quoting *Butler*, 302 S.C. at 468 (emphasis in original)); *see also Tucker v. Catoe*, 346 S.C. 483, 552 S.E.2d 712 (2001) (granting original writ and remanding for coercive jury charge). This Court's original jurisdiction empowers it "to provide relief to those who have, for whatever reason, been utterly failed by our criminal justice system." *Torrence*, 305 S.C. at 69.

PROCEDURAL HISTORY

In July 2002, Brad Sigmon was convicted and sentenced to death for the murders of Gladys and David Larke in Greenville County, South Carolina. *State v. Sigmon*, 366 S.C. 552, 623 S.E.2d 648 (2005), *cert. denied*, 548 U.S. 909 (2006). Due to his trial counsel's failure to

rebut the State's gross mischaracterization of Brad's personality, and paucity of their penalty phase presentation, which attributed Mr. Sigmon's behavior to depression, his jury found no mitigating circumstances. *Sigmon*, 366 S.C. at 554, 623 S.E.2d at 648.

This Court affirmed the trial's result on direct review, where, apart from proportionality review, only a single issue was raised. *Id.* In state post-conviction review, Mr. Sigmon's counsel did not raise trial counsel's ineffectiveness for failing to investigate and present mitigating evidence. This Court again denied relief. *Sigmon v. State*, 403 S.C. 120, 742 S.E.2d 394 (2013).

In federal habeas review, his attorneys conducted, for the first time, the thorough investigation into Mr. Sigmon's background that the Constitution requires. They then presented a new claim: that Mr. Sigmon's trial counsel had provided ineffective assistance by failing to investigate and present available, powerful mitigating evidence that weighed heavily in favor of a life sentence. As state post-conviction counsel had failed to present this claim, federal habeas counsel sought to introduce it pursuant to the Supreme Court's decision in *Martinez v. Ryan*, 566 U.S. 1 (2012) (allowing merits review of otherwise procedurally defaulted claims of ineffective trial counsel where the Sixth Amendment claim was not raised in state court due to state post-conviction counsel's ineffectiveness). The district court denied this claim. While the Fourth Circuit affirmed the decision to deny an evidentiary hearing on the claim, Judge King dissented strenuously, writing that prior counsel had failed in their "paramount responsibility . . . to convince the jury that Sigmon was worthy of some mercy." *Sigmon v. Stirling*, 956 F.3d 183, 204 (4th Cir. 2020). The United States Supreme Court denied review. *Sigmon v. Stirling*, 141 S. Ct. 1094 (2021).

Mr. Sigmon has received multiple execution notices following the conclusion of his appeals, but each was stayed pending litigation over the constitutionality of South Carolina's

amended execution statute. On February 7, 2025, this Court scheduled Mr. Sigmon's execution for March 7, 2025.

Mr. Sigmon now seeks a writ of habeas corpus in the Court's original jurisdiction to ensure that he is not executed without any decision-maker—and particularly this Court—ever having been fully apprised of his severe mental illness, cognitive dysfunction, and his traumatic background, and the reasons why his death sentence is fundamentally unjust and disproportionate.

I. Executing Brad Sigmon would deny fundamental fairness and shock the universal sense of justice because no jury or court was presented with evidence that Mr. Sigmon suffered from unmedicated bipolar disorder and severely impaired neurocognitive functioning and endured a childhood of trauma and abuse. In concert, this evidence explains Mr. Sigmon's erratic and aberrant behavior at the time of the crime, after his arrest, and at trial.

It was not until Mr. Sigmon entered federal habeas that any counsel began to investigate and present the available mitigating evidence of Mr. Sigmon's mental illness, organic brain injuries, and childhood trauma. As that investigation has continued, a fuller understanding of how these impairments and trauma not only mitigate but also explain the most aggravating aspects of his crimes and his behavior at trial has emerged. No court has heard this evidence in its entirety. Mr. Sigmon should not face execution until this Court has.

A. Mr. Sigmon suffered from an undiagnosed, unmedicated, and inherited mental illness that went undetected and unmentioned at trial.

While trial counsel told Mr. Sigmon's jury that he suffered from depression, no one on the defense team questioned whether his actions during the crime and during sentencing were attributable to something other than his personality. A thorough investigation into Mr. Sigmon's family medical history would have readily alerted the defense team that Mr. Sigmon suffers from a severe, inherited mental illness that causes manic episodes. Had they been more attentive to his

medical needs during trial, moreover, they would have known that Mr. Sigmon had not received any psychiatric medications in the weeks leading up to trial.

Prior to trial, trial counsel hired psychiatrist, Dr. Donna Maddox, for a limited purpose—not to conduct a complete evaluation, but to help them determine whether Mr. Sigmon should testify. At the time, Dr. Maddox knew only that Brad had been diagnosed in jail with major depressive order. She did not have any information about the mental health of Mr. Sigmon's family, the results of neuropsychological testing, or any indication that he had suffered trauma as a child. Without this information, Dr. Maddox erroneously attributed his symptoms to his personality, substance abuse and depression. Ex. A, 2021 Report of Dr. Donna Maddox at 4. In the end, Mr. Sigmon's jury was told only that he was depressed.

In 2021 and in the years thereafter, Dr. Maddox reevaluated Mr. Sigmon and was able to review his updated medical records, as well as to review mental health records from his family for the first time. As Dr. Maddox explained, "recently provided family history records indicate extensive substance abuse among Mr. Sigmon's parents and siblings, rampant and severe mental illness among Mr. Sigmon's siblings (bipolar disorder, depression, schizophrenia, suicidality), and a history of childhood trauma – including physical abuse of Mr. Sigmon and his siblings by their father. Mr. Sigmon's son Robbie also has been diagnosed with bipolar disorder. Ex. B, 2025 Report of Dr. Donna Maddox at 3.

With this additional information, Dr. Maddox determined that Mr. Sigmon was not simply depressed and narcissistic, but actually suffers from Bipolar II Disorder—a mental illness that runs in his family and causes him to "cycl[e] through episodes of hypomania" during which he suffers from "grandiosity, agitation, too much self-confidence, poor judgment" and periods of deep depression. *Id*. at 1. As Dr. Maddox explained, Mr. Sigmon has exhibited all of the

symptoms of Bipolar II Disorder over the last twenty-three years," including "periods of rapidly shifting mood" and episodes of "grandiosity" and "paranoia." *Id*. at 5. He exhibits "pressured speech," in which he talks rapidly and moves quickly from one topic to the next, and has a "decreased need for sleep and rapid thoughts." *Id*. Brad "has clearly documented major depressive episodes" but he also has "periods of euthymic mood … free from the effects of mania or depression." *Id*.

Dr. Maddox indicated that not only the symptomology, but also Mr. Sigmon's "present mood instability, family history of bipolar disorder, and the course of bipolar (generally manic episodes in early adulthood, depression in middle adulthood and more manic episodes in older adulthood) [that] point toward a diagnosis of bipolar II disorder." *Id*. Moreover, the opportunity to evaluate Mr. Sigmon without the narrow constraints imposed by trial counsel was critical, as "Bipolar II requires observation over time, making it more difficult to accurately diagnose with limited contact." *Id*. With the benefit of family mental health history, repeated and thorough evaluations, and trauma history, Dr. Maddox has confirmed that the most disruptive and provocative symptoms of Mr. Sigmon's mental illness—especially his rapidly shifting mood, grandiosity, paranoia, pressured speech, and decreased need for sleep—were at work at both the time of the offense and his ill-fated speech to the jury.

