

THE STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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Mar 26 2025

S.C. SUPREME COURT

MIKAL D. MAHDI,

Petitioner,

v.

BRYAN P. STIRLING, Commissioner,  
South Carolina Department of Corrections,

Respondent.

Appellate Case No. 2025-000524

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**\*\*EXECUTION DATE SET for APRIL 11, 2025, at 6:00 p.m.\*\***

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

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On March 18, 2025, Petitioner, Mikal D. Mahdi, filed a petition for writ of habeas corpus essentially seeking review of the sufficiency of his mitigation case at his **2006** sentencing proceeding and the sufficiency of the evidence he did, or could have, presented in his **2009** post-conviction relief (PCR) action. He also seeks to stay his imminent execution so he can once again attempt to challenge his sentence. (Appellate Case No. 2025-000491, Motion filed March 18, 2025). Respondent opposes the petition, and the stay, and submits the petition for original jurisdiction review should be denied.

Mahdi does not contest his guilt or that he has been in litigation for nearly two decades. Mahdi has raised numerous issues in collateral actions that have been tested, tried and rejected (including relying on some of the same lay witnesses and experts he offers in support of his arguments here). He has not been entitled to relief. He is not now. At base, Mahdi simply asks this Court for one more opportunity to try to convince a factfinder to disagree with Judge Newman's sentence. Mahdi's

assertion that “a basic sense of justice and fairness” should allow him this additional opportunity calls on an equity position that does not favor him. (*See* Pet. 59). It blinks reality to suggest that his case has not been thoroughly reviewed. In Mahdi’s vernacular, if his mitigation presentation before Judge Newman “didn’t even span the length of a *Law & Order* episode,” (Pet. 59), the review of any potential error is in its 24th season.<sup>1</sup> Mahdi’s claims of ineffective assistance and unconsidered, compelling mitigation are unavailing. Indeed, his latest complaints in the instant petition merely repackage his old PCR issues and those submitted for federal review.

While Mahdi repeatedly offers that Judge Newman did not hear from particular mitigation witnesses, or hear particular childhood trauma evidence, Judge Early, the PCR judge, did. Further, Judge Early also heard more evidence of Mahdi’s character than Judge Newman. It was not good for Mahdi. For example, Judge Early heard testimony from trial defense experts, Dr. Thomas Martin and Dr. Geoffrey McKee. They received information about Mahdi’s other murders in Virginia. Further, Dr. Martin testified Mahdi had no difficulty in expressing that he would kill people as necessary to achieve his goal and appeared to have no remorse regarding any of his past violent acts. (Attachment 1, 84-85). Dr. Martin, in his discussions with Mahdi, gathered more details of the murder; that Mahdi shot Capt. Myers in the chest and head, and after Myers was on the floor of his cabin, Mahdi shot him several more times in the head to make sure he was dead. (Attachment 1, 85). Notably, Dr. McKee found Mahdi was very intelligent and did not suffer from a major mental illness at the time of the crime, and like Dr. Martin, concluded Mahdi had antisocial personality disorder. (Attachment 1, 84-85). Given the highly likely, very detrimental result of opening the door to allow additional

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<sup>1</sup> “Dick Wolf’s procedural *Law & Order* dramas have a decades-long legacy.” <https://www.nbc.com/nbc-insider/all-of-the-law-order-spin-offs-in-the-franchise>. Britannica online reference describes it as the “longest-running law-enforcement series in American television.” <https://www.britannica.com/topic/Law-and-Order>.

damaging evidence, defense counsel testified they made a strategic decision not to call either expert. (Attachment 1, 85). Courts will not find counsel ineffective for such a decision. *See Wong v. Belmontes*, 558 U.S. 15, 25 (2009) (per curiam) (“A heavyhanded case to portray Belmontes in a positive light, with or without experts, would have invited the strongest possible evidence in rebuttal—the evidence that Belmontes was responsible for not one but two murders.”).<sup>2</sup>

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<sup>2</sup> The detrimental evidence continued to turn up the more that was presented in PCR. For instance:

Not only were Mahdi’s family members unhelpful in this regard, the PCR court also made a credibility determination that they too were unwilling to serve as witnesses or assist trial counsel. *See* J.A. 7556 (“This Court finds the testimony of counsel and their defense team on [the Mitigation Evidence Claim] *to be credible* and the present testimony of Mahdi's witnesses regarding their previous willingness to testify *to be not credible*.”); *Elmore*, 661 F.3d at 849 (reiterating that state PCR court's credibility findings are not overturned absent a “stark and clear” error in judgment). Mahdi has not challenged that assessment.

But even if Mahdi's family members had testified during sentencing, the evidence adduced during the PCR merits hearing makes clear that they would have undermined his key mitigation arguments. For example, Carson and Lawanda testified about Mahdi’s manipulative behavior, including his frequent malingering about suicide and the incident when he made a false claim of abuse in an effort to retaliate against them. Indeed, Carson told Haas that he “still laughs about this today because he feels [Mahdi] was just being manipulative and really wasn't struggling [with suicide].” J.A. 2774. He also referred to Mahdi as a “demon” based on his behavior. J.A. 2706. Rose described Mahdi's anger and violent conduct as a child, including “hit[ting his mother] a couple of times.” J.A. 2288. Sophia testified about an incident where Mahdi slashed his mother's tires because she would not let him use her car.

