

THE STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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Feb 27 2025

S.C. SUPREME COURT

BRAD KEITH SIGMON,

Petitioner,

v.

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

Respondents.

Appellate Case No. 2025-000309

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**\*\*EXECUTION DATE SET for MARCH 7, 2025, at 6:00 p.m.\*\***

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**RETURN TO PETITION FOR A WRIT OF HABEAS CORPUS**

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On February 20, 2025, Petitioner, Brad Keith Sigmon, filed a petition for writ of habeas corpus essentially seeking review of the sufficiency of his mitigation case at trial and another proportionality review. He also seeks to stay his imminent execution so he can once again attempt to challenge his sentence in this request for review in this Court's original jurisdiction. (Appellate Case No. 2025-000187, Motion filed February 20, 2025). Respondent opposes the petition, and the stay, and submits the petition for original jurisdiction review should be denied.

Sigmon, who admittedly has had ample opportunity to litigate these and other claims during the 20-plus years of litigation since his July 2002 trial, has not presented any claim in his present petition that warrants the extraordinary exercise of original jurisdiction. He does, at various points in the petition, complain about the qualifications and performance of original trial counsel; however, the history of this litigation shows that trial counsel's performance has been

repeatedly reviewed without any finding that counsel's representation fell below constitutional standards. It was reviewed in the 2006 PCR action with the assistance of veteran capital litigation attorneys meeting the heightened qualification provided by statute and enforced by this Court; and, subsequently, both trial counsel and PCR counsel's performance was reviewed in federal habeas corpus proceedings with new and veteran capital litigation attorneys. In both of these collateral actions, counsel re-investigated and explored Sigmon's background and mental health. Sigmon, in fact, relies in large measure on affidavits used in the prior federal habeas action. (*See* Pet. Exhibits D, N, T, U, V, W, X). Moreover, his "new" affidavits largely tread the same ground regarding Sigmon's background as shown in various presentations from the time of trial through the federal habeas action.

Sigmon does allege a newly diagnosed bipolar disorder (by two of the same doctors who has previously examined him and did not make an earlier diagnosis of the condition) is available. Yet, he must admit that such diagnosis, if accurate, was indicated in his 2021 testing, (*see* Pet. Exhibit L at 5; Exhibit M at 1), and some of his "new" evidence is inextricably tied to age decline which, clearly, would not have been available at the time of trial.

At any rate, trial counsel did address the effects of depression and the ingestion of cocaine and alcohol driven by major depression, as feeding the brutality of the murders by presentation of detailed testimony from psychopharmacologist Dr. Alexander Morton. (*See* Return Attachment 2). At best, Sigmon has shown a developing difference in medical opinion (which, of course, may mean more changes as more age-related considerations are presented), but he has not shown that any of the testimony at the time of trial (or for that matter, information developed for PCR or federal habeas) is somehow infirm. Notably, Sigmon previously petitioned for original jurisdiction habeas corpus review (again when execution was imminent). Represented by two of the same attorneys who represent him here, counsel then raised only one

allegation, arguing that certain prison conditions evidence should not have been allowed at his sentencing. (Appellate Case No. 2021-00584). This Court denied review. (Appellate Case No. 2021-000584, Order, June 16, 2021). This Court should similarly decline to exercise its original jurisdiction and deny this new petition in its entirety. It is exceedingly difficult to argue that the alleged failure in trial mitigation, which had been questioned in federal habeas, is now so critical to fair sentencing that the March 7, 2025, execution should be delayed, when it was not raised in the 2021 action to this Court or at any time before this 2025 petition. Lastly, his request for a second proportionality review should be denied. Sigmon received a proportionality review in his direct appeal as required by statute. *See State v. Sigmon*, 366 S.C. 552, 556, 623 S.E.2d 648, 650 (2005) (“in comparison with similar cases, Sigmon’s sentence was neither excessive nor disproportionate to his crime”). *See also* S.C. Code Ann. § 16-3-25 (E) and (F). Nothing requires him to receive another.

Original jurisdiction habeas corpus review is not simply another opportunity for an inmate to continue to raise issues or re-raise failed issues. It is certainly not a vehicle to be used to delay a duly imposed and just execution. This Court has not rewarded litigants for delaying their actions. It should not do so here. The petition should be denied.

#### **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, 538, 564 S.E.2d 83, 84 (2002) (quoting *Gibson v. State*, 329 S.C. 37, 39, 495 S.E.2d 426,428 (1998)). “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). As such, original jurisdiction habeas is reserved for the gravest of constitutional errors. *Butler v. State*, 302 S.C.

466, 468, 397 S.E.2d 87, 88 (1990) (“We caution that not every intervening decision, nor every constitutional error at trial will justify issuance of the writ. Rather, the writ will issue only under circumstances where there has been a ‘violation, which, *in the setting*, constitutes a denial of fundamental fairness shocking to the universal sense of justice.”) (quoting *State v. Miller*, 16 N.J. Super. 251, 84 A.2d 459 (1951)). Therefore, the need for the exercise of original jurisdiction review is 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.*, at 480, 671 S.E.2d at 603.

### **CLAIMS IN THE PETITION**

Sigmon seeks review of the following claims in this Court’s original jurisdiction, which he presents in the form of statements as follows:

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.

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.

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.

The claims (or statements) do not clearly present any constitutional claim for consideration that would even facially support original jurisdiction habeas review.

Neither of his first two assertions rest on constitutional provisions but merely reference to mitigation evidence. The presentation of mitigation evidence is generally a combination of the sufficiency of counsel's investigation and reasonableness of counsel's strategic decisions. Because Sigmon does not allege a Sixth Amendment violation, he has not alleged a constitutional claim on investigation and/or presentation that this Court could review in context of his case to consider whether its violation "constitutes a denial of fundamental fairness shocking to the universal sense of justice." *Green, supra*. Similarly, in the third, Sigmon's basis is the state proportionality review conducted by this Court and mandated by state statute. Again, he fails to assert a constitutional claim. The petition is insufficient on its face to allow the exercise of original jurisdiction.