Dr. Ernest Martin, a state psychiatrist who saw Mr. Sigmon while he was incarcerated prior to trial, makes similar conclusions. Dr. Martin noted that Mr. Sigmon had a prior diagnosis of depression and prescription for .75 mg of Elavil, an antidepressant, which he confirmed. Ex. C, 2024 Declaration of Dr. Ernest Martin at 2. After he reviewed Mr. Sigmon's jail records, Dr. Martin saw a pattern: "When Mr. Sigmon was unmedicated, he was often agitated, irritable, grandiose, paranoid, and impulsive"—symptoms more consistent with unmedicated Bipolar

disorder, and not just depression. *Id*. at 1. "Bipolar disorder includes mood swing [sic] and at times can include, psychosis, where a patient's ability to ground themselves in reality is impaired. The diagnosis also includes symptoms of disordered mood and thought such as the agitation, irritability, grandiosity, paranoia, and impulsivity exhibited by Mr. Sigmon." *Id.* Dr. Martin confirmed that Mr. Sigmon was unmedicated at trial and noted that the media used these very terms to describe Mr. Sigmon's behavior during the proceedings—"agitated and impulsive," "tearful," "rambling," and "profane at times." *Id*. Given this, Dr. Martin agreed that a "more appropriate diagnosis for Mr. Sigmon would have been bipolar disorder." *Id*. at 2. Most notably, Dr. Martin opined that Mr. Sigmon may have been incompetent at trial "given his symptom presentation and severity when not medicated." *Id*. at 2.

1. Mr. Sigmon's behavior before the crime corroborates these mental illnesses.

Mr. Sigmon's siblings described his behavior just prior to the Larkes' murder in similar terms. Mr. Sigmon's brother, Davey, "saw Brad just days before" the crime and described him as "coming apart." Ex. D, 2014 Affidavit of Davey Sigmon at ¶ 2. Davey Sigmon explained that "Brad was not himself, and he was very sad and heartbroken" over the end of his relationship with Becky." *Id*. Mr. Sigmon was "smoking crack and drinking" and was irrational and inconsolable in a way that was "out of character." Ex. E, 2024 Declaration of Davey Sigmon at ¶¶ 21-22. "He hadn't slept for three or four days when this happened," and he "was drinking, he was emotional, he was crying, and he was definitely using crack cocaine. I tried to talk to him, but I couldn't get through to him that he needed to sleep it off." *Id*. at ¶ 22.

Mr. Sigmon's brother, Mike, also noted that Brad Sigmon's behavior and thinking were "not rational" and that he was "not himself; he was utterly fixated on winning Becky back. Ex. F, 2024 Declaration of Mike Sigmon at ¶ 16. "Brad was [] convinced that if he could only talk to the

Larkes' daughter, Becky, alone he could somehow persuade her they belonged together forever." *Id*. "He could not focus on anything but fixing his relationship with Becky ... He was unable to think of anything but winning Becky back." *Id*.

Mr. Sigmon's sister, Kelley, remembered that Mr. Sigmon was having "frequent crying spells" and was "clearly devastated" that his relationship with Becky ended. Ex. G, 2024 Declaration of Kelley Sigmon McDonald at ¶ 50. Kelley also described Mr. Sigmon as "not himself" and "not thinking rationally," plagued by "wild ideas about his ability to convince Becky to come back if he only had alone time with her." *Id*. at ¶ 51. Brad was "on edge, unable to sit down, and couldn't stop talking" just prior to the murders. *Id*.

All those closest to Brad knew was that he was not acting like himself. The behavior Brad's siblings witnessed was textbook evidence of a manic episode and psychotic break. To his jury, however, it was mischaracterized and reduced to the behavior of a "lovesick idiot." What we now know, after thorough evaluation, is that his behaviors were symptoms of bipolar disorder and severe neurological deficits.

2. Mr. Sigmon's behavior once arrested provided further corroboration.

Mr. Sigmon's manic, impulsive and paranoid mental illness was further corroborated by way of his persistent compulsion after arrest to speak about the crime to anyone who would listen. Mr. Sigmon's written and oral statements to law enforcement prior to trial present textbook mania, with their hyper-detailed, unrestrained, and unintentionally provocative content.

For example, Mr. Sigmon's written statement to a Greenville County Sheriff's investigator when he was apprehended in Tennessee was hyper-detailed and hypersexual. When describing how he got involved with Becky, Mr. Sigmon stated, "Becky would come across the street wearing sexy clothes, taunting me." Ex. H, 2001 Sigmon Written Statement at 1. Mr.

Sigmon went on to describe how they became intimate: "We went to Motel 6 on Interstate 85 and made love for a couple of hours." *Id*.

Later in his statement, Mr. Sigmon described how Becky met Keith Merrill, the man she became involved with after Mr. Sigmon, and he provided incredible, almost manic, detail. "She met him through the cleaners where she worked. She worked at Milliken Cleaners on Poinsett Highway. Keith had come in the [sic] have his clothes cleaned and he gave Becky his business card and on the back of a Milliken Cleaners card he wrote his name and cell phone number in big bold black letters." *Id.* When describing an incident where Becky stood him up for Keith, Brad stated, "I went out and bought her some sexy clothes and I waited for her . . . I waited and waited and she never did call me . . . I knew that she was out with Keith. . . I asked her if she had been out with Keith. . . . She told me that they had gone to his motel room after that they French kissed and that he reached up and rubbed her [expletive]." *Id.* at 2-3.

Gatlinburg Detective, Tim Williams, testified at Mr. Sigmon's trial that Mr. Sigmon seemed unusually compelled to speak with him at length. He explained that Mr. Sigmon "initiated the conversation" after signing a waiver of his rights and then "went into great detail about his relationship [with Becky] and what happened." App.[2] 1469. According to Detective Williams, Mr. Sigmon spoke for at least an hour and a half while he only interjected "a few" times to ask questions. *Id*.

Similarly, Investigator McNamara, who transported Mr. Sigmon back to Greenville, identified the same manic and impulsive behaviors. While in the patrol car, Mr. Sigmon "talked rather constantly and told . . .[him] that he wanted to talk to [the transport officers] and wanted to

[2] Citations to "App." refer to the PCR Appendix filed with this Court in *Sigmon v. State*, No. 2006-236547 (S.C.).

tell [them] what had happened in Greenville. He wanted to tell [them] everything that had occurred from the time the incidents occurred until the time. . .” he was apprehended in Tennessee. *Id.* at 1491. McNamara described Mr. Sigmon as “very adamant” in wanting to explain his relationship with Becky and what happened with the Larkes. Id. at 1498. McNamara testified that Mr. Sigmon “talked extensively” for about a “four hour period of time” from the time the waiver of rights was signed until the statement was complete. *Id*. at 1503. Mr. Sigmon spoke with almost no interjection and was “quite adamant about getting everything out in to the open and off his chest.” *Id*. at 1505.

