STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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Mar 03 2025

S.C. 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.

REPLY TO RETURN TO PETITION FOR A WRIT OF HABEAS CORPUS

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Respondent's Return to Petition for a Writ of Habeas Corpus ("Return") provides this Court with two reasons that Mr. Sigmon's petition should be denied. Return at 5. First, Respondent alleges that Mr. Sigmon has raised no constitutional claim in his petition—an allegation that is demonstrably incorrect. Second, Respondent claims that the petition should be denied because "the record of review in this matter is simply massive"—essentially arguing that Mr. Sigmon has had his share of appeals and doesn't deserve another. Respondent ignores that this Court has authorized and reserved original writs so that it can intervene in situations such as this: when the ordinary course of appeals has not corrected constitutional errors that have resulted in a sentence of death, and where the now-imminent execution 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). Pretending that these errors have not been raised or cannot be heard is unavailing. For obvious reasons, this too is misleading as Mr. Sigmon was entitled under the constitution to each stage of the legal process in which he has participated—to now deny him the opportunity to have a court hear this evidence because he did so is frankly shocking to the universal sense of justice. Given this, this Court should issue a stay of execution, grant Mr. Sigmon's petition, and adjudicate the merits of Mr. Sigmon's constitutional claims.

I. Mr. Sigmon's constitutional claims are properly before this Court.

Respondent falsely characterizes Mr. Sigmon's claims in support of his petition as mere "statements" that present no constitutional claim for this Court's consideration. Respondent goes on to insist that Mr. Sigmon never alleges a Sixth Amendment violation nor relies on the constitution in support of his claims related to the ineffectiveness of his trial counsel. This allegation is preposterous and, frankly, baffling. Mr. Sigmon invokes the Sixth Amendment repeatedly, quotes from and uses language rooted in United States Supreme Court precedent

defining what the Sixth Amendment requires of counsel, and cites authority from the United States Supreme Court, federal Courts of Appeals, and this Court granting relief on claims of ineffectiveness of counsel under the Sixth Amendment. Petition at 2-3, 21-22, and 27.

Mr. Sigmon has clearly presented a Sixth Amendment claim—and, frankly, a well-recognized one that goes to the heart of counsel's constitutional obligations when representing a defendant facing a sentence of death. To state this claim once more, Mr. Sigmon contends that his trial counsel performed deficiently in failing to investigate and present readily available and powerfully mitigating evidence of Mr. Sigmon's bipolar disorder, neurocognitive deficits, and childhood trauma: evidence "the jury was deprived of...in violation of Mr. Sigmon's Sixth Amendment rights." Petition at 3, 22. Mr. Sigmon further alleged that there is a reasonable probability that, but for counsel's deficiencies, at least one of his jurors would have voted for a sentence of less than death. Petition at 27. This claim cites and details the deficient performance and prejudice prongs for an ineffectiveness claim as promulgated in *Strickland v. Washington*, 466 U.S. 668 (1984). If this is not a Sixth Amendment claim, what could be?

Moreover, as for Mr. Sigmon's proportionality claim, there is no question that this Court's proportionality review is rooted in the Eighth Amendment. We know because this Court has said so: in *Moore v. Stirling*, 871 S.E.2d 423 (2022), when explaining that proportionality review is "an essential component" of South Carolina's compliance with the Eighth Amendment requirements detailed in *Furman v. Georgia*, 408 U.S. 238 (1972). Specifically, in *Moore*, this Court recognized the Supreme Court's requirement that all states must have "a means to promote the evenhanded, rational, and consistent imposition of death sentences," determined that "some form of meaningful appellate review is likely still required to avoid the arbitrariness and inconsistencies deemed unconstitutional in *Furman*," and concluded that the "General Assembly

has specifically required comparative proportionality review as an essential component of South Carolina's capital sentencing scheme to avoid the arbitrariness discussed in *Furman...*and other cases." *Moore*, 871 S.E.2d at 431 (internal citations omitted).

This was further underscored in the concurring portion of Justice Hearn's separate opinion in *Moore*, where she explained her agreement with the majority that proportionality review has an Eighth Amendment dimension in South Carolina:

> Whether by virtue of the Eighth Amendment's ban on cruel and unusual punishment or the Fourteenth Amendment's protections of substantive due process, the underlying interests at stake [in Moore's state habeas petition] invoke more than merely an issue of state law. There can be no debate that a death sentence that is arbitrary and capricious is unconstitutional. *See Godfrey v. Georgia*, 446 U.S. 420, 428, 100 S.Ct. 1759, 64 L.Ed.2d 398 (1980) ("[I]f a State wishes to authorize capital punishment it has a constitutional responsibility to tailor and apply its law in a manner that avoids the arbitrary and capricious infliction of the death penalty.").

Moore, 436 S.C. at 231-232, 871 S.E.2d at 436. In Justice Hearn's words, "there can be no debate" that proportionality review functions as an Eighth Amendment protection in South Carolina. Mr. Sigmon said as much in his Petition: "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.'" Petition at 27.