#### **ABBREVIATED STATEMENT OF THE CASE.**

##### *Facts of the Double Murder and Sigmon's Capture*

The State will rely on the general summary from the Fourth Circuit Court of Appeals opinion from the federal habeas corpus action:

In 2001, Sigmon and Rebecca Barbare had been in a romantic relationship for approximately three years and lived together in a trailer near the trailer of Barbare's parents, David and Gladys Larke. *Sigmon v. State*, 403 S.C. 120, 742 S.E.2d 394, 396 (2013). But early in that year, after Barbare ended their relationship and moved in with her parents, Sigmon became increasingly obsessed with Barbare. *Id.*

On April 26, 2001, Sigmon and an acquaintance, Eugene Strube, spent the evening drinking alcohol and smoking crack cocaine. *Id.* Early in the morning of April 27, Sigmon told Strube that when Barbare left to take her children to school the next morning, Sigmon would go to the Larkes' home, "tie her parents up," and "get ahold of" Barbare. J.A. 40-41.

Later that morning, after Barbare left to take her children to school, Sigmon took a baseball bat from beneath his trailer and entered David and Gladys Larke's home. *Sigmon*, 742 S.E.2d at 396. When

David Larke, upon seeing Sigmon, called to Gladys Larke to bring him his gun, Sigmon struck David Larke in the back of his head with the bat several times. *Id.* Thereafter, Sigmon chased Gladys Larke into the living room and struck her several times in the head. *Id.* at 397. Sigmon then went to the kitchen, saw David Larke was still moving, and struck him again. *Id.* And after seeing that Gladys Larke was also still moving, Sigmon struck her several more times. *Id.* David and Gladys Larke died within minutes.

Sigmon retrieved David Larke's gun and waited for Barbare to return. *Id.* When she arrived, Sigmon forced her into her car and drove her away. *Id.* But during the ride, Barbare jumped from the car, causing Sigmon to pull over, chase after her, and shoot her. *Id.* Barbare survived the shooting. *Id.*

Meanwhile, Sigmon fled but was captured in Tennessee ten days later after his mother helped authorities locate him. *Id.* Upon his capture, Sigmon confessed to the murders. *Id.*

*Sigmon v. Stirling*, 956 F.3d 183, 189 (4th Cir. 2020), *as amended* (Apr. 15, 2020).

#### *Indictment and Trial*

Sigmon was indicted on multiple charges for the above criminal acts.<sup>1</sup> On July 15, 2002, the State called for trial the two murder charges and the burglary, first degree charge (the charges that dealt specifically with entry into the Larkes' home and their murders). On July 17, 2002, after extensive qualification and *voir dire*, the jury was selected and sworn. The guilt phase began on July 18, 2002. On July 19, 2002, the jury returned guilty verdicts on both murder charges and the burglary charge. After observing the mandatory twenty-four (24) hour waiting period, *see* S.C. Code § 16-3-20(B), the penalty phase began on July 20th. On the 21st, after deliberations, the jury found, beyond a reasonable doubt, three (3) statutory aggravating circumstances:

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<sup>1</sup> These include: assault and battery with intent to kill (2001-GS-23-7627); kidnapping and possession of a weapon during the commission of a crime of violence (2001-GS-23-7628); burglary, first degree (2001-GS-23-7629); murder of David Larke (2001-GS-23-07630); murder of Gladys Larke (2001-GS-7631); and grand larceny (2001-GS-23-07632). The charges included his crimes against the Larkes and against their daughter.

- 1) two or more persons were murdered by the defendant by one act or pursuant to one scheme or course of conduct;
- 2) the murder was committed while in the commission of burglary;
- 3) the murder was committed while in the commission of physical torture.

(PCR App. p. 2118).<sup>2</sup>

The jury assessed that death was the appropriate sentence. (PCR App. p. 2118).

#### *Direct Appeal*

Sigmon timely pursued a direct appeal and raised one claim related to the murder indictments. On December 19, 2005, this Court issued an opinion affirming the convictions and sentence and subsequently denied a timely petition for rehearing on January 13, 2006. *State v. Sigmon*, 366 S.C. 552, 623 S.E.2d 648 (2006). The Supreme Court of the United States denied certiorari review on June 26, 2006. *Sigmon v. South Carolina*, 548 U.S. 909 (2006).

#### *First Post-Conviction Relief Action*

Sigmon filed his initial application for post-conviction relief (PCR) on October 13, 2006. This Court assigned the Honorable J.C. Nicholson, Jr., jurisdiction over the PCR action. Judge Nicholson appointed William H. Ehlies, Esq., and Teresa L. Norris, Esq., to represent Sigmon. After investigation, PCR counsel filed an amended application on June 4, 2008, that included a claim that trial “counsel failed to adequately present evidence of applicant’s mental state” in failing to present a video of Sigmon’s confession to demonstrate “the very emotional nature of Sigmon’s initial confession,” and a failure to “call and present” Dr. Ernest Martin “to testify about [Sigmon’s] depressive disorder.” (*See* PCR App. 2480).

On July 22, 2008, PCR counsel moved for summary judgment. A hearing was convened on August 4, 2008. PCR counsel pursued the motion. When the motion was denied, PCR counsel

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<sup>2</sup> The PCR appendix is contained in its entirety in Appellate Case No. 2009-136506.

rested and did not present any witnesses or other evidence. (*See* PCR App. pp. 2758-61). The State called former trial counsel Frank L. Eppes, Esq. to testify.

On July 14, 2009, Judge Nicholson issued a written Order of Dismissal, later filed on July 20, 2009. (PCR App. pp. 2846-2893). Sigmon timely appealed.

Mr. Ehlies continued representation on appeal along with Robert M. Dudek, Chief Appellate Defender of the South Carolina Office of Indigent Defense, Division of Appellate Defense. Counsel filed a petition for writ of certiorari in this Court on April 21, 2010. Certiorari review was granted in part, however, the Court affirmed the denial of relief on March 20, 2013. *Sigmon v. State*, 403 S.C. 120, 742 S.E.2d 394 (2013). Sigmon petitioned for review in the Supreme Court of the United States, which was denied on November 18, 2013. *Sigmon v. South Carolina*, 571 U.S. 1028 (2013).