The media reported similar behavior from Mr. Sigmon, including his impulse to speak to reporters, even when it was not in his best interest. One news station that interviewed Mr. Sigmon reported that Mr. Sigmon “had plenty to say . . . as we waited for the court hearing to begin[.] Sigmon told us almost everything that happened[,] from the weekend before the killings . . .when he tried in vain to get Becky Barbare to see him . . .” until law enforcement officers searched for him after the crime. Ex. I, WYFF Sigmon Interview at 2. On another day, WYFF reported that “today [Sigmon] had plenty to say. [H]e talked with WYFF … [telling] [us] almost everything today about what happened in the weeks before and after the killings” and “answered many of our questions.” *Id.* at 5, 7.

3. Mr. Sigmon’s behavior at trial corroborates and vividly illustrates these illnesses.

Just after closing arguments and before the jury was sent to decide Mr. Sigmon’s sentence, Mr. Sigmon stood and made his own closing argument. Mr. Sigmon began by admitting his guilt and expressing remorse: “I am guilty,” and “I have no excuse for what I did. It’s my fault and I’m not trying to blame nobody else for it, and I’m sorry.” Ex. J, “*Sigmon: ‘I am guilty’,*” GREENVILLE NEWS, July 20, 2002 at 1. Mr. Sigmon then launched into a frantic

monologue, full of irrational justifications for his actions that only antagonized jurors. Media reports describe him as agitated, impulsive, tearful, speaking in a rambling matter, and profane. *Id*. at 1, 5; Ex. K, "*Sigmon gets death*," GREENVILLE NEWS, July 22, 2002 at 1, 3. As Mr. Sigmon pleaded with his jury to understand, he brandished the suitcase that he had packed for himself and the victims' daughter, Becky Barbare, which had been admitted into evidence and contained lingerie, bath oil, and Polaroid photographs of her. Mr. Sigmon waved around several of the photos for his jury to see, including one of Ms. Barbare wearing only a bra. He admitted to the jury that he was obsessed with her; and he explained that losing her "set me off." *Id*. at 3. While Mr. Sigmon frantically made this plea, trial counsel, who had previously argued that Mr. Sigmon was "a lovesick idiot who snapped," sat at counsel table with his head in his hands. *Id*.

In sum, an understanding of Mr. Sigmon's compromised mental health would not only have mitigated some of his behaviors, but explained them. "This evidence might not have made [him] any more likable to the jury, but it might well have helped the jury understand [him], and his horrendous acts[.]" *Sears v. Upton*, 561 U.S. 945, 951, 130 S. Ct. 3259, 3264, 177 L. Ed. 2d 1025 (2010).

B. Mr. Sigmon suffers from deficient cognitive functioning, including error of recognition, that significantly impairs his executive functioning and exacerbates his severe mental illness.

Mr. Sigmon's severe undiagnosed, unmedicated and inherited mental illness was compounded by an underlying brain injury that enhanced and aggravated its symptoms. Neuropsychological testing conducted by Dr. Robert Shaffer has established that Mr. Sigmon suffers from multiple forms of cognitive dysfunction due to organic damage to his brain. On some measures, Mr. Sigmon scored in the bottom two percent, or worse. Ex L, 2021 Report of Dr. Robert Shaffer at 1-2.

Dr. Shaffer determined that Mr. Sigmon has "an organic brain injury-based manic or hypomanic condition" and more significantly, a "neuropsychological impairment that affects his executive functions and information processing." *Id*. at 5. He explained that these impairments are "most pronounced in unfamiliar and rapidly changing situations …. [and] he is substantially more prone to both substance intoxication and, even in the absence of intoxication, more vulnerable to circumstances that trigger posttraumatic reactivity." *Id*. at 6. Dr. Shaffer opined that as a result of these neurocognitive impairments, Mr. Sigmon "would have difficulty appreciating the consequences of events and the consequences of his own actions, even when not intoxicated. The effect of intoxication would be to greatly amplify the impairment and would result in even greater reactivity to external events." *Id*.

Dr. Shaffer noted that Mr. Sigmon scored high on the Iowa Interview for Partial Seizure-like Symptoms, indicating he likely suffers "dissociative episodes, gaps in memory, and manic or hypomanic states." *Id*. Mr. Sigmon scored in the 99th percentile on this test and exhibited symptoms such as ringing in his ears, dissociative episodes, and rapid shifts in mood. *Id.* at 2. These behaviors "often occur among individuals with a history of brain trauma. . . [and are] characteristic of many people who exhibit manic behavior" *Id*. Other testing indicated that "Mr. Sigmon has difficulty halting an ongoing series of action when once told that it is incorrect." *Id*. at 3. Additionally, Mr. Sigmon received markedly low scores on tests where failures are "associated with abnormal brain activity[,] . . . brain injury," and "temporal lobe dysfunction," *Id.* at 2.

Overall, Dr. Shaffer determined that Mr. Sigmon has "an organic brain injury-based manic or hypomanic condition" and more significantly, a "neuropsychological impairment that affects his executive functions and information processing." *Id.* at 5. Dr. Shaffer's testing also

revealed that Mr. Sigmon's impairments are "most pronounced in unfamiliar and rapidly changing situations . . . . [and] he is substantially more prone to both substance intoxication and, even in the absence of intoxication, more vulnerable to circumstances that trigger posttraumatic reactivity." *Id.* at 6. Dr. Shaffer concluded that, because of his impairments, Mr. Sigmon "would have difficulty appreciating the consequences of events and the consequences of his own actions, even when not intoxicated. The effect of intoxication would be to greatly amplify the impairment and would result in even greater reactivity to external events." *Id*.

In a 2025 report, following an additional evaluation and review of Mr. Sigmon's medical records, Dr. Shaffer expounded upon one of Mr. Sigmon's most significant neurocognitive defects—error of recognition—and the role it played this crime. Dr. Shaffer explained that "[a] deficit in error recognition disables the normal ability to discern and correct differences between perceptions . . . and reality." Ex. M, 2025 Report of Dr. Robert Shaffer at 1. He explained that a person with a deficit in error recognition thinks if "they could just explain their point of view, then everyone will understand and accept that point of view as reality." *Id.* A person with error recognition deficit has a limited "ability to appreciate the consequences of actions both before and after the commission of an act." *Id.*

The symptoms of Mr. Sigmon's error of recognition deficit were not subtle. As Dr. Shaffer explained, Mr. Sigmon's error of recognition deficits announced themselves loudly many times over, including, most significantly, Mr. Sigmon's belief that he could convince Becky Barbare to reconcile, despite her breaking up with him. *Id.* at 2. This included his belief that he just needed to talk to Ms. Barbare alone so he could convince her to come back to him. *Id.*

Mr. Sigmon's allocution during sentencing was similarly a direct result of his error of recognition. Mr. Sigmon was convinced "that if he could explain his point of view, jurors would

come to understand and agree with his irrational beliefs . . . and be less likely to sentence him to death." *Id.* Mr. Sigmon believed that showing jurors how he had packed and prepared to talk to Becky while waving around Polaroids of her half-naked would convince them of his love for her and his remorse for killing her parents. Instead, as the media reported, Mr. Sigmon appeared "agitated, impulsive, tearful, speaking in a rambling matter, and profane[]," and jurors were more repulsed than convinced and sentenced Mr. Sigmon to death. *Id*. at 1, 5. *See Sears,* 561 U.S. at 945–46 (organic brain damage that caused "perform[ance] at or below the bottom first percentile in several measures of cognitive functioning and reasoning" is "significant mitigation evidence.").