*Mahdi*, 20 F.4th at 902. Notably, Mahdi attempted to establish through another social worker that Mahdi’s father beat/abused him. The Fourth Circuit rejected that: “The fact of this case is that there is *no* evidence of childhood abuse for us to give credence to. We will not diminish the strength of factually supported claims of childhood abuse by sensationalizing the unsupported allegation here, which is contrary to a massive record disproving any such speculation.” *Mahdi*, 20 F.4th at 900. Again, the record shows repeated attempt to find something “new” missed by trial counsel, especially that not tinged with accompanying negatives. Mahdi repeatedly failed.

Yet, the preceding paragraph is but a snapshot of the comprehensive review made in post-conviction relief. In considering Mahdi's claims presented in the instant petition, this Court should review what Mahdi does not dwell on—the review conducted by Judge Early. Attached and incorporated by reference is Judge Early's final order from the 2009 PCR action. (Attachment 1).

This Court previously considered Mahdi's PCR claim of error and denied his petition for review. (Appellate Case No. 2014-002131). Moreover, Mahdi's case was thoroughly considered in district court with the Honorable Timothy M. Cain finding no basis for relief. (Attachment 2). Further still, the Fourth Circuit affirmed the denial of relief. *Mahdi v. Stirling*, 20 F.4<sup>th</sup> 846 (4th Cir. 2021), *cert. denied*, 143 S.Ct. 582 (2023). To put a fine point on it, Mahdi's request for yet additional review of trial counsel's performance,<sup>3</sup> and a different presentation of mitigation, is nothing new at all.

As to his specific assertion that critical mitigation witnesses were not heard, that, too, is incorrect—Judge Early heard them, *and* he considered whether the absence of their testimony created a reasonable probability of a different result in sentencing. He resolved that it did not. (Attachment 1, 20-22 and 27-123).

In fact, even though Mahdi insists that additional review is warranted, he also admits that his first claim (ineffective assistance regarding the mitigation case) was raised and litigated in the 2009 PCR. (Pet. 10). The “readily-available” testimony relied upon by Mahdi here, (*see* Pet. 39-46), is from witnesses presented in the 2009 PCR (Myra Harris, Carol Wilson, George Smith), along with assertions by an affidavit of the remaining named witness (James Woodley who had testified at the

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<sup>3</sup> Most capital defense team(s) claim adherence to the performance suggestions in the *American Bar Association Guidelines for the Appointment and Performance of Defense Counsel in Death Penalty Cases*, 31 Hofstra L. Rev. 913, 1085 (2003). Mahdi references those guidelines in his petition. (Pet. 17-18). Those guides provide in all cases that, “Ultimately, winning collateral relief in capital cases will require changing the picture that has previously been presented.” Mahdi's attempt here is not unique.

sentencing proceeding).<sup>4</sup> (*See* Attachment 1, 20-22, 37-43, 44-60, 64, 96-123). Notably, Mahdi in his prior appeal to this Court, raised in his petition the fact that trial counsel did not call Harris, Wilson, Smith and Woodley to testify, complaining that trial counsel relied on a social worker to present personal history mitigation evidence. (Appellate Case No. 2014-002131, Petition at 9, 14-21).<sup>5</sup> (Attachment 3, 14-21). This Court did not grant certiorari review then; it should not grant this petition now.

Moreover, for his childhood trauma claim, he relies in part on some of the experts that he presented in the 2009 PCR. (Pet. 50). (*See* Attachment 1, 60-92, 116-119, 122-123). Even so, Mahdi asks the Court to accept that his juvenile institutional solitary confinement and institutional experience in general were either shockingly inappropriate or inflicted unwarranted detriment to his development. Of course, his theories were all available for argument and consideration in the 2009 PCR, but if he could present the question, Mahdi fails to pose the most critical questions: what was the reason for the juvenile incarceration and isolation? In a word—Mahdi. (Attachment 1, 67-75, 120).

The Fourth Circuit listed numerous reasons for severe consequences. *See Mahdi*, 20 F.4th at 860-861 (summary of DJJ evidence include Mahdi’s “various disciplinary violations for conduct including, among other things, attempted assault on an officer and the use of threatening language/behavior” and statements that before suicide “he would become homicidal first. He gave

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<sup>4</sup> Sheriff Woodley’s sworn sentencing hearing testimony was significantly different from the affidavit offered during the PCR. Judge Early found no reasonable impact of the “new” facts on sentencing because Judge Newman was aware of the relevant behaviors, specifically those going to Mahdi’s father. (*See* Attachment 1, 118).