*Initial Federal Habeas Corpus Proceedings Pursuant to 28 U.S.C. § 2254*

Sigmon requested and received a stay from the federal district court to pursue federal habeas review. The district court, in addition to appointing prior PCR counsel to continue in the federal proceedings, also appointed new, qualified counsel to review the case for any ineffective assistance of trial counsel issues that PCR counsel may have missed. *Sigmon v. Stirling*, 956 F.3d at 190. New counsel, Jeffrey P. Bloom, Esq., filed a motion to amend, and also moved to stay the federal action and return to state court to attempt to seek another PCR with an eye toward exhausting the procedurally defaulted claims in the amendment. Mr. Bloom also moved for substitute counsel, and Marta Kahn, Esq., was appointed to replace Mr. Ehlies and Ms. Norris. Over objection, a stay was granted on September 30, 2014, for Sigmon to attempt to litigate his successive PCR litigation.

*Second Post-Conviction Relief Action*

On August 21, 2014, Sigmon filed a second PCR action. He alleged, in relevant part, the

following, which mirrored the procedurally defaulted claims he attempted to raise in the federal habeas corpus action:

(a) Sigmon was denied his right to effective assistance of counsel per the Sixth and Fourteenth Amendments, and according to state law, by the failure of trial counsel to interview and call as witnesses additional family members and community witnesses, and by inadequately interviewing those family members that they did call as witnesses, and/or by failing to call the county detention center psychiatrist as a witness, and/or by failing to introduce an available video exhibit, such that substantial mitigating evidence was not presented and Sigmon was prejudiced thereby at the capital sentencing phase of his trial.

(b) Sigmon was denied his right to effective assistance of counsel per the Sixth and Fourteenth Amendments, and according to state law, including per S.C. Code § 16-3-26(B)(1), and in that the “second chair” attorney – who was not qualified under State law to serve as lead counsel – nonetheless served and acted as “lead counsel,” contrary to the order of the court appointing counsel, and without objection from actual lead counsel, such that the trial attorneys rendered ineffective assistance of counsel, and the petitioner was prejudiced thereby at the capital sentencing phase of his trial.

(C/A 2014-cp-23-4632, Application filed August 21, 2014).<sup>3</sup>

Of note here, successive PCR counsel also indicated, in a supplemental memorandum, that trial counsel might not have been qualified under the statute relevant for death penalty trials. In the Order Granting Respondent’s Motion for Summary Judgment and Dismissing Action as Successive and Barred by the Statute of Limitations, Judge Nicholson rejected the viability of a claim that prior PCR counsel was deficient in failing to consider the claim or that Sigmon was prejudiced:

This Court notes that Respondent attached portions of a deposition in the Reply to the Supplemental Memorandum that support that prior PCR counsel questioned Mr. Abdalla about his

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<sup>3</sup> Sigmon raised five claims. The remaining claims alleged ineffective assistance regarding the stun-belt used at trial and not “being aware” both attorneys could argue at closing, and an ineffective assistance of appellate counsel claim for failing to raise a *voir dire* issue.

prior felony experience before the capital trial in July 2002. Not only do these pages indicate that PCR counsel did investigate, the responses tend to support qualification under the statute. In his direct testimony, Mr. Abdalla stated he was qualified with five (5) years of experience in “serious felony charges,” referencing his six (6) years with the solicitor’s office before going to the public defender’s office in Spartanburg, which was before going to the Greenville County public defender’s office prior to being assigned this case. (Reply Attachment, Abdalla Deposition, pp. 5-8). In cross-examination, Mr. Abdalla revealed he had a case in 1999 or 2000 in Spartanburg that was “going to be a capital case” but plead out. (Attachment, Abdalla Deposition pp. 45-46). Moreover, again as Respondent points out in their Reply, both well qualified PCR counsel were aware of the state statutory requirement for trial counsel from their work in other cases. See, for example, Thomas Treshawn IVEY, Petitioner - Appellant, v. William D. CATOE, Commissioner, South Carolina Department of Corrections; Charles M. Condon, Attorney General, State of South Carolina, Respondents - Appellees., 2001 WL 34379133 (4th Cir. Nov. 14, 2001), Brief of Appellant, at 55-56. There is nothing in this record to indicate the issue or issues on qualification of trial counsel could not have been raised in the prior proceeding

(Appellate Case No. 2017-001119, Notice of Appeal, Order at n. 4).<sup>4</sup>

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<sup>4</sup> Sigmon alleges that co-counsel, Frank Eppes, “had never previously tried a case where he had to select a jury,” citing a portion of the capital *voir dire* process in advance of Sigmon’s capital trial. (Pet. at 23). To the contrary, Mr. Eppes testified, “At the time of the Sigmon trial I had trial experience, but I didn’t have expansive felony experience trial experience.” (PCR App. 2764). He could not, however, confirm that he had felony trial experience before the representation, but testified that he would “have to go back and look.” (PCR App. 2765). In clarification, in the affidavit submitted in the prior federal habeas proceedings, Mr. Eppes asserted that he, at the time of the representation, “had handled a large number of complex civil cases,” and numerous guilty pleas, and probably some misdemeanor trials,” however, he “had not yet had any actual felony trials.” (Pet. Exhibit S, ¶ 2). That did not render him unqualified for appointment and certainly shows no Sixth Amendment issue. The district court, in fact, found Sigmon’s claim was not substantial in light of the fact that counsel was properly appointed under the relevant state statute, rejected Sigmon’s argument of “per se” ineffective assistance, and determined that no prejudice under a constitutional right occurred in the proceedings. (C/A 8:13-cv-01399-RHB, ECF No. 234 at 42-44).

One other point should be considered here. Sigmon attempts to show glaring general jury selection inexperience by citing to the jury *voir dire* at trial and asserts “Eppes had never previously tried a case where he had to select a jury. (Pet. 23). Sigmon simply shows that he rests on a misunderstanding of South Carolina *voir dire* process. While judges normally conduct *voir dire* in non-capital cases, see S.C. Code § 14-7-1010 and 1020, both the judge and attorneys question jurors in capital *voir dire*, see S.C. Code § 16-3-20(D). It would make sense that Eppes had not questioned jurors before in non-capital cases.

Judge Nicholson dismissed the action by order dated February 10, 2017, and filed March 3, 2017. On August 21, 2017, this Court dismissed the notice of appeal for failure to “show ... an arguable basis for asserting that the determination by the lower court was improper.” *See* Rule 243(c), SCACR.