C. Childhood trauma and abuse caused Mr. Sigmon to turn to alcohol and drugs which only intensified Mr. Sigmon's severe mental illness and neurocognitive deficits.

In addition to mental illness and neurocognitive dysfunction, Mr. Sigmon's vulnerabilities included trauma resulting from an abusive and neglected childhood. Mr. Sigmon's father, Ronnie, was a violent alcoholic who physically abused his wife, Virginia, and their children. Ex. N, 2014 Affidavit of Virginia Wooten at ¶ 4. From a young age, Mr. Sigmon, the oldest sibling, often found himself the punching bag for his father when he was trying to protect his mother. As his mother described:

> Ronnie did not normally beat our children, but my son Brad, being the oldest of our children, would often get in the middle of the physical altercation trying to protect me when Ronnie was assaulting me. Beginning at about 6 years of age, Brad began trying to get his dad, Ronnie, to stop beating me. Brad would say things like, "Don't hit my mama."
>
> When Brad was about 10 or 12 years old, Brad would physically get between me and his dad, and try to grab Ronnie's hands. Ronnie would knock him out of the way or shove him or slap him. This happened a lot.

> When Brad was around 15 years old, his dad had returned from Thailand where he had been stationed in the military. Ronnie and I got into an argument. Ronnie hit me multiple times in the face and my glasses scratched my face up and left marks. Brad tried to intervene to protect me and Ronnie punched Brad and knocked him down.

Id. at ¶¶ 4-6. These beatings were not isolated incidents, but rather were frequent and consistent:

> There are many other incidents which I could relate where Ronnie hit or punched Brad when Brad was trying to protect me from Ronnie during a physical and violent fight.
>
> There are numerous other incidents when Brad was a child where Ronnie would assault me and Brad would try to help me and get between us, then Brad would get hit or punched by Ronnie.

Id. at ¶¶ 6-7.

Mr. Sigmon's siblings corroborated the volatility of their parents' marriage, the physical abuse in their home, and how violent their father became when he drank too much. "My parents didn't have a great marriage. When my dad drank, and even when he did not, he would sometimes get physical and violent with my mom."

> [Virginia] and my father, Ronnie Sigmon, had verbal arguments where they yelled and screamed at each other in front of us children. They also became physically aggressive with each other when they would argue. When I was seven or eight years old, my father had been drinking and pushed my mom so hard that she fell against the washing machine and broke her finger.

Ex. O, 2024 Declaration of Starlette Sigmon Coffey at ¶ 2. Mr. Sigmon's siblings watched as Brad would try to intervene to help his mother and protect his younger siblings and would get punched or knocked out. Ex. E, 2024 Declaration of Davey Sigmon at ¶ 14; Ex. G, 2024 Declaration of Kelley Sigmon McDonald at 1-2. Yet Brad's brothers describe that "Brad was

never a fighter. This is probably why my dad picked on Brad, to toughen him up." Ex. E, 2024 Declaration of Davey Sigmon at ¶ 22.

Brad's sister, Kelley, also describes their "family life growing up []as chaotic and filled with abuse." Ex. G, 2024 Declaration of Kelley Sigmon McDonald at 1-2. Kelley recalls both verbal and physical abuse at the hands of her alcoholic father and explained that her brothers bore the brunt of the physical abuse – because their father expected them to be tough and not "sissies." *Id.*

To further toughen his children, Ronnie gifted each of them with their own gun at a young age. Davey was given a .22-single shot rifle when he was only seven years old. And Ronnie allowed the siblings to create their own firing range – inside the house.

> It was a brick fireplace that we put wood inside and covered with plywood, and then we decorated the plywood covering with targets. My siblings and I, including my sisters, would shoot our guns at the target from the kitchen. I cannot believe that no one ever got hurt. I realize now how dangerous that was.

Ex. E, 2024 Declaration of Davey Sigmon at ¶ 11. "Sometimes when my dad was drinking, he would just stare in the mirror and draw on himself with his pistol. Our dad would also point a gun into his mouth, and we were constantly afraid he was going to blow his brains out in front of us." *Id*. at ¶ 5.

"Dad was a pretty harsh disciplinarian," Davey recalls. *Id*. at ¶ 12. "When we got in trouble, he would have us pull down our pants and he would spank us with a belt. He would take me, Mike, and Brad to the bedroom for our spankings." *Id*. Virginia also sometimes beat her children with a belt when they misbehaved, and Ronnie once used a whip to beat Mike. Ex. O, 2024 Declaration of Starlette Sigmon Coffey at ¶ 4. Davey remembers that Brad left home in his

late teens because "he couldn't take the physical and verbal abuse at my dad's house anymore." Ex. E, 2024 Declaration of Davey Sigmon at ¶ 16.

Mr. Sigmon's mother often left home as well. Virginia "would disappear from the home for days or weeks at a time ..." Ex. O, 2024 Declaration of Starlette Sigmon Coffey at ¶ 3. Indeed, Virginia regularly left her five children at home alone on the weekends to go and stay with her boyfriend. Divorce records document Virginia's regular absence and neglect in leaving her children to fend for themselves. *See* Ex. P, 1974-1975 Sigmon Divorce Records. In fact, after their divorce, Ronnie was granted full custody of the children, and Virginia was only permitted to visit them if supervised. *Id*.

Unfortunately, after the divorce, Ronnie took the children to live with his girlfriend, Pat, and her children. In Pat's home, the physical and psychological abuse from Ronnie continued and was exacerbated by Pat. Kelley describes Pat as being just as violent and scary as their father; during one incident, she pulled a gun on Brad because she wanted him to leave the house. Ex. G, 2024 Declaration of Kelley Sigmon McDonald at 1-2. Pat ensured that her own children were treated better than the Sigmon children. *Id.* For example, Pat's children received new clothing while the Sigmon children did not. *Id.* Pat also encouraged Ronnie to physically "discipline" the Sigmon children while her children were not even spanked. Most egregious was Pat's hatred for Brad and her ultimate refusal to allow him to stay in her home – rendering him homeless as a teenager. *Id.*

It is not a surprise, given this tumultuous and traumatic childhood that Brad turned to drugs and alcohol to cope with stress and loss of relationships as an adult. Well-established clinical research demonstrates that children who grow up in homes where there is unpredictable violence are far less able to cope with stress and challenging situations as adults. *See, e.g.,* Al

Odhayani A, Watson WJ, Watson L., *Behavioural consequences of child abuse,* CANADIAN FAMILY PHYSICIAN, 2013;59(8):831-836 (systematic literature review explaining that "children who experience parental abuse or neglect are more likely to show negative outcomes that carry forward into adult life, with ongoing problems with emotional regulation, self-concept, social skills, and academic motivation, as well as serious learning and adjustment problems, including academic failure, severe depression, aggressive behavior, peer difficulties, substance abuse, and delinquency"); Phyllis L. Crocker, *Childhood Abuse and Adult Murder: Implications for the Death Penalty*, 77 N.C. L. REV. 1143, 1157-66 (1999) (reviewing psychological and medical "research on the correlation between childhood abuse and adult violence"); Dorothy Otnow Lewis et al., *Neuropsychiatric, Psychoeducational, and Family Characteristics of 14 Juveniles Condemned to Death in the United States*, 145 AM. J. PSYCHIATRY 584, 586-87 (1988) (finding fifty percent of death sentenced juveniles in survey suffered from psychosis and almost all were severely abused as children).