Respondent may wish this was not *Moore*'s holding, but pretending does not make it so. Mr. Sigmon has asked this Court to provide him the proportionality review to which he is entitled under *Moore* and the Eighth Amendment. That, like his claims of ineffective assistance of counsel, cites and is rooted in his constitutional rights. Respondent's claims that Mr. Sigmon has not raised constitutional claims in his Petition are disingenuous and should be ignored.

II. Respondent's attempt to diminish the compelling mitigating evidence of bipolar disorder, neurocognitive dysfunction and trauma, never presented to any jury or court, misapprehends both the evidence itself and its mitigating nature

In addressing the newly discovered evidence of Mr. Sigmon's bipolar disorder, neurocognitive dysfunction, and childhood trauma—evidence that Mr. Sigmon alleges should have been presented by his trial counsel during his capital sentencing phase—Respondent instead urges this court to consider whether it "cast[s] any doubt on the details" of the murders. Return at 14. Mr. Sigmon has never disputed his guilt in these tragic crimes; he admitted that to his jury and has always expressed deep remorse. Mr. Sigmon has claimed that his counsel was ineffective for failing to investigate and present this powerful mitigating evidence at sentencing and that if jurors had heard it, there is a reasonable probability of leading just one juror to vote for life. Petition at 22. Mr. Sigmon's guilt is not at issue here, the absence of constitutionally effective trial counsel and the resulting prejudice is.

Respondent is next critical of the "inconsistency" in Mr. Sigmon's mental health diagnoses. Respondent fails to appreciate prior counsel's deficient use of Dr. Maddox—including the failure to request a psychological evaluation, failure to provide information as to Mr. Sigmon's family history or prior testing data—coupled with the limited time Dr. Maddox was authorized to observe Mr. Sigmon, which ultimately led to her erroneously diagnosing Mr. Sigmon with major depressive disorder. Petition at 9. Indeed, until now, a constitutionally sufficient mitigation investigation needed to inform a proper analysis of Mr. Sigmon's compromised mental health had never been undertaken. Petition at 20-22. Like Dr. Maddox, Dr. Martin's initial diagnosis of major depressive disorder was not based on a psychological evaluation or Mr. Sigmon's family history. But it was based on the limited information provided to him by Mr. Sigmon while he was in the jail. Had trial counsel thoroughly investigated Mr.

Sigmon's behaviors, Drs. Maddox and Martin could have come to this diagnosis much sooner. The issue here is counsel's failure to conduct even the most basic investigation and to follow up on obvious red flags; this is deficient performance under *Strickland. See Wiggins v. Smith*, 539. U.S. 510, 527 (2003).

The fact that Dr. Maddox and Dr. Martin did not correctly diagnose Mr. Sigmon during their pre-trial encounters with him does not invalidate this claim; indeed, it serves as a measure of the prejudice to Mr. Sigmon from his trial counsel's deficient failures to provide those experts with the family history and background materials needed for a true picture of his impaired mental health. The evidence now before this Court, and the experts available to relate how it explained Mr. Sigmon's conduct, were readily available at trial. Yet, trial counsel not only failed to conduct the investigation needed to develop it, but further constrained Dr. Maddox by hiring her for a limited purpose only. Trial counsel's deficiencies would implicate Mr. Sigmon's constitutional rights under any circumstances, but given that Mr. Sigmon had admitted his guilt, mitigating the sentence was both the purported and only conceivable focus of trial counsel's strategy. *See Andrus v. Texas*, 590 U.S. 806, 817 (2020) (finding that counsel's failure to investigate available mitigating evidence could not be justified as a tactical decision when it "resulted from inattention" and that the failure was "alarming given that counsel's purported strategy was to concede guilt and focus on mitigation.").

Respondent also tries to blame Mr. Sigmon's bipolar diagnosis on his old age, completely ignoring Drs. Maddox and Martin's extensive discussion and evaluation of how the symptoms of this disorder manifested in Mr. Sigmon's provocative and otherwise inexplicable behaviors prior to, during, and after the crime.

Respondent criticizes Mr. Sigmon's siblings for echoing each other in their descriptions of Mr. Sigmon's behavior. This is ludicrous. All are describing their brother's alarming behaviors prior to the tragic break that preceded his crimes. Their descriptions would necessarily have similarities; that they do is corroboration. Respondent also tries to diminish the significance of his siblings' description of Mr. Sigmon as "not himself," arguing that this shows Mr. Sigmon's behavior was an "aberration, not a cycle of expected behavior from mental illness." Return at 17. Respondent's reductive argument both ignores and is entirely incompatible with the uncontradicted expert testimony from Dr. Maddox and Dr. Martin describing the course of unmedicated bipolar disorder—which causes cycling between periods of depression and hypomania. Petition at 8. This description is entirely consistent with this "cycle of expected behavior from mental illness." Return at 17.