<sup>5</sup> Current counsel, Ms. Norris, represented Mahdi at the PCR and on appeal. Seth C. Farber, Esq., and Brandon W. Duke, Esq, both *pro hac vice*, represented Mahdi in the PCR appeal along with Ms. Norris. Mr. Farber and Mr. Duke now are counsel for amici Time Served, Criminal Practice Clinic and Gualt Center arguing in support of additional review.

very graphic descriptions of how he would hurt others. He also graphically described how [DJJ staff] would find [Mahdi's victims and him after he committed suicide] (i.e. "hanging")"). Further, the record shows that Mahdi was committed to the Virginia's Department of Juvenile Justice (DJJ) at age fourteen for two counts of breaking and entering and two counts of grand larceny. *Mahdi*, 20 F.4th at 859; *see also* Attachment 1, 5). He admittedly was also involved in the sale of crack cocaine at the same age. *Mahdi*, 20 F.4th at 860. (*See also* Attachment 1, 11). Mahdi was charged with assaulting and causing bodily injury to another inmate. (*See* Attachment 1, 11). As Judge Early found, it was Mahdi who had the negative effect on the corrections environment. (Attachment 1, 67-75, 118-119). Though Respondent disagrees that Mahdi's "new" evidence of "adverse child experiences," "unconscious racial bias in youth prisons," "racial and intergenerational trauma"<sup>6</sup> and "adolescent brain development" science, truly qualify as "newly discovered" under legal standards,<sup>7</sup> even so, the focus merely continues on same areas of mitigation he explored in his PCR. Again, the base of his request is to seek another opportunity to convince a different judge. That is not the purpose of original jurisdiction review.

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<sup>6</sup> Mahdi's argument on this assertion would impose a requirement that an adequate mitigation history encompass approximately 200 years of family genealogy to be found adequate. He does not reconcile that suggestion with the dictates of the Sixth Amendment that the investigation into a defendant's background be "reasonable," *see, e.g., Wiggins v. Smith*, 539 U.S. 510, 524 (2003) (using the term "reasonably available" in describing mitigation investigation efforts), or the limitations in presentation to confine evidence to the circumstances of the crime and the character of the defendant, *see, e.g., Lockett v. Ohio*, 438 U.S. 586, 604 (1978).

<sup>7</sup> It is very difficult to maintain that any of the evidence in this late-filed petition is new in any sense. First, Mahdi admits that his claim of ineffective assistance in presenting the mitigation case was raised and litigated in the 2009 PCR and rejected by Judge Early, and even admits the federal courts reviewing that determination also rejected the claim. (Pet. 10). To be clear, the "readily-available" testimony relied upon by Mahdi here, (*see* Pet. 39-46), depends on witnesses actually presented (Myra Harris, Carol Wilson, George Smith), and assertions by an affidavit (James Woodley) presented in the 2009 PCR. (*See* Attachment 1, 20-22, 37-60, 64, 96-123). Moreover, for his childhood trauma claim, he relies in part on the very expert, Dr. Haney, that he presented in the 2009 PCR. (Pet. 50).

This Court's precedent makes clear that 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

Mahdi seeks review of the following claims in this Court's original jurisdiction:

1. Did Mikal Mahdi's trial attorneys deprive him of the effective assistance of counsel when they prematurely gave up on their investigation, resulting in presentation of mitigating evidence that spanned only 15 transcript pages, was over in less than 30 minutes, and omitted critical witnesses and information about Mahdi's tumultuous childhood?
2. Should Mikal Mahdi's death sentence be reevaluated in light of newly available scientific, medical, and psychological research that clarifies the scale of crippling trauma he endured as a child and teenager?

The answer to each must be "no."

## ABBREVIATED STATEMENT OF THE CASE

Mahdi is under a sentence of death for the June 18, 2004 murder of Captain James E. Myers in Calhoun County.

### A. Facts of the Crime:

Mahdi's South Carolina crimes were part of a multi-state spree in July 2004 beginning in Virginia and ending in Florida. Mahdi's callous murder of a convenience store clerk in North Carolina was captured in chilling detail on store surveillance. Mahdi continued the violence into and across South Carolina. This Court summarized the facts in the direct appeal review, *Mahdi v. State*, 678 S.E.2d 807, 807–08 (2009). However, in an unusual addition, then Chief Justice Jean Toal authored a concurring opinion to "record the facts of this particularly heinous case." *Id.* at 808.<sup>8</sup> The

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<sup>8</sup> The Chief Justice explained the necessity of the addition as follows: "I recite these facts to emphasize the egregious nature of Petitioner's crimes. In my time on this Court, I have seen few cases where the extraordinary penalty of death was so deserved. I therefore concur with the majority and vote to affirm Petitioner's conviction and sentence." 678 S.E.2d at 809 (Toal, C.J., concurring).

Chief Justice set out an expanded version of the facts that more fully describes Mahdi's crimes and his extraordinary brutality:

On July 14, 2004, Petitioner, then a resident of Virginia, embarked upon a crime spree that would span four states. Petitioner stole a .380 caliber pistol from his neighbor, a set of Virginia license plates, and a station wagon. Petitioner left Virginia and headed to North Carolina.

On July 15, Petitioner entered an Exxon gas station in Winston-Salem, North Carolina armed with the .380 pistol. Petitioner took a can of beer from a cooler and placed it on the counter. The store clerk, Christopher Jason Boggs, asked Petitioner for identification. As Boggs was checking Petitioner's identification, Petitioner fatally shot him at point-blank range. Petitioner fired another shot into Boggs as he lay on the floor. Petitioner then attempted unsuccessfully to open the store's cash register. Petitioner left the store with the can of beer, and headed to South Carolina.