As Dr. Shaffer described in his report, "the developmental consequence of familial child abuse is often complex posttraumatic stress disorder. In male abuse survivors this frequently results in substance abuse and reactive behavior when the security of the survivor is challenged by circumstances." Ex. L, 2021 Report of Dr. Robert Shaffer at 5. Dr. Maddox also emphasized the impact of violence and neglect on Mr. Sigmon, explaining that "victims of trauma often have associated substance abuse issues as adults" and tumultuous intimate relationships, just like Mr. Sigmon. Ex. A, 2021 Report of Dr. Donna Maddox at 2, 5.

D. No jury or court has ever heard this complete evidence.

The true mitigation and explanation for Brad's crimes and his behavior is, as Dr. Shaffer concluded, a singular and "devastating convergence of his brain damage, mental illness, and

personal traumas." *Id.* For Mr. Sigmon, "the distorted perceptions caused by his error-recognition deficit combined with his . . . hypomanic episodes," the ever-present "dread and apprehension from his PTSD," and the accelerants of his "pre-crime intoxication and pre-trial withdrawal from illegal substances and mental health medications" combined to overwhelm him completely, leaving "him simply unable to . . . appreciate the consequences of his . . . actions." *Id.* As Dr. Shaffer notes, it is likely that this convergence had rendered him psychotic and incompetent at the time of his trial.

Each aspect of this picture is indisputably mitigating. Mr. Sigmon's mental illnesses and organic brain damage fit within categories of evidence that the Supreme Court has repeatedly identified as powerfully mitigating. *See, e.g., Porter v. McCollum*, 558 U.S. 30, 36 (2009) (finding prejudice in part because of unpresented neuropsychological testing showing "brain damage that could manifest in impulsive, violent behavior"); *Rompilla v. Beard*, 545 U.S. 374, 392 (2005) (new sentencing hearing required in part due to unpresented testing that revealed "organic brain damage"); *Council*, 380 S.C. at 177 (recognizing the mitigating value of the defendant's "frontal lobe brain dysfunction" in a capital case). Similarly, evidence of childhood trauma is well-accepted as highly mitigating and is one of the most frequent grounds on which courts order new trials for Sixth Amendment violations. *See, e.g., Porter*, 558 U.S. at 43 (holding that it was unreasonable for the state court "to discount to irrelevance the evidence of Porter's abusive childhood, especially when that kind of history may have particular salience for a jury evaluating Porter's behavior in his relationship with Williams."); *Wiggins*, 539 U.S. at 535; *Williams v. Taylor*, 529 U.S. 362, 397-98 (2000); *Council v. State*, 380 S.C. 159, 177, 670 S.E.2d 356 (2008) (all three cases recognizing the mitigating value of childhood abuse and granting relief from death sentences in part on this basis).

If anything, trial counsel's obligation to identify contributors and causes for Mr. Sigmon's behavior was amplified here, as the question of sentence was the only issue at trial. Rather than explore what underlay this forest of red flags, however, trial counsel attributed them to depression—a condition that would manifest more nearly the opposite of Mr. Sigmon's behavior—and an unpleasant personality. While trial counsel was able to present evidence of Mr. Sigmon's depression diagnosis, this did little to fully apprise the jury of Mr. Sigmon's mental fragility leading up to the crime, following the crime and during his trial. Instead, trial counsel left room for the State to improperly characterize Mr. Sigmon as "evil" rather than providing evidence to show that Mr. Sigmon was in fact suffering from a manic episode exacerbated by drug and alcohol use, and withdrawal from antidepressants in the days before, during, and after this horrific crime. After not being medicated for nearly a month prior to his rash allocution to the jury, trial counsel did not raise the issue of Mr. Sigmon's competency to the trial court. And the jury was left to believe that Mr. Sigmon was simply an evil person and that it had no other option but to sentence him to death.

If the jury had known this information, there is a more than reasonable chance it would have changed at least one juror's vote. It is only because of trial counsel's deficiencies, discussed infra, that his jury heard none of it, and this Court is hearing it only now.

II. Executing Brad Sigmon would deny fundamental fairness and shock the universal sense of justice because his inexperienced trial attorneys failed to identify and interview key witnesses, put other critical witnesses on the stand without interviewing them beforehand, and failed to follow-up on obvious leads that would have led to the discovery of this powerful mitigating evidence, including Mr. Sigmon's severe mental illness, neurocognitive dysfunction, and history of childhood trauma.

A defendant's Sixth Amendment right to the effective assistance of counsel is violated when counsel's performance was deficient, in that it fell below accepted professional norms and

objective standards of reasonableness, and where that deficient conduct prejudiced the defendant—meaning that confidence in the reliability of the verdict is undermined, and there is a reasonable probability of a different result in the absence of counsel's errors. *Strickland v. Washington*, 466 U.S. 668, 688, 693-94 (1984). In the context of a capital sentencing proceeding, prejudice is shown if there is a reasonable probability that just one juror would have voted for life imprisonment over death, but for counsel's deficiencies. *Wiggins v. Smith*, 539 U.S. 510, 537 (2003) (in a capital post-conviction case involving a claim of ineffective trial counsel, the question is whether there is "a reasonable probability that at least one juror would have struck a different balance."); S.C. Code § 16-3-20(C) (a jury shall not recommend a death sentence unless unanimous). Mr. Sigmon's case far surpasses this standard and merits relief pursuant to the Court's original writ authority to correct denials of fundamental fairness.

A. Trial counsel failed to interview critical sentencing-phase witnesses, including Mr. Sigmon's parents and siblings.

Mr. Sigmon was represented at trial by John Abdalla and Frank Eppes. Abdalla, who was designated as lead counsel, was an Assistant Public Defender in Greenville County. Ex. Q, 2014 Abdalla Affidavit ¶ 1. Abdalla had never tried a capital case before, or even served as counsel on a capital case in any capacity. Ex. R, 2008 Abdalla Deposition at 8. Second chair, Frank Eppes, was a private attorney who handled civil cases, had no felony trial experience, and in the criminal realm dealt primarily with guilty pleas and misdemeanor trials. Ex. S, 2014 Eppes Affidavit ¶ 2. Eppes had never previously tried a case where he had to select a jury. App. 178 (Eppes stating, "you're the first juror I've ever done voir dire with in my life, so I hope you will bear with me a little bit."). Abdalla and Eppes were so green when it came to trying a serious criminal case, they did not even realize that South Carolina law allowed them both to give

closing arguments at the sentencing phase, and to decide the order of those arguments. Ex. Q, 2014 Abdalla Affidavit ¶ 7; Ex. R, 2014 Eppes Affidavit ¶¶ 3, 5.