### *Continuing Federal Habeas Corpus Proceedings*

Following this Court’s dismissal of the notice of appeal, the stay of the federal proceedings was lifted on August 30, 2017. Sigmon then filed a memorandum in support of his amended application on October 2, 2017. Respondents filed a return to the amended application on November 21, 2017, and again moved for summary judgment. After a response in opposition and reply, the magistrate issued a Report and Recommendation on July 9, 2018, and recommended Respondent's motion for summary judgment be granted. On September 30, 2018, the district court agreed and granted Respondent's motion. Sigmon timely appealed. (*See* District Court, District of South Carolina, C/A 8:13- cv-01399-RBH). Sigmon appealed the denial of relief. The Fourth Circuit Court of Appeals, after briefing and argument, affirmed. *Sigmon v. Stirling*, 956 F.3d 183, 193 (4th Cir. 2020), *as amended* (Apr. 15, 2020).

On appeal, Sigmon argued that “trial counsel failed to find and present significant mitigating evidence at the sentencing,” and argued that PCR counsel were ineffective in failing to present the issue in PCR. Further, in order to avoid the procedural bar to raising this claim in federal proceedings, he argued he could show the “failure to present additional mitigation evidence [was] a substantial” claim. *Id.*, at 198-199.

Trial counsel presented mitigation evidence through three experts, five jail employees, five family members, and a volunteer who led a Bible class at the jail. However, Sigmon alleges trial counsel failed to elicit sufficient mitigating evidence from these witnesses and failed to call additional mitigation witnesses. Specifically, Sigmon argues the following evidence should have also been offered: Sigmon’s

father, his brother, and Pastor Don McKellar—the pastor at Sigmon’s mother and stepfather’s church—could have testified about Sigmon’s positive adjustment to prison. Barbare’s son, who was 12 years old at the time of the trial, could have testified that Sigmon treated him like a son. Sigmon’s mother could have testified that Sigmon’s father pushed or hit Sigmon during his childhood. She and other family members could have testified that Sigmon began working at age 15 to support his family. Greenville County Detention Center staff psychiatrist Dr. Ernest Martin could have testified about Sigmon’s history of depression. And Dr. Martin and Pastor McKellar could have testified to Sigmon’s remorse.

...

Sigmon has not made out a substantial claim that trial counsel performed deficiently. Generally, trial counsel are not required to “investigate every conceivable line of mitigating evidence no matter how unlikely the effort would be to assist the defendant at sentencing.” *Wiggins*, 539 U.S. at 533, 123 S.Ct. 2527.

*Sigmon v. Stirling*, 956 F.3d at 199.

The Fourth Circuit found most of the allegedly “missed” evidence was merely cumulative of that evidence presented at trial, but did acknowledge Sigmon’s argument that “no witnesses testified to any physical abuse or domestic violence during his childhood.” *Id.*, at 200. However, the court found that Sigmon had failed to show his trial counsel were deficient, noting they “used a mitigation expert, as suggested by the ABA guidelines for death penalty cases,” and that “the mitigation team interviewed several of the people Sigmon now argues should have been asked to testify.” *Id.* The Fourth Circuit likewise turned away trial counsel’s post-trial affidavits containing assertions that they were unaware of “some of the mitigating evidence Sigmon argues should have been presented,” not only because it was mostly cumulative, but also because it resolved that Sigmon failed to show prejudice. *Id.* Even so, the court continued to rule, in the alternative, that if Sigmon could show ineffective assistance of trial counsel, he could not show “PCR counsel were ineffective in failing to raise this issue.” *Id.*, at 200-201. Sigmon attempted to rely on the fact that PCR counsel indicated they did not personally interview potential witnesses, but the Fourth Circuit

noted that PCR counsel (similar to trial counsel) had the services of a mitigation investigator who did conduct the interviews. *Id.*, at 201.

The Supreme Court of the United States denied Sigmon’s petition for review. 141 S. Ct. 1094, 208 L. Ed. 2d 545 (2021).

*Prior Original Jurisdiction Action.*

On June 3, 2021, in advance of a previously expected execution notice, Sigmon filed a “Stay Motion and Petition” in this Court. He later filed a memorandum in support of his motion and petition on June 7, 2021. Sigmon asked this Court to review an ineffective assistance of trial counsel issue, specifically, an issue previously raised in the PCR action regarding a failure to object to a portion of the State’s cross-examination on prison conditions. This Court denied the petition finding that Sigmon “failed to show a constitutional violation constituting a denial of fundamental fairness shocking to the universal sense of justice,” citing Rule 245(a), SCACR. (Appellate Case No. 2021-000584, Order, June 16, 2021).

**REASONS WHY THE PETITION SHOULD BE DENIED**

Primarily, the petition should be denied as Sigmon relies on no constitutional claim to review under the “fundamental fairness shocking to the universal sense of justice” standard for original jurisdiction habeas actions. *Green, supra*.

Further, the petition should be denied as the record of review in this matter is simply massive. Relief has simply not been warranted. It is not warranted here. The prior litigation includes a full jury trial, direct appeal, PCR, PCR appeal, a successive PCR action and appeal, federal habeas review and appeal, and a prior petition for habeas review in this Court’s original jurisdiction. Sigmon has had several sets of well-qualified attorneys, funding for investigation and re-investigation, and ample time for case development. Sigmon is due no further review. This Court should deny the petition.

*Mental Health Investigation  
Bipolar Diagnosis and Allegation of Cognitive Difficulties*

Respondents address Sigmon’s first two assertions in the petition as one because each shares the same basic factual premise.