Early in the morning of July 17, Petitioner approached Corey Pitts as he sat at a traffic light in downtown Columbia, South Carolina. Petitioner stuck his gun in Pitts' face, forced him out of his car, and stole Pitts' Ford Expedition. Petitioner replaced the Expedition's license plates with the plates he had stolen in Virginia, and headed southeast on I-26.

About thirty-five minutes down the road, Petitioner stopped at a Wilco Hess gas station in Calhoun County and attempted to buy gas with a credit card. The pump rejected the card, and Petitioner spent forty-five minutes to an hour attempting to get the pump to work. Due to his suspicious behavior, the store clerks called the police. Aware that the clerks' suspicions had been alerted, Petitioner left the Expedition at the station and fled on foot through woods behind the station.

About a quarter to half mile from the station, Petitioner came upon a farm owned by Captain James Myers, a thirty-one year veteran law enforcement officer and fireman. Petitioner broke into a work shop on the Myers property. Once inside the work shop, Petitioner watched television and examined Myers' gun collection. Petitioner found Myers' shotgun and used the tools in the shop to saw off the barrel and paint it black. Petitioner also took Myers' .22 caliber rifle and laid in wait for Myers.

That day, Myers had been at the beach celebrating the birthdays of his wife, sister, and daughter. Myers had visited with his father before returning to his farm. Upon arriving at the farm, Myers stopped by the work shop, where he was confronted by Petitioner. Petitioner shot

Myers nine times with the .22 rifle. Petitioner then poured diesel fuel on Myer's body and set the body on fire. Petitioner stole Myers' police-issued truck, and left with Myers' shotgun, his .22 rifle, and Myers' police-issued assault rifle.

Later that evening, Myers' wife, also a law enforcement officer, became worried when Myers did not return home. Mrs. Myers drove to the work shop and discovered Myers' burned body lying in a pool of blood.

Petitioner escaped to Florida, where he was spotted by police on July 21 driving Myers' truck. Fleeing the police, Petitioner abandoned the truck on foot in possession of the assault rifle. When cornered by police, Petitioner abandoned the rifle and was eventually taken into custody.

*Id.* at 809.

The district court noted this expanded version of the facts in its opinion. (Attachment 2, 1-3).<sup>9</sup> Further, during sentencing, the State presented evidence of other acts of violence, summarized by the sentencing judge as follows:

On January 7th, 1998, while in the Virginia Department of Juvenile Justice' for grand larceny and breaking and entering, Mr. Mahdi, then 14 years of age, conveyed to a counselor doing an evaluation profile that his only strength was robbing people. On June 30th, 1998, Mr. Mahdi, then 15 years old, was involved in an over nine-hour standoff with the Brunswick County, Virginia Sheriff's Department who was attempting to execute an order on the defendant to return him to a juvenile detention facility when Mr. Mahdi made the comment, according to Brunswick County Sheriff James Woodley, that, I'm going to kill a cop before I die. On November 23rd, 2000, the defendant, then 17 years of age, attempted to grab the gun of a Richmond, Virginia Police Officer who was attempting to arrest Mr. Mahdi on a vandalism charge for slashing his mother's automobile tires. During this arrest, Mr. Mahdi commented, according to Officer Mike Koehler, that he should have killed that crazy bitch, referring to his mother. On April 17th, 2001, then 18 years old, while attempting to break into an apartment in Richmond, Virginia, Mr. Mahdi stabbed Moises Rivera, a maintenance supervisor, five times, resulting in a

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<sup>9</sup> The district court added, by footnote, that Mahdi had also "pled guilty to first-degree murder in the death of Mr. Boggs and received a life sentence in North Carolina." (Attachment 2, 2 n. 1).

felony conviction for malicious wounding. Mr. Mahdi received a 15 year prison sentence suspended to the service of 39 months to be followed by 15 years of probation.

During each of these periods of incarceration, Mr. Mahdi's behavior was maladaptive, assaultive and demonstrated an utter disrespect for authority, including threatening the life of a detention officer.

Following Mr. Mahdi's release on probation on May 12th, 2004, his criminal activities escalated during a crime spree that resulted in his killing Christopher Jason Boggs during a robbery of an Exxon Station in Winston-Salem, North Carolina on July 15th, 2004. Mr. Mahdi shot Mr. Boggs twice in the face at pointblank range with a weapon that had been stolen from his grandmother's neighbor's house in Lawrenceville, Virginia. On July 18th, 2004, three days later at approximately 3:30 a.m., Mr. Mahdi carjacked Corey Pitts' automobile in Columbia, South Carolina using a chrome plated handgun. Following his murder of Captain Myers, Mr. Mahdi was apprehended on July 21st, 2004 in Satellite Beach, Florida, after jumping out of Captain Myers' city issued truck armed with a Ruger .223 assault rifle belonging to the Orangeburg Department of Public Safety. Following his arrest, Mr. Mahdi stated that, according to Sergeant Darren Frost of the Satellite Beach Police Department, that he did not shoot Sergeant Frost only because the gun was stuck in a three shot burst and he did not think he could shoot him, the other cop, referring to the other police officer, and the F'ing dog. While in safekeeping in the South Carolina Department of Corrections awaiting this trial, Mr. Mahdi made numerous threats to kill various department employees.