Inexplicably, Abdalla agreed to take a backseat to Eppes. Ex. R, 2014 Eppes Affidavit, ¶ 2. Eppes instructed Abdalla to handle the mitigation investigation, but retained the responsibility of "[d]eciding on which family or other community witnesses to call to testify" and that this would be "largely [his] decision." *Id.* at ¶ 7. Eppes claimed that his "focus [was] on Becky Larke, her background, and her relationship with Brad Sigmon, *and not on the mitigating circumstances*." *Id.* (emphasis added). Given Mr. Sigmon's repeated confessions, of course, mitigating circumstances were the only reasonable, conceivable focus for trial.

Eppes has admitted that he and Abdalla did not conduct interviews of critical witnesses for the sentencing phase: "[t]he only mitigation information that I had, *including the questions that I asked of the family witnesses*, was given to me by our mitigation investigator." *Id*. at ¶ 7 (emphasis added). In a case where his client's life was at stake, putative lead counsel failed to conduct any sentencing-phase interviews himself, and as a result, never spoke with (or called to testify) critical and quintessential mitigation witnesses—Mr. Sigmon's four siblings[3] and the son of Becky Larke, Troy Barbare, Jr., who was willing to testify on Mr. Sigmon's behalf even though he had killed Troy's grandparents and shot his mother. Ex. R, 2014 Eppes Affidavit, ¶ 8; Ex. Q, 2014 Abdalla Affidavit, ¶ 4; Ex. T, 2014 Troy Barbare Jr. Affidavit, ¶ 3.

[3] Mr. Sigmon's brothers, Mike and Davey Sigmon, report that, at most, counsel may have spoken with them in court during trial, though Mike had explicitly approached counsel and asked to testify. Ex. R, 2014 Eppes Affidavit, ¶ 8; Ex. Q, 2014 Abdalla Affidavit, ¶ 4; Ex. D, 2024 Declaration of Davey Sigmon, ¶¶ 24-25; Ex. F, 2024 Declaration of Mike Sigmon, ¶ 17. Similarly, counsel never interviewed Mr. Sigmon's sisters, Starlette and Kelley, or called them as witnesses. Ex. O, 2024 Declaration of Starlette Sigmon Coffey, ¶ 17; Ex. G, 2024 Declaration of Kelley Sigmon McDonald.

The three witnesses that counsel did call to testify at sentencing—Mr. Sigmon's mother and father and his son, Robbie—were not interviewed by counsel prior to trial either. They were called to the stand after meeting with counsel just moments prior to their testimony. According to Robbie, he "was not interviewed before the trial by any of my father's attorneys or by anyone" and only met "very briefly" with one of the attorneys before he was called to the stand to testify. Ex. U, 2014 Robbie Sigmon Affidavit, ¶ 2. Similarly, Mr. Sigmon's father does "not recall ever being interviewed by either of Brad's lawyers before the trial in 2002"—he met with one of the attorneys "very briefly" at the courthouse "just before [he] testified." Ex. V, 2014 Ronnie Sigmon Affidavit, ¶ 7.[4]

Finally, trial counsel called Brad's mother Virginia Wooten to testify, but did not "spend [ ] a lot of time with" her and failed to ask her any questions about the effect that her husband Ronnie's alcoholism had on her and Brad. Ex. N, 2014 Virginia Wooten Affidavit, ¶ 8.

B. State post-conviction counsel were deficient in the same ways as trial counsel.

For their part, Mr. Sigmon's post-conviction attorneys neither presented evidence nor alleged that Mr. Sigmon's trial attorneys were ineffective in failing to present the jury with the full contours of his mitigating evidence. Neither post-conviction attorney conducted interviews of Mr. Sigmon's family members and instead had an investigator interview only "*some* of Brad Sigmon's family members." Ex. W, 2014 Hank Ehlies Affidavit, ¶ 3; Ex. X, 2014 Teresa Norris Affidavit, ¶ 3. The only family members with whom state postconviction counsel had personal

[4] The extent of trial counsel's carelessness in this regard is encapsulated by the fact that they did not even realize at the time of trial that Mr. Sigmon's father, Ronnie—one of their most important family witnesses—had been a correctional officer with the South Carolina DOC for about five years. Ex. Q, 2014 Abdalla Affidavit, ¶ 2; *see also* Ex. V, 2014 Ronnie Sigmon Affidavit, ¶ 7 (Ronnie explaining that, before he testified, trial counsel did not ask about his employment as a correctional officer).

contact were Brad's sons, Robbie and Brandon Sigmon, but even that was only "by telephone once or twice." Ex. W, 2014 Hank Ehlies Affidavit, ¶ 3. Accordingly, trial counsel's ineffectiveness, and the mitigating evidence they failed to uncover and present, was never presented to this Court for postconviction review.

C. As a result of counsel's poor representation, neither Mr. Sigmon's jury nor any court has considered the compelling mitigating evidence of his severe mental illness, neurocognitive deficits and traumatic childhood—evidence which helps to explain the crime and his actions thereafter and weighs in favor of a life sentence over a death.

The failure to interview key mitigation witnesses is well-recognized by the courts as falling well below professional norms in capital cases and any objective measure of reasonable performance. *See Walker v. State*, 407 S.C. 400, 403-04, 756 S.E.2d 144 (2014) (affirming determination that trial counsel was deficient for failing to interview an alibi witness despite being aware of that witness and the potentially helpful information they had); *Ard v. Catoe*, 372 S.C. 318, 331-32, 642 S.E.2d 590 (2007) ("while the scope of a reasonable investigation depends upon a number of issues, at a minimum, counsel has the duty to interview potential witnesses and to make an independent investigation of the facts and circumstances of the case.") (internal quotations and citation omitted); *Porter v. McCollum*, 558 U.S. 30, 39 (2009) (finding trial counsel deficient in part due to their failure to "interview any members of Porter's family); *Browning v. Baker*, 875 F.3d 444, 472 (9th Cir. 2017) (explaining that the government did not challenge the state court's holding that it was deficient performance for counsel to call a witness to stand without interviewing him). Because Mr. Sigmon's trial counsel abandoned their basic duty to interview key mitigation witnesses, this Court must find them deficient.

Counsel also failed to follow up on leads that, despite their failure to investigate, presented themselves and would have inspired reasonable counsel to follow up. This, too, was

constitutionally deficient. *See Walker*, 407 S.C. at 403 (counsel deficient where she had notes indicating a need to interview defendant's girlfriend, but never followed up); *Ard*, 372 S.C. at 333-34 (counsel deficient for failing to follow-up on a vague but potentially helpful gunshot residue report by a State expert, which would have yielded favorable testimony); *Williams v. Stirling*, 914 F.3d 302, 315 (4th Cir. 2019) (counsel deficient for failing to conduct investigation despite known "red flags" indicating their client had fetal alcohol syndrome).