As a first matter, Respondents note nothing in any of the affidavits presented to this court cast any doubt on the details of this most brutal double murder that Petitioner unquestionably committed. The brutality of the murder of two victims in the victims’ own home – in particular, the uncontested fact that Petitioner was lying in wait for the opportunity to surprise and beat the couple repeatedly with a baseball bat, cracking their skulls with crushing blows stands in vicious contrast to a new (twenty years after trial) bipolar diagnosis or new family affidavits regarding minimally “new” evidence on background. This does not undermine the jury’s sentencing determination. *See generally Wong v. Belmontes*, 558 U.S. 15, 28 (2009) (“Schick’s mitigation strategy failed, but the notion that the result could have been different if only Schick had put on more than the nine witnesses he did, or called expert witnesses to bolster his case, is fanciful.”); *Woodford v. Visciotti*, 537 U.S. 19, 27 (2002) (finding state court determination that no *Strickland* prejudice occurred was not unreasonable where state court acknowledged counsel failed to present evidence of “troubled” family background, “feelings of inadequacy, incompetence, inferiority,” and possible “seizure disorder,” but found circumstances of aggravation “severe” such as a planned, execution-style murder during armed robbery and prior offenses against other individuals). The additional minor mitigation effect, if any, would likely be blunted or eradicated not only by consideration of the record as a whole, but the inconsistency in diagnoses that Sigmon’s new affidavits now present.<sup>5</sup> To be sure, Sigmon’s mental state was not overlooked at trial, during

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<sup>5</sup> Though the new diagnosis appears based in part on patterns of illness within the family, (*see* Exhibit B at 5), notably, Davey Sigmon’s diagnosis of bipolar is not in his 2014 affidavit but appears in his 2024 affidavit. (*Compare* Exhibit D, ¶ 4 (diagnosed with major depression only) *with* Exhibit E, ¶18, revealing diagnosis of bipolar). Of note, Davey Sigmon’s affidavit reflects that Sigmon suffers from depression – which is consistent with the prior diagnosis. Exhibit E, ¶ 18.

PCR, or during federal habeas proceedings, nor was his troubled background. As the Fourth Circuit found regarding alleged ineffective assistance of counsel for “missed” mitigation:

... Much of the evidence Sigmon argues should have been discovered and presented was cumulative of evidence presented to the jury. *See Morva v. Zook*, 821 F.3d 517, 530 (4th Cir. 2016) (“That the mitigating evidence [the defendant] insists should have been presented at trial is merely cumulative to the evidence actually heard by the jury further undercuts [the defendant’s] claim for deficient performance.”). Several jail employees and an expert testified to Sigmon’s adaptability to prison. Positive character evidence came in through a jail volunteer and several family members, including Sigmon’s parents and son. A social work expert testified about Sigmon’s difficult childhood, including the fact that Sigmon worked as a teenager to support his family. Dr. Martin’s diagnosis of major depressive disorder came in through another defense expert. Trial counsel introduced evidence of Sigmon’s remorse through Sigmon’s mother, through a jail employee, and through their closing argument, which referred to Sigmon’s call to his mother before his capture. Sigmon argues no witnesses testified to any physical abuse or domestic violence during his childhood. However, this potentially mitigating fact—in light of the testimony from the social work expert and Sigmon’s family about his difficult childhood more generally—is not on a par with the substantial mitigation evidence missed by counsel in *Williams*, *Gray*, and *Wiggins*.

*Sigmon*, 956 F.3d at 200.

It is the same here.

As to the family background, that was carefully researched at all levels, beginning at trial. One of the defense’s trial experts was clinical social worker Shirley Furtick. She made a “bio-psycho social assessment” of Sigmon, interviewing his family and reviewing a plethora of records. She opined, “Brad’s earliest childhood was one of losses and neglect.” She testified in detail about family and history, along with her opinions on Petitioner’s child and adult issues and challenges. (*See* Return Attachment 1, Trial Transcript pp. 1974-2022 (qualification as expert and direct examination of clinical social worker Shirley Furtick)).<sup>6</sup> The federal habeas

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<sup>6</sup> Though Judge King dissenting in the Fourth Circuit opinion would have allowed the mitigation to be explored further at a federal hearing, *i.e.*, it was not “facially insubstantial,”

corpus proceeding 2014 affidavits from prior PCR counsel indicate they, too, had help in contacting witnesses and investigating. (Pet. Exhibits W, ¶¶ 3,4, and X, ¶¶ 3, 4). Whether there were personal interviews by trial counsel or PCR counsel, or even federal habeas corpus counsel, matters not in considering depth of investigation and availability of information. Indeed, this Court has instructed that dependence on social historians is generally preferable to trial counsel's review of records for purposes of a mitigation case. *Council v. State*, 380 S.C. 159, 173-174, 670 S.E.2d 356, 363 (2008). Sigmon's argument to the contrary should be rejected. (See Pet. at 26-27).

As to Dr. Martin's opinion, Sigmon does not deny that trial counsel was very aware of his diagnosis. As Mr. Abdalla asserted in his 2014 affidavit, counsel considered Dr. Martin's diagnosis

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*Sigmon*, 956 F.3d at 212, he set out in his dissent a good summary of the mitigation case presented by the defense at trial:

The defense presented three expert witnesses in the sentencing phase. Alex Morton, an expert in addictions and psychopharmacology, concluded based on an examination of Sigmon and a review of medical and psychiatric records that Sigmon (1) suffers from "a medical disorder of the brain called recurrent major depressive disorder" (a diagnosis made by a psychiatrist, and not by Morton); (2) has "chemical dependency disorders, specifically regarding cocaine, alcohol and marijuana, and some past use of other substances"; and (3) "was using a number of substances to treat his depression and temporarily was probably helping ... but overall made that depression worse." See J.A. 320-21. Morton also testified that Sigmon's use of alcohol and crack cocaine prior to the murders could have caused him to be violent, agitated, and impulsive. Regarding the evidence that Sigmon repeatedly struck the Larkes with a baseball bat, Morton explained that "repetitive behaviors" are consistent with cocaine use, and that "it's almost like once [Sigmon] started, he did not stop, and that is something you see with animals that are being studied with cocaine." *Id.* at 345-46.

*Sigmon*, 956 F.3d at 205. Respondent submits that this shows that even if the assertions were further explored at a hearing, Sigmon could not, on this record, show ineffective assistance. Even so, this summary underscores once again that though Sigmon may argue a different mitigation might have made a difference, he has never shown counsel was ineffective in investigation and crafting the expansive defense present at trial.

of “Major Depression was helpful as evidence of a major mental illness.” (Pet. Exhibit Q, ¶ 3). PCR counsel was similarly aware. Not only did PCR counsel allege that Dr. Martin should have been called at trial, PCR counsel withdrew the allegation at the hearing, though Dr. Martin was present at the courthouse. (Pet. Exhibit X, ¶ 4). Dr. Martin’s diagnosis, which he made over months of seeing and/or treating Sigmon while awaiting trial, was also a fact rested upon by Dr. Morton in his evaluation and referenced in Dr. Morton’s testimony.