(Attachment 5, 5-7).<sup>10</sup>

B. Procedural History:

1. Trial Level Proceedings.

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<sup>10</sup> The district court also summarized the evidence of Mahdi's past violent behavior and threats of violence, including the near murder of "Moises Rivera, whom Mahdi almost stabbed to death in Richmond, Virginia on April 17, 2001. (See Attachment 2, 31-38). In particular the district court quoted his threats to others in post-arrest detention: at a disciplinary hearing for hitting an officer, Mahdi asserted he intended to "kill that mother f\*\*\*\*\* officer," (Attachment 2, 36), and while complaining that he was not responded to in a timely fashion, he threatened to kill or have someone else kill the grievance coordinator, (Attachment 2, 37). Mahdi also crafted weapons even under severe restrictions, and, somehow made a handcuff key in an effort to escape at trial. (See J.A. 483-84).

The Calhoun County grand jury indicted Mahdi on August 23, 2004 for Murder, Grand Larceny greater than \$5,000, and Burglary, second degree, violent. The State issued a notice of intent to seek the death penalty prompting the provisions for capital counsel appointment. This Court assigned continuing jurisdiction to the Honorable Clifton Newman. Carl Grant, Esq., and Glenn Walters, Esq., were appointed to represent Mahdi. Mr. Grant was in a serious motorcycle accident in the early summer of 2006 and was relieved as counsel. Mr. Walters moved to first chair counsel and Josh Kroger, Esq., was appointed as second chair.

From November 26-29, 2006, after individual *voir dire* of jurors, a jury of twelve jurors and four alternates were selected and impaneled. However, prior to the swearing of the jury, on November 30, 2006, Mahdi waived his right to a jury determination on guilt and sentencing and entered pleas of guilty to all charges which Judge Newman accepted.<sup>11</sup> Mahdi admitted to all the facts supporting the plea including: that he killed Captain Myers with malice aforethought; that he entered a building belonging to the victim without consent and with intent to commit a crime and while in or immediately after leaving the building was armed with a deadly weapon; and used the weapon during the burglary to commit the murder of the victim.

A separate sentencing proceeding was held before Judge Newman beginning on December 4, 2006. On December 8, 2006, Judge Newman filed his written sentencing order and read the order into the record. Judge Newman found the State proved two statutory aggravating circumstances beyond a reasonable doubt. After considering all of the evidence in extenuation, aggravation, and

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<sup>11</sup> Prior to his pleas, Mahdi had been examined, found competent, and evidence at the sentencing hearing showed that he was a twenty-one year old with an extensive criminal history such that he “was well aware of the severity of the crimes and the possible consequences.” Further, when his IQ was last tested at the age of 14 at a juvenile facility in Virginia, his score was 108. (See Attachment 1, 3 and Attachment 5, 7).

mitigation of punishment, Judge Newman sentenced Mahdi to death.<sup>12</sup> In concluding his Order, Judge Newman stated as follows:

In extinguishing the life, hope, and dreams of Captain Myers in such a wicked, depraved and conscienceless manner, the Defendant Mikal Deen Mahdi also extinguished any justifiable claim to receive the mercy he seeks from this Court.

In considering all of the evidence in this case, I have concluded that the only appropriate punishment for the murder of Captain James E. Myers is death.

(Attachment 5, 11).

2. Direct Appeal Proceedings.

Mahdi did not timely appeal; however, this Court granted an original writ to allow for direct appeal review. Mahdi was represented by Appellate Defender Katherine Hudgins, with the South Carolina Commission on Indigent Defense, Division of Appellate Defense, who raised one issue:

Did the trial judge improperly consider Mikal Mahdi's initial exercise of his constitutional right to a trial by jury in imposing a death sentence?

(See Attachment 1, 4). On June 15, 2009, this Court not only affirmed Mahdi's plea and sentence but also conducted the required proportionality review. *Mahdi v. State*, 678 S.E.2d 807, 808 (S.C. 2009). Mahdi did not seek certiorari to the United States Supreme Court.

3. State Collateral Proceedings.

Mahdi filed his initial post-conviction relief ("PCR") application on August 18, 2009. The Honorable Doyet Early was appointed to preside over the collateral action. Teresa Norris, Esq., and Robert Lominack, Esq., were appointed to represent Mahdi. PCR counsel filed amended applications raising multiple issues, including the following relevant to this action:

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<sup>12</sup> Mahdi was also sentenced to consecutive terms of 15 years for burglary and 10 years for grand larceny. (Attachment 1, 4).

**Ground 10(a)/11(a)(iii):** Counsel failed to adequately investigate, develop, and present mitigation evidence concerning Applicant’s family, social, institutional, and mental health history.

(Attachment 1, 19).