It simply cannot be considered a reasonable strategic decision for counsel to fail to pursue entire categories of evidence that would have amplified and supported what they already planned to present. *See Sears*, 561 U.S. at 947-51 (counsel presented substantial evidence about how defendant's execution would affect his family, but failed to present complementary evidence that demonstrated defendant's traumatic upbringing and cognitive impairments); *Bagwell v. State*, 410 S.C. 259, 268, 763 S.E.2d 630 (Ct. App. 2014) (counsel deficient where they did not pursue DNA testing that would have supported defendant's testimony regarding his alibi and whereabouts during the crime); *Thomas v. Clements*, 789 F.3d 760, 765, 769 (7th Cir. 2015) (counsel deficient for failing to call an expert pathologist to provide forensic testimony consistent with and supportive of the defendant's account of the crime). In this case, Mr. Sigmon's trial counsel were plainly deficient in their failure to develop and present evidence that would have persuasively expanded on what little information the jury already heard.

When counsel's deficient performance prejudices the defendant in a capital trial, such that there is a reasonable probability that just one juror would have made a different sentencing decision had the attorney performed properly, a new sentencing hearing is required. *See Wiggins*, 539 U.S. at 537; S.C. Code § 16-3-20(C). In this case, Mr. Sigmon's deficient attorneys failed to uncover and present a range of substantial mitigating evidence, including his severe mental

illness, cognitive impairment, and childhood trauma, that neither the jury nor this Court has ever heard and that dramatically impacted his conduct just before and at the time of the offense, his competency to stand trial and his conduct during trial, and the jury's weighing of the aggravating and mitigating circumstances. Under these circumstances, it would be fundamentally unfair to permit Brad Sigmon's execution to go forward.

III. This Court's 2005 proportionality review of Mr. Sigmon's death sentence fails to account for the compelling mitigating circumstances presented here that have never been considered by any court or jury; and similar death eligible cases in which death was not sought or was sought but not imposed.

In *Moore v. Stirling*, 436 S.C. 207, 871 S.E.2d 423 (2022), this Court held that limiting proportionality review to those cases that resulted in a death sentence does not comport with the statutory language of S.C. Code. Ann. § 16-3-25. Expressing a "concern that restricting our statutorily-mandated proportionality review to only similar cases where death was actually imposed is largely a self-fulfilling prophecy ... [and] will almost always lead to the conclusion that the death sentence under review is proportional," this Court expanded the permissible pool of comparative cases to those murders that would have been death-eligible but did not result in a death sentence. *Moore*, 436 S.C. at 217, 871 S.E.2d at 429 (quoting *State v. Dickerson*, 395 S.C. 101, 125, 716 S.E.2d 895, 908, n.8 (2011)). As this Court explained, this expanded proportionality review is "essential to the [death penalty] statute passing constitutional muster in the absence of another, comparable safeguard." *Moore*, 436 S.C. at 222, 871 S.E.2d at 431.

In *State v. Owens*, No. 2024-001397, this Court applied that safeguard and provided Freddie Owens with a second proportionality review. Ex. Y, September 12, 2024 Order Denying Relief in *State v. Owens*. This Court explained in *Owens* that "looking at the aggravating circumstances present in other cases is an obvious point for comparison" when analyzing the proportionality of a death sentence, but also highlighted the importance of considering the

character and record of the individual offender, including mental illness and criminal history. *Id*. at 11. With this explanation, the Court considered evidence of Mr. Owens' character and criminal history, the comparative non-capital murder cases Mr. Owens submitted, and a study conducted by Drs. Frank Baumgartner and Kaneesha Johnson finding the death penalty is disproportionately applied in South Carolina. *Id*.

Like Mr. Owens, Mr. Sigmon is entitled to similar review, as his death sentence was also found by this Court to be neither excessive nor disproportionate in 2005–prior to the discovery of his bipolar disorder, neurocognitive deficits, and related trauma, and prior to the advent of the corrected review endorsed in *Moore. Sigmon*, 366 S.C. at 556-557, 623 S.E.2d at 650. When that corrected review is applied, Mr. Sigmon's death sentence stands out as disproportionate in light of: (1) his severe mental illness and history of childhood trauma; (2) similar death eligible cases in which death was sought but not imposed, and similar death eligible cases in which death was not sought; (3) capital cases used for comparison by this court during Mr. Sigmon's direct appeal; and (4) a study of the South Carolina death penalty by Drs. Baumgartner and Johnson.

A. Mr. Sigmon's death sentence is disproportionate where this court never considered his severe mental illness and history of childhood trauma

As discussed in Sections I and II, *supra*, Mr. Sigmon suffers from mental illness and organic brain damage, and has a history of childhood trauma that has not been considered by any court or jury. As several experts have described, Mr. Sigmon's illnesses and impairments gravely impacted his behavior at the time of the crime, his confession, his expressions of remorse, and his statements at trial. Moreover, the physical abuse and neglect that Mr. Sigmon endured as a child had repercussions into adulthood, causing post-traumatic stress disorder and other neuropsychological issues.

Per the proportionality statute and this Court's caselaw, these aspects of Mr. Sigmon's life and character are relevant for this Court's review, which requires a determination of "[w]hether the sentence of death is excessive or disproportionate to the penalty imposed in similar cases, considering both the crime *and the defendant. See* S.C. Code Ann. § 16-3-25(C) (emphasis added). *See also, State v. Copeland*, 278 S.C. 572, 590, 300 S.E.2d 63, 74 (1982) (a death sentence must be "neither excessive nor disproportionate in light of the crime and the defendant."). This Court was deprived of this available, critical information during its 2005 review because of trial counsel's ineffectiveness. But this Court's 2005 review also failed even to mention this provision of the proportionality standard and fails to discuss or even reference to Mr. Sigmon's character and characteristics.

Accordingly, this Court's 2005 review was incomplete. In undertaking the corrected review promulgated in *Moore*, this Court should consider the full scope of Mr. Sigmon's mitigating evidence, which is now finally before it. Given this, and the compelling nature of this new evidence, this Court should find that Mr. Sigmon's death sentence is disproportionate.

B. Mr. Sigmon's death sentence is disproportionate to other death-noticed double homicide cases with similar circumstances and aggravators

Mr. Sigmon's death sentence is disproportionate to other death-noticed double homicide cases that, like his case, include State allegations or a jury finding that the murders were committed during a burglary and involved torture or serious and extensive injuries to the victims tantamount to torture. *Sigmon*, 366 S.C. at 554-555. However, unlike Mr. Sigmon's case, in these cases, either the judge or jury rejected the death penalty in favor of a prison term, or the State did not seek a death sentence. These cases are summarized in the attached exhibit. *See* Ex. Z, Comparative Case Summaries.