Dr. Morton testified he had “consulted with Ernest Martin,” and that “Dr. Martin diagnosed him as having major depressive disorders ... depression.” Dr. Morton further testified not only of that diagnosis but also explained the process and effects of drugs and alcohol use in worsening the depression. (Return Attachment 2).

Again, the only thing presented at this time is added inconsistency, and the troubling aspect that the 2021 and later evaluations, especially concerning potential cognitive issues, are influenced by aging and other post-trial medical events. The prior diagnosis made without the post-crime and post-trial changes due to age are still a matter of record and would be available for comparison. Moreover, the new affidavits by close family members repeatedly indicate that Sigmon “was not himself” at the time surrounding the murders. (See Pet. Exhibit D, ¶2; Exhibit E, ¶ 22, Exhibit F, ¶ 15; Exhibit G, ¶¶ 45, 50, 54). That indicates an aberration, not a cycle of expected behavior from mental illness. Consider, too, that the presentation made at trial on the basis of medical and other expert opinions avoided the recognized aggravation that could be gleaned from a bipolar diagnosis. See *Feldman v. Thaler*, No. 3:07-CV-1284-P, 2011 WL 1666937, at \*11 (N.D. Tex. May 3, 2011) (recognizing reasonableness of conclusion that new bipolar opinion “presented a double-edged sword that could have supported the prosecution’s case for future dangerousness”).<sup>7</sup>

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<sup>7</sup> As a corollary to the argument on the new bipolar diagnosis, Sigmon suggests that medication and the diagnosis may have helped prevent or explain a closing statement by Sigmon

To the extent that Sigmon is attempting to claim ineffective assistance, this is not a substantial claim for all the reason the Fourth Circuit previously found. But in regard to a bipolar diagnosis specifically, the question to ask is why would counsel doubt the evidence and fact-supported explanations that they had? Counsel retained and consulted with experts and developed a viable and supported defense. That it was ultimately unsuccessful does not show ineffective assistance.

Lastly, Sigmon does not even attempt to show actual prejudice. First, as asserted, the evidence here is either cumulative and/or creates inconsistencies that weakens the defense. Second, as noted above, nothing presented here undermines the overwhelming evidence of guilt. And that evidence cannot be avoided. He waited all night in the home next to the Larkes, waited for “Becky” to leave to take her children to school, then entered the home of sixty-two (62) year old David Larke, surprised Mr. Larke in his kitchen, and struck him repeatedly with a baseball bat. Petitioner then saw Mr. Larke’s fifty-nine (59) year old wife enter the kitchen. Petitioner chased her back into her living room, where he repeatedly struck her with the same baseball bat. He returned to the kitchen and continued beating Mr. Larke. He then went back to the living room and continued beating Mrs. Larke. *Sigmon*, 956 F.3d at 189. Mr. Larke sustained a total of

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that counsel opined was “just awful.” (Pet. Exhibit S, ¶ 4). Yet, interestingly, defense counsel in referencing the statement to the jury focused on the emotion exhibited, not aggression. (Pet. Exhibit S, ¶ 4, 5). Sigmon does not offer a way that new evidence could be submitted at the argument stage and none is readily apparent. Therefore, the question remains whether the evidence could be submitted at trial generally, and as noted above, there is little benefit and a danger of significant prejudice. *Felder, supra*. At any rate, based on the affidavits offered, the jury would still hear from family that his actions in these crimes in their view was out of character and fueled by substance abuse. *See also* Attachment 3 (sentencing phase testimony of Sigmon’s father, “he’s made a mistake of course. He was always the peace maker. That’s what’s so shocking about all this. He’s the one that stopped the fights. He’s the one that would run from a fight. I used to think he might be a coward, but he just didn’t want the trouble. Had many good characters...”); *see also* Attachment 6, portion of Sigmon’s son Robbie Sigmon’s trial testimony (indicating no abuse by his father and a good relationship). Such inconsistency would also invite a fair argument that post-crime evaluation of a history or pattern of manic swings and aggression would appear far less credible.

nine (9) crushing blows to the skull (some likely while his head was on the floor), bruising on his ears, left shoulder, and a defense wound on the back of his right hand. His “skull was basically almost broken in two.” (Attachment 4, Tr. 1710-1716). The pathologist testified the injuries indicated that “these are not trivial swings with this bat. These are full force, great deal of energy transmitted, homerun type swings.” (Attachment 4, Tr. 1728). Mrs. Larke similarly received nine (9) injuries to her skull and had defensive wounds to her forearms, wrists, and elbows. Bruising indicated she attempted to put her arms up “across her head” in futile defense as the blows were inflicted. (Attachment 4, Tr. 1729). She had also inhaled blood into her lungs “indicating that she was alive following the injuries that caused her basilar skull fractures, and was breathing through these fractured sinuses and inhaling that blood down into her lungs.” (Attachment 4, Tr. 1727). The pathologist opined that both victims would have died in approximately three (3) to five (5) minutes from the severity of the beatings. (Return Attachment, Tr. 1730-1731). Further, as to his mental state and ability to think matters through, though questioned in this latest petition, the record shows that when his plans for “Becky” were thwarted, he followed a plan to leave the jurisdiction eventually ending up in Tennessee, successfully avoiding capture for 10 days. (Return Attachment 3). There is simply no reasonable probability of a different result. *Wong v. Belmontes, supra*.

Even so, Respondents maintain that Sigmon has failed in the first step for a viable petition – he has failed to present a constitutional claim.

#### *Proportionality Review*

Sigmon argues this Court should re-evaluate the proportionality of his sentence based on *Moore v. Stirling* and this Court’s September 12, 2024 order in *State v. Owens*. Sigmon is incorrect.

In *Moore*, this Court found that there was nothing to prevent it from reviewing cases where the death sentence was not imposed when conducting a proportionality review. *See* 436 S.C. 207,

226–27, 871 S.E.2d 433–34 (2022). And in *Owens*, the Court appeared to conduct at least a glancing proportionality review. See Order, *State v. Owens*, Case No. 2024-001397, at 9–11 (S.C. S. Ct. Sept. 12, 2024) [hereinafter, “*Owens Order*”]. Sigmon argues that, viewed in combination, these decisions demonstrate that he should get another proportionality review.