On March 9, 2011, a PCR evidentiary hearing was held at the Broad River Correctional Institution parole hearing courtroom.<sup>13</sup> After presentation of testimony and other evidence, Judge Early took the matter under advisement. Judge Early filed his Order of Dismissal on January 8, 2013. The State filed a timely motion to alter or amend referencing one of the findings<sup>14</sup> that Judge Early later granted. He then entered an Amended Order of Dismissal on August 20, 2014 (dated August 19, 2014). (Attachment 1). Mahdi filed a motion to alter or amend the Amended Order which Judge Early denied on September 9, 2014.<sup>15</sup> Mahdi appealed.

4. State Collateral Action Appeal Proceedings.

New counsel joined Ms. Norris in representing Mahdi on appeal: Seth Farber, Esq., and Brandon Duke, Esq. Counsel asked for review of one issue:

Was Petitioner denied the effective assistance of counsel at his capital sentencing proceeding by trial counsels’ decision to rely entirely on a single expert witness to present mitigating evidence about Petitioner’s background instead of calling available lay witnesses who could have provided detailed and specific testimony in mitigation?

(Attachment 3, Petition at 1).

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<sup>13</sup> The hearing was held inside the facility due to security concerns. Mahdi and a fellow death row inmate were charged with stabbing a guard while on death row. (Attachment 4, 2 n.6).

<sup>14</sup> The State objected to a finding of deficient performance on the investigation claim, but did not to the PCR court’s finding Mahdi had not established prejudice. The PCR judge ultimately agreed that he erred by strictly applying the ABA guidelines as dispositive and found the guidelines to be just that – guidelines. The district court agreed that “the PCR court’s decision not to base its analysis on the advisory ABA guidelines was not contrary to clearly established federal law.”

<sup>15</sup> After a timely motion to alter or amend was denied, Mahdi sought an appeal; however, that initial appeal notice was dismissed as premature given the timely post-judgment motion. (*See* Appellate Case No. 2013-000183).

As submitted in the return to the petition, Mahdi's counsel selected only a portion of witnesses actually presented in PCR. The State argued the likely reason was to avoid the notable negative material that tended to consistently be available when offering other witnesses. (*See* Attachment4, Return at 17-18). On September 8, 2016, this Court denied certiorari review. (*See* Appellate Case No. 2014-002131). Mahdi sought review in the Supreme Court of the United States, but the Court denied the petition on February 21, 2017.

5. Section 2254 Habeas Action in District Court through Stay.

Mahdi received a stay of execution to pursue a federal habeas action. The district court appointed E. Charles Grose, Esq., and John L. Warren, III, Esq. to represent Mahdi in the federal action. Derek Alan Shoemake, Esq., would later replace Mr. Warren when Mr. Warren accepted a federal clerkship. On February 9, 2017, Mahdi filed a "place-holder" petition and moved to stay the execution for the pendency of the action which the court granted. On September 7, 2017, Mahdi moved to stay the federal action to return to state court on a successive action, which Respondents opposed because the action would be improperly successive and time-barred under state law. The district court denied the motion on October 3, 2017, with leave to re-file if the successive state action should be allowed to be developed. (*See* C/A No. 8:16-cv-03911).

6. Second State Collateral Proceedings.

In Mahdi's second application filed on January 10, 2017, he argued several issues, none relevant to this appeal. Judge Early was again assigned to hear the collateral action. On February 10, 2017, the State moved to dismiss as untimely, successive, barred by laches, and/or res judicata, collateral estoppel, judicial estoppel, and the principle of "the law of the case" or not cognizable on post-conviction relief; and, at any rate, without merit. Judge Early heard arguments on the motion to dismiss on May 1, 2017, and dismissed the application on June 29, 2017, finding the action was time barred and improperly successive, and procedurally barred under laches, res judicata, collateral

estoppel, judicial estoppel and the principle of “the law of the case.” This Court dismissed the notice on April 19, 2018, pursuant to Rule 243(c), SCACR. (*See* Appellate Case No. 2017-002212). Mahdi filed a petition for writ of certiorari in the Supreme Court of the United States, which the Court denied on December 3, 2018.

7. Completion of Section 2254 Habeas Proceedings in District Court.

As noted, the federal action continued without a stay while Mahdi litigated the procedurally barred second PCR action. Mahdi filed an amended petition and Respondents filed a return and moved for summary judgment on December 20, 2017. On March 12, 2018, Mahdi filed a response in opposition and several affidavits outside the state court record. Respondents moved to strike the affidavits. In an Order filed September 24, 2018, the district court granted Respondent’s motion for summary judgment; granted in part and denied in part the motion to strike (allowing consideration of materials to evaluate Mahdi’s arguments to excuse default); denied the petition; and declined to issue a certificate of appealability. (Attachment 2, 96-97). A timely motion to alter or amend was filed challenging, in part, the denial of an additional funding request. The district court unsealed the relevant funding requests to allow full argument. After additional responses, the district court denied the motion to alter or amend on March 29, 2019. Mahdi appealed.

8. Appeal of the Denial of Relief in 28 U.S.C. § 2254 Proceedings.

After briefing and argument, the Fourth Circuit affirmed the denial of relief by published opinion issued on December 20, 2021. *Mahdi v. Stirling*, 20 F.4th 846, 866 (4th Cir. 2021). On January 9, 2023, the Supreme Court denied a petition to review the issues related to his claim regarding trial counsel investigation of mitigation evidence. *Mahdi v. Stirling*, 143 S. Ct. 582 (2023). (*See also* Supreme Court Docket No. 22-5536).