C. The majority of cases used in this Court's proportionality review in 2005 have been overturned.

A comparison of Mr. Sigmon's case to the capital cases selected for comparison by the South Carolina Supreme Court during his direct appeal in 2005 establishes that Mr. Sigmon's death sentence is disproportionate. In its 2005 review, this Court identified seven cases with similar aggravating circumstances where a death sentence had been imposed. *Sigmon*, 366 S.C. at 556-557, 623 S.E.2d at 650 (citing *State v. Vazquez*, 364 S.C. 293, 613 S.E.2d 359 (2005) (involving a double murder committed in the course of robbery); *State v. Hill*, 361 S.C. 297, 604 S.E.2d 696 (2004) (involving a triple murder); *State v. Wise*, 359 S.C. 14, 596 S.E.2d 475 (2004) (involving a quadruple murder committed in the course of burglary); *State v. Simmons*, 360 S.C. 33, 599 S.E.2d 448 (2004) (involving a murder committed in the course of physical torture); *State v. Shuler*, 353 S.C. 176, 577 S.E.2d 438 (2003) (involving a triple murder committed in the course of burglary); *State v. Weik*, 356 S.C. 76, 587 S.E.2d 683 (2003) (involving a murder committed in the course of burglary and physical torture); *State v. Hughey*, 339 S.C. 439, 529 S.E.2d 721 (2000) (involving a double murder committed in the course of burglary)). However, in the last ten years, four of those cases have been remanded for resentencing, resulting in life sentences instead of death sentences.[5] Of the remaining three case, two of the men waived their appeals prior to the completion of post-conviction review[6] and were executed, and one died of

[5] *See Vasquez v. State*, 388 S.C. 447 (2010) (remanding for resentencing); https://www.myhorrynews.com/news/crime/conway-man-sentenced-to-death-for-2002-burger-king-killings-gets-life-instead/article_6dda3cde-5797-11e3-94d9-001a4bcf6878.html; *Simmons v. State*, 416 S.C. 584 (2016) (resentenced to life without parole); *Weik v. State*, 409 S.C. 214 (2014); https://www.postandcourier.com/news/solicitor-suggests-firing-squad-for-south-carolina-executions-after-another-killer-gets-reprieve/article_7395defc-02a7-11e8-97c5-674c036524d8.html (resentenced to life); https://www.indexjournal.com/news/resentencing-takes-man-from-death-to-life-in-prison/article_6f0e33d7-03cd-55fe-9370-895e5aa46338.html (Hughey resentenced to life).

[6] *Hill v. State,* 377 S.C. 462 (2008);

natural causes before the completion of his appeals.[7] Under these circumstances, it can hardly be said that the imposition of a death sentence in Mr. Sigmon's case is not excessive or disproportionate.

D. The South Carolina Death Penalty Study

An in-depth analysis of the reliability and proportionality of South Carolina's death penalty system study conducted by Frank R. Baumgartner, Ph.D., the Richard J. Richardson Distinguished Professor of Political Science at the University of North Carolina at Chapel Hill, and Kaneesha R. Johnson, Ph.D., a Postdoctoral Fellow in the Political Science Department at the University of North Carolina at Chapel Hill, proves that Mr. Sigmon's death sentence is disproportionate. Ex. AA, South Carolina Death Penalty Study. This study examined several large datasets describing South Carolina homicide cases and capital prosecutions: all death sentences imposed in South Carolina from 1974 to 2023, *see id.* at 67-74; FBI Supplemental Homicide Reports documenting all homicides reported in South Carolina from 1976 to 2021, *see id.* at 75-76, 83-89; and a database of the 384 death notices issued in South Carolina from 1977 to 2021, supplemented by information from court documents and news articles describing the actual or potential aggravating circumstances in each case, *see id.* at 90-91.

In their 60-page analysis of this data, Baumgartner and Johnson conclude that South Carolina's use of the death penalty is not driven by the "rational" factors one would expect to influence the frequency of capital punishment in a non-arbitrary system. For example, a higher rate of aggravated homicides, regardless of whether one examines the data by time or place, does

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https://www.augustachronicle.com/story/news/2008/06/07/met-461383-shtml/14668637007/. *See also*, https://thetandd.com/news/hastings-wise-a-volunteer-for-execution-his-is-scheduled-this-evening/article_931d7ad1-28eb-53a8-aa06-cd5bf8d05595.html.

[7] John Shuler died of a heart attack in 2013. *See* https://thetandd.com/news/locl/crime-and-courts/triple-killer-shuler-dies-in-prison/article_35fa40da-9cde-11e2-a443-001a4bcf887a.html.

not lead to a greater number of death sentences. *Id*. at 11-19. Moreover, even statutory aggravating factors do not reliably predict which cases will result in death and which will not.

> [O]nly one legally relevant factor, prior murder conviction, is related to the outcome in a statistically significant manner as intended by the legislature. One factor, a child victim, is almost statistically significant ($p = 0.163$, or one chance in 10) but in the wrong direction, surprisingly predicting lower odds of a death sentence when it is present. Armed larceny also shows a lower, rather than a higher, likelihood of a death sentence, though this is also not statistically significant. And the entire model explains only a small fraction of the outcome. *In sum, aggravating circumstances, when taken together, explain little of the outcomes of these death-noticed cases.*

Id. at 48-49 (emphasis added); *see also id.* at 52-53 (reaching the same result using a different approach to analyzing the statistics).

Instead, factors such as the county where a homicide occurred, the time period in which it occurred, and the race and gender of defendants and victims, correlate with death-sentencing results. A regression analysis further demonstrates that the arbitrary influences of race, gender, geography, as well as the time the case occurred, all persist even after controlling for aggravating circumstances in the 384 death-noticed cases between 1977 and 2021. "In sum, aggravating circumstances, when taken together, explain little of the outcomes of these death-noticed cases." *Id*. at 48-49. Using a full logistic regression model, Baumgartner and Johnson revealed that "aggravators do not hold much explanatory value," while the presence of a white victim makes a case about 2.6 times as likely to result in death. Similarly, the model showed that death-sentencing rates vary widely depending on the circuit in which the case occurred, and pre-2000 cases have dramatically increased odds of receiving a death sentence—about seven times greater—than post-2000 cases. *Id.* at 51-54.

Baumgartner and Johnson summarize their findings this way:

> A proportionate system would be a reliable and predictable one. The South Carolina death penalty system is neither reliable nor predictable except by incorporating legally irrelevant factors such as time period, Noticing Circuit, and demographic factors such as race and gender of the victim and offender. We can do a better job in explaining which cases lead to a death sentence by using these factors than we can by focusing only on legally relevant factors such as the presence of various statutory aggravators or the number of aggravators present in any case. In a proportional system where the death penalty was reliably handed down only in the most deserving cases, we would not see these geographic, demographic, or time-dependent factors coming to light, and we would see much greater impact for legally relevant aggravators. In sum, the system as a whole is neither reliable, proportionate, nor equitable.

Id. at 10.

For these reasons, Mr. Sigmon is entitled to have this court review the proportionality of his death sentence, taking into account the new mitigating evidence of his character and criminal history, the comparative non-capital murder cases, and the fact that the death penalty is disproportionately applied in South Carolina.

CONCLUSION

Because of the repeated mistakes of his prior attorneys and the limitations of proportionality review at the time of his appeal, no jury or court has ever heard the full spectrum of reasons why Brad Sigmon does not deserve to be executed. Mr. Sigmon therefore asks the Court to stay his execution, remand this petition, and assign the matter to a circuit judge for the conduct of an evidentiary hearing.

Respectfully submitted, this, the 20th of February, 2025.

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