Respondent's further claims that evidence of Mr. Sigmon's fractured mental health, if presented to jurors during sentencing, would have been more prejudicial to his case is contradicted by nearly every major Supreme Court decision addressing ineffective assistance of counsel and recognizing the mitigating value of such evidence. *See Williams v. Taylor*, 529 U.S. 362 (2000); *Wiggins*, *supra*; *Rompilla v. Beard*, 545 U.S. 374 (2005); *Porter v. McCollum*, 558 U.S. 30 (2009); *Sears v. Upton*, 561 U.S. 945 (2010); *Andrus*, *supra*. Moreover, this mental health evidence goes straight to—and explains—the most aggravating aspects of both Mr. Sigmon's crime and behavior at trial, which the Solicitor characterized as "evil," and trial counsel—in an actual example of an argument that is more aggravating than mitigating—described as the actions of a "lovesick idiot." Had the jury been able to place this true picture of Mr. Sigmon "on the mitigating side of the scale, and appropriately reduced the ballast on the aggravating side of the scale" from the Solicitor's uncontradicted denunciation, "there is clearly

a reasonable probability that [they]would have struck a different balance," *Porter*, 558 U.S. at 42, 130 S. Ct. at 454.

III. Respondent ignores the reality of Mr. Sigmon's death sentence and the death penalty in South Carolina—death sentences are most strongly correlated to race, gender and geography, not aggravating circumstances.

Respondent repeats the same refrain throughout her Return, reciting the admittedly brutal facts of Mr. Sigmon's crimes as the reason that he is not entitled to any review of his claims. Mr. Sigmon has always admitted his guilt and repeatedly expressed his deep remorse. However, the facts of the crime do not negate the need for a constitutional proportionality review—one that takes into account all of the mitigating evidence, alongside the aggravating evidence, and that compares Mr. Sigmon's case to 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. Respondent is wrong on three critical points as she tries to prevent this court from any further proportionality review of Mr. Sigmon's death sentence.

First, Respondent ignores the conclusions of the SC Death Penalty Study, which finds that "aggravating circumstances, when taken together, explain little of the outcomes of these death-noticed cases." *See* Petition, Ex. AA, SC Death Penalty Study at 48-49, 52-53. Respondent's continued insistence that the aggravated nature of Mr. Sigmon's case is the basis for his death sentence and the reason that an expanded proportionality review is unnecessary is a fallacy. As set forth more clearly in the attached Supplement, aggravating circumstances are not predictors of whether a defendant in South Carolina will get death: "legally relevant aggravating circumstances generate poor and consistently insignificant predictions of death-sentencing outcomes. By contrast, legally irrelevant factors of race, gender, geography, and time period

clearly drive the system." Ex. 1, Supplemental Report at 20. Aggravating circumstances are not and should not be hailed as the linchpin that limits further proportionality review.

Second, Respondent's argument that the now non-death cases that were used as comparative cases during Mr. Sigmon's direct appeal are irrelevant because they were not "reversed based on a proportionality review," is nonsensical. Return at 22. The original sentences were found to be erroneous and the defendants were not resentenced to death. The point is not why the sentences were vacated, but that they did not afterward receive a death sentence again. Interestingly, then in trying to find another death-sentenced defendant "like this one," Respondent cites to a case that is nothing like Mr. Sigmon's—that of William Dickerson (Return at 23), who was convicted of systematically torturing his victim over thirty-six hours, including "choking, being tied up and placed in a closet, being sodomized with a gun and a broomstick, having his scrotum burned, being hit with a heavy vase and a mirror, and generalized beating and cutting." *State v. Dickerson*, 395 S.C. 101, 108, 716 S.E.2d 895, 899 (2011).

Finally, Respondent gripes that Mr. Sigmon cannot ask this court to consider new mitigating evidence in conducting an expanded proportionality review because it was not considered by the jury. Return at 21. Later, Respondent cites to state law, acknowledging that proportionality review is "supposed to consider the crime and the defendant, and the similarities of both to prior cases." Return at 24 (citing to S.C. Code Ann. § 16-3-25(C)). It cannot be both ways—if the first proportionality review did not consider the character of Brad Sigmon, as South Carolina law contemplates, then must that not be a consideration now, before he is executed? Especially where this court did not even mention Mr. Sigmon's character in its original proportionality review, it is incumbent on this court to now give due consideration here. This is

exactly the second review provided to Mr. Owens: "considering all of this evidence and everything Owens presented to accompany his request for a second proportionality review." Petition, Ex. Y, Order Denying Relief in *State v. Owens* at 11. Mr. Sigmon is due the same.

CONCLUSION

For these reasons, Mr. Sigmon asks the Court to stay his execution, remand this petition, and assign the matter to a circuit judge to conduct an evidentiary hearing to allow review of this never-before-heard, compelling evidence of Mr. Sigmon's severe mental illness, neurocognitive dysfunction, and childhood trauma—evidence that should have been discovered by trial counsel and presented to the jury tasked with deciding whether Mr. Sigmon should live or die, and evidence that should have been weighed by this Court when determining whether a death sentence was the appropriate punishment for these circumstances. Because no court has ever properly weighed this mitigating evidence, it would be shocking to the universal sense of justice to ignore it now.

Respectfully submitted, this, the 3rd of March, 2025.

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