## REASONS WHY THE PETITION SHOULD BE DENIED

Primarily, the petition should be denied because the record of review in this matter is massive. Relief has simply not been warranted. It is not warranted here.

The prior litigation includes a full sentencing proceeding, a direct appeal review, PCR, PCR appeal, a successive PCR action and appeal, and federal habeas corpus review and appeal. Mahdi has had several sets of well-qualified attorneys, funding for investigation and re-investigation, and ample time for case development. And, though Mahdi claims “new” evidence, he really intends to rely on new presentations. The mitigation evidence has been previously rejected, whether by Judge Newman at sentencing, or Judge Early in the PCR, or the federal courts in 28 U.S.C. § 2254 review. Mahdi is due no review even in light of the new (or changed) diagnosis offered twenty years after the crime (and after numerous evaluations in the interim). This Court should deny the petition.

### *Claim of Ineffective Assistance at Sentencing*

To be clear, all of Mahdi’s attempts to broaden mitigation resulted in the State learning of more aggravation. Further, subsequent to the PCR hearing, Mahdi pled guilty to the first-degree murder of store clerk Christopher Boggs. Even as Mahdi requests a new sentencing proceeding, or sentencing consideration, he still brings his history of terror and violence with him. A claim that additional consideration of the largely redundant themes from the PCR strains basic logic. At any rate, the *Strickland* issue lacked merit in law and fact.

Though Mahdi describes his trial counsel’s mitigation investigation as insufficient, there is no denying that trial counsel made reasonable investigation into Mahdi’s background. Indeed, the majority of the sentencing presentation by the defense centered on explaining Mahdi’s family and

experiences. Credentialed and capital case experienced social worker Marjorie Hammock<sup>16</sup> testified at length concerning her biopsychological assessment of Mahdi. She testified that she conducted interviews of Mahdi, and his mother and other family members (grandmother, uncles and aunts). She also reviewed records, consulted with others, and visited Mahdi's home. The district court summarized her detailed sentencing phase testimony:

Ms. Hammock testified that Mahdi's father, Shareef, was an extremely troubled child. (App. A003625). Shareef attended the local, formerly white, school shortly after desegregation and recalled being traumatized by the experience. (App. A003626). He was constantly in conflict with and alienated from those around him and considered himself unwanted. *Id.* Ms. Hammock stated there was alcoholism and neglect in Shareef's family. *Id.* Shareef was the only one of his siblings to not finish school; instead, he joined the Marines. *Id.* After he was discharged from the Marines, Shareef converted to Islam and changed his name. (App. A003626-27). He had odd jobs, but was not able to function well, struggled with depression, and had a number of incidents with local law enforcement. (App. A003627).

Shareef was twenty-seven and Vera was sixteen when they had an arranged marriage. *Id.* Ms. Hammock described the marriage as full of conflict, very unstable, and chaotic. *Id.* Shareef was unable to support his family and they moved several times, eventually living with Mahdi's grandmother in Lawrenceville, Virginia. *Id.* Ms. Hammock testified Mahdi and his older brother, Saleem, witnessed a "great deal

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<sup>16</sup> Ms. Hammock testified that she had been a professor of social work on the college level since 1999; supervised students in field practice programs; received a B.A. and a Master's degree in social work from Howard University; had completed course work for a Ph.D. in philosophy and social work; had been previously employed as the chief of social work and a mental health consultant in the department of corrections prior to becoming a professor; and, had worked in social services, including supervising programs addressing poverty, worked for juvenile detention centers, and engaged in private counseling. She testified she had performed biopsychosocial assessments in "criminal and [in] noncriminal" settings and had participated in assessments in 25 capital cases and testified in 14. At the time of her testimony at Mahdi's sentencing, she was also working on 5 other such assessments in capital cases in South Carolina, Florida and a case in Alabama. (J.A. 1591). She testified she was licensed in social work in SC since 1988; belonged to the National Association of Social Workers and the Clinical Social Work Society of South Carolina; was a diplomate in clinical social work; a member of the Academy of Social Workers; a member of the National Association of Social Workers, and served as a governor-appointed member of the Board of Social Work for licensing. She was found qualified as an expert in the field of clinical social work without objection. This well-supported the district court's observation that Ms. Hammock was "an expert in clinical social work." (See Attachment 2, p. 39).

of conflict” between their mother and father and that, when Mahdi was four or five, Vera left the family to “get away from the abuse.” (App. A003627-28).

After Vera left, Shareef struggled to take care of the boys. (App. A003628). Mahdi’s grandmother tried to help, but she and Shareef had a very confrontational relationship. *Id.* At some point, Shareef forced Vera to return to Lawrenceville from Richmond. *Id.* Ms. Hammock testified Vera returned “ostensibly to see the boys, but that result[ed] in, again, some physical conflict. And she le[ft] again not to see her son for a number of years.” *Id.*

Ms. Hammock stated Mahdi had difficulty in school. *Id.* He was considered bright, but did not perform well, was a poor reader, and struggled with his self-esteem. (App. A003628-29).