This argument might have some persuasive power—had it not been rejected in *Owens*. Nothing in *Owens* requires a second proportionality review of every death sentence. In fact, this Court found that “Owens’ claim that he is entitled to a proportionality review that includes cases in which the defendant was not sentenced to death is . . . without merit.” *Id.* at 10. That contradicts Sigmon’s attempt to invert the holding of *Moore*—that this Court is allowed to consider cases that did not result in a death sentence—to create a rule that this Court is not allowed to conduct a proportionality review without considering those cases. That is not supported by *Moore*, as this Court made clear in *Owens*. *Id.* (“In *Moore*, this Court held it is not required to limit the similar cases for proportionality review to only those cases in which the death penalty was imposed. However, there is no language in *Moore* suggesting a constitutional proportionality review *requires* the consideration of cases in which the death penalty was not imposed.” (citation omitted)).

That this Court gave *Owens* the courtesy of a proportionality review (or just an alternative reason for denial) does not require it to do so here. But even if it did, all of Sigmon’s reasons for this Court to reverse course on his proportionality claim fall short.

First, Sigmon asks this Court to reconsider his sentence from the ground up. He requests that this Court “consider the full scope of Mr. Sigmon’s mitigating evidence” and, if necessary “find that Mr. Sigmon’s death is disproportionate.” Pet. at 30. That misconstrues the purpose of a proportionality review.

Proportionality reviews are not mini-sentencing hearings. They are instead a final check on the jury system—not to make sure that the jury has reached the correct decision, but to ensure that

it has not reached a constitutionally impermissible one. This Court has said as much. “Whether this Court would impose a death sentence under the same circumstances is not within the permitted scope of this Court's appellate review. Rather, the Court's task in comparative proportionality review aims to ensure that a jury's decision was not the result of arbitrariness.” *Moore*, 436 S.C. at 229, 871 S.E.2d at 435. The U.S. Supreme Court has at least suggested as much. *See Zant v. Stephens*, 462 U.S. 862, 876, 103 S. Ct. 2733, 2742, 77 L. Ed. 2d 235 (1983) (finding that a previous decision upheld Georgia’s death penalty statute because the requirement of an aggravating factor combined with a proportionality review “adequately protected against the wanton and freakish imposition of the death penalty”).

Sigmon faults this Court for not considering his more recent mental illness diagnoses in its first proportionality review—but this Court’s considers a jury’s verdict after the jury has heard and weighed mitigating evidence against aggravating factors. As a result, his argument on this point is bound up in his allegations of ineffective assistance, *see supra*; after all, unless the jury’s verdict was deficient because of the lack of this evidence (and the failure of trial counsel to present it), then the proportionality review is not implicated as there will be no new sentencing warranting another review.

Next, Sigmon tries to discredit this Court’s previous proportionality review by patching together a collection of cases not considered then and the later developments in those cases that were considered. Neither approach shows that Sigmon should prevail.

For one thing, Sigmon’s new filing at times falls short of what this Court has called for when a petitioner wants to draw attention to other cases. *Moore v. Stirling*, 436 S.C. at 227, 871 S.E.2d at 434 (“Because only the records of cases in which there has been an appeal are readily accessible by this Court, if a defendant seeks the Court's consideration of a case that has not resulted in an appeal, the defendant shall submit to the Court an official record of the conviction

and sentence, including a trial transcript, for consideration in the Court's review.”). Sigmon provides no evidence that Colin Broughton, Todd Kohlhepp, or Antwain Adams have ever sought this Court’s appellate review; the only transcript provided for any of them comes from Adams’ guilty plea.

There is also a problem with Sigmon’s argument that some—it is worth noting, not all—of the cases this court considered in Sigmon’s first proportionality review have since resulted in resentencing: *Not one of them appears to have been reversed based on a proportionality review.* See *Vasquez v. State*, 388 S.C. 447, 450, 698 S.E.2d 561, 562 (2010) (granting PCR relief because prosecutor compared killings to September 11 attacks); *Simmons v. State*, 416 S.C. 584, 586, 788 S.E.2d 220, 222 (2016) (explaining that the PCR court vacated a death sentence based on intellectual disability); *Weik v. State*, 409 S.C. 214, 216, 761 S.E.2d 757, 758 (2014) (requiring new sentencing following PCR relief “[b]ecause of the lack of social history mitigation evidence”)<sup>8</sup>; Resp./Pet. Brf. of Resp., *Hughey v. State*, Case No. 2010-170387 (Aug. 29, 2014 S.C. S. Ct.) at 16–17, 47–48, 51–52 (explaining that the PCR court’s decision was based on flawed instructions about mercy neither objected to by trial counsel nor adequately briefed by appellate counsel). In other words, the original sentences were found erroneous because of other flaws that could have influenced the respective juries’ sentencing decision; neither this Court nor any other Court found as a matter of law that the sentences were not proportional. See *Moore*, 436 S.C. at 224, 871 S.E.2d at 432 (“We find this point unavailing as none of the cases were overturned for a reason that

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<sup>8</sup> The State does not dispute that a consideration of aggravating and mitigating circumstances can form part of the proportionality inquiry. *Owens* Order at 10–11. But the Court reviews those circumstances on appeal to make sure that the “jury’s decision was not the result of arbitrariness.” *Moore*, 436 S.C. at 229, 871 S.E.2d at 435. As a result, the lack of mitigation evidence being put before the jury has a qualitatively different impact on the jury’s initial death sentence than on this court’s review of that sentence for proportionality. Because the opinion of this Court in the *Weik* PCR case was based on whether the information was put before the jury in the first instance, it does not follow that the *proportionality review* was inherently flawed.

influenced any part of the Court’s analysis under subsection 16-3-25(C), including the proportionality review.”).