In 1991, Shareef sent Mahdi to live with his aunt and uncle, Carson and Lawanda Burwell, in Baltimore, Maryland. (App. A003629). Carson and Lawanda described Mahdi as a bright and energetic young boy, but very, very troubled and indicated he had difficulty in school. *Id.* Carson told Ms. Hammock that Mahdi could not read at all when he came to live with them. *Id.*

Regarding Mahdi’s education, Ms. Hammock listed the schools he attended [FN 18] and summarized parts of his records from second and third grade. (App. A003630-32). In second grade, records indicate Mahdi had uneven skills—he was placed in an average math program, but a below average reading program—and needed improvement in his standards for behavior and showing respect for authority. (App. A003631). In third grade, Mahdi was outstanding in science, but below average in reading, vocabulary, and spelling. (App. A003631-32). The records also indicate Mahdi struggled with self-esteem and had difficulty with relationships with others. (App. A003632). Ms. Hammock also noted Mahdi’s education was disrupted several times by moves and, ultimately, by his father removing Mahdi from school in order to homeschool him. *Id.*

Ms. Hammock testified Vera was very withdrawn, did not want to participate in the interview, and seemed frightened of being involved with the family again. (App. A003632-33). Vera and others described Vera’s abusive relationship with Shareef, but Ms. Hammock did not relate any specifics. (*See* App. A003633). Mahdi lived with Vera for a short time when he was released from DJJ. Ms. Hammock described this as “not a good reunion,” said Vera and Mahdi “did not get along at all,” and Vera said she and Mahdi “had very different kinds of ideas about his living with her.” (App. A003634).

Ms. Hammock testified Mahdi's child development was greatly impacted by his father's inability to properly parent. (App. A003635). Mahdi's childhood was marked by conflict, chaos, and a lack of stability. (App. A003636-37). During adolescence, Mahdi was exposed to his father's outbursts and problems, including his conflicts with his own family, the community, and law enforcement. (App. A003637). She stated that more than anything, Mahdi wanted an intact family and an ongoing relationship, but he never received consistent help from his mother or father in growing up and developing good skills and a sense of values. *Id.* Ms. Hammock opined Mahdi had suffered emotional trauma throughout his early life, which "had an impact on his inability to make good choices, to have a good sense of himself and others and to behave according to societal norms." (App. A003638). She stated Mahdi had the following risk factors: abuse and neglect; abandonment; lack of proper socialization; poor self-esteem; poor history of school progress; and poor sense of himself. *Id.*

[FN 18] She testified Mahdi began kindergarten at Sister Clara Muhammad School in Richmond, Virginia, but also attended kindergarten at Totaro Elementary School in Lawrenceville, Virginia. (App. A003630-31). She stated records were not available, or were not legible, from Sister Clara and there were not narrative records from Totaro. (App. A003631). Mahdi then started first grade at Chamberlayne Elementary School in Richmond, Virginia. *Id.* Ms. Hammock stated records were not available from Chamberlayne either. *Id.* Then, Mahdi was sent to Baltimore, Maryland, where he attended Scotts Branch Elementary for second and third grade. *Id.* According to the school experience summary, Mahdi attended Totaro Elementary for fourth grade and part of fifth grade, until Shareef removed him in order to homeschool him. (App. A007515). The experience summary also indicates Mahdi did not appear motivated in fourth grade and his potential was stifled. *Id.*

(Attachment 2, 40-43).

Mahdi's claim that the record shows Judge Newman was not presented with anything that would "humanize" him cannot be squared with the record. Further, the district court noted, in addition to the fact information related, Ms. Hammock concluded:

[S]omeone who is neglected, was abandoned, who suffers from poor parenting is likely to end up in a situation where he's out of control and he does damage to himself and others. This is - - we find this profile all too frequently in people who end up in this kind of situation. He never had really a chance to develop appropriately. (App. A003638-39).

(Attachment 2, 43).

The district court also noted this information that was admitted into evidence by exhibit but not in the oral testimony:

The time line admitted into evidence contains the following information not included in Ms. Hammock's oral testimony: "1975 Sareef [sic] involved in a series of misdemeanors locally all said to be racially motivated"; "1988 Vera (Tilea) is taken to Lawrenceville from Richmond by Sareef [sic] who abuses her. Nathan rescues Vera. Mikal and Saleem witness more abuse and violence"; "8/23/92 Mikal involuntary admission in a psychiatric facility after suicide threat/gesture and Mikal hospitalized Admission DX Axis I, Major Depression with suicidal ideation, adjustment disorder, R/O Adjustment Disorder, Axis II Developmental Reading Disorder, Axis III Hx of right arm and right leg fractures"; "10/19/92 Mikel [sic] discharged from Walter P. Carter Mental Health. Discharge DX Axis I Major Depression, Single Episode[.] Mikal also becomes more disruptive in his uncle's home in order to force his return to Lawrenceville to join his father and brother. He has become even more defiant after he learns that his brother has joined his father. The three reunite and live on Burwell property with the boys. This was an isolated place in the country and they often had no food, heat or money." The time line ends in April 2001, when Mahdi was