Regardless, there are other cases that make it clear that Sigmon’s death sentence is not so far outside the bounds of the jury’s guided discretion that it was disproportionate. In fact, this Court has held that cases like this one are precisely the kind most likely to produce a death sentence that is not disproportionate. *See State v. Dickerson*, 395 S.C. 101, 124, 716 S.E.2d 895, 908 (2011) (“In capital cases where the State proceeded on the aggravating circumstances of kidnapping, criminal sexual conduct, torture, or any combination thereof, this Court has routinely affirmed the sentence of death.”) (collecting cases); *see also State v. Tench*, 353 S.C. 531, 534, 579 S.E.2d 314, 315–16 (2003) (finding death sentence proportionate when the defendant claimed he originally intended to commit burglary until the victim fired on him).<sup>9</sup>

As to the Baumgartner-Johnson study that Petitioner asks this Court to consider: the Court, though finding another proportionality review “to include[] cases in which the defendant was not sentenced to death” was not warranted, already did so in *Owens*. After a brief mention of the study in the proportionality section of its Order, the Court “again definitively [found]” that the death sentence was not disproportionate. *Owens* Order at 11. *But see Thompson v. Aiken*, 281 S.C. 239, 242, 315 S.E.2d 110, 111 (1984) (“Prosecutorial discretion plays no role in” proportionality “review, yet the sole basis upon which this or any other petitioner could offer a showing of ‘patterns’ would be an argument based on disproportionate punishment. We are not persuaded and accordingly we recommend that the bench and bar focus attention upon real and substantial issues in future capital cases.”).

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<sup>9</sup> According to information provided by Sigmon’s Exhibit AA, the defendant in *Tench* died of natural causes.

Setting that aside, there is another thing Sigmon’s appeal to the Baumgartner-Johnson study lacks—any indication that it has anything to do with his case. The State does not concede that South Carolina’s death penalty is meted out disproportionately—but even if it was, Sigmon has not shown that it is disproportionate as applied to him.

South Carolina’s death penalty statute does not contemplate the use of social science studies in a proportionality review. The considerations about proportionality are supposed to consider the crime and the defendant, and the similarities of both to prior cases. *See* S.C. Code Ann. § 16-3-25(C) (West). Regression analyses are noticeably absent.

And it is not surprising that juries do not mechanistically apply the death penalty based on aggravating and mitigating factors. We do not want them to. *See* S.C. Code Ann. § 16-3-20 (West) (providing for a life sentence “[w]here a statutory aggravating circumstance is found and a sentence of death is not recommended by the jury”); *Rosemond v. Catoe*, 383 S.C. 320, 330, 680 S.E.2d 5, 10 (2009) (“It is proper to instruct a jury in a capital sentencing phase that it may recommend a life sentence for any reason or no reason at all, including as an act of mercy.”). Juries are given guided discretion on whether to impose the death penalty for the very reason that they will impose it selectively.

. . . 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); *cf. McCleskey v. Kemp*, 481 U.S. 279, 292 (1987) (holding, in challenge to death sentence based on Equal Protection Clause, that defendant “must prove that the decisionmakers in *his* case acted with discriminatory purpose” despite study claiming Georgia’s death penalty was carried out in a racially discriminatory manner); *cf. Woodson v. North Carolina*, 428 U.S. 280, 304 (1976) (“A process that accords no significance to relevant facets of the character and record of the individual offender or the circumstances of the particular offense excludes from consideration in fixing the ultimate punishment of death the possibility of compassionate or mitigating factors stemming from the diverse frailties of humankind.”) (plurality opinion).

Sigmon has shown no reason for this Court to grant a new proportionality review, and he has demonstrated no basis for this Court to come to a different conclusion even if it did. The petition should be denied.

*Law of the Case, Collateral Estoppel, Res Judicata*

There are other reasons to decline Sigmon’s invitation to revisit his proportionality review.

“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.”). This doctrine should apply here. Sigmon has already had one review by this Court, and this Court rejected his claim. *See State v. Sigmon*, 366 S.C. 552, 556–57, 623 S.E.2d 648, 650 (2005).

A new review is also barred by collateral estoppel and *res judicata*. See also *State v. Hewins*, 409 S.C. 93, 106, 111–12, 760 S.E.2d 814, 821, 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 be applied in general sessions 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)). Sigmon’s disagreement with this Court’s earlier decision does not remove its preclusive effect.

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.

The petition should be denied.

#### **THE PRESENT ACTION FRUSTRATES THE NECESSITY OF FINALITY.**

“[T]he principle of finality ... is essential to the operation of our criminal justice system” because “[w]ithout finality, the criminal law is deprived of much of its deterrent effect.” *Teague v. Lane*, 489 U.S. 288, 309 (1989). *Teague* added, “[t]he fact that life and liberty are at stake in criminal prosecutions ‘shows only that “conventional notions of finality” should not have as much place in criminal as in civil litigation, not that they should have none.’” *Id.* (Citation omitted). See also *Mackey v. United States*, 401 U.S. 667, 691(1971) (Harlan, J., concurring in judgments in part and dissenting in part). In observing the balance of equities disfavors last-minute delay, the Supreme Court continues to recognize: “Both the State and the victims of

crime have an important interest in the timely enforcement of a sentence." *Bucklew v. Precythe*, 139 S.Ct. 1112, 1133 (2019) (quoting *Hill v. McDonough*, 547 U.S. 573, 584 (2006)). At this time, it is appropriate to recall that “[c]orresponding to the right of an accused to be given a fair trial is the societal interest in punishing one whose guilt is clear after he has obtained such a trial.” *Gilbert*, 277 S.C. at 59, 283 S.E.2d at 182 (quoting *United States v. Tateo*, 377 U.S. 463,466 (1964)). The balance of equities tips far, far away from allowing Sigmon another review. Principles of finality weigh in favor of dismissal.

### CONCLUSION

For all the foregoing reasons, Sigmon’s petition should be denied.

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February 27, 2025

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**INDEX OF EXHIBITS TO THE RETURN  
TO PETITIOJN FOR WRIT OF HABEAS CORPUS**

**Feb 27 2025**

S.C. SUPREME COURT

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1. 2002 Trial Transcript pp. 1974-2022 (qualification as expert and direct examination of clinical social worker Shirley Furtick);
  2. 2002 Trial Transcript pp. 2089-2126 (qualification as expert and direct examination of psychopharmacologist Dr. Alexander Morton);
  3. 2002 Trial Transcript p. 2160 (partial direct testimony from Ronnie G. Sigmon, Defendant's father).
  4. 2002 Trial Transcript pp. 1704-1731 (direct testimony from pathologist Michael Ward).
  5. 2002 Trial Transcript pp. 1435-1439 and 1468-1472 (describing manhunt and capture).
  6. 2002 Trial Transcript pp. 1940-1941 (portion of direct testimony from Robbie Sigmon, Defendant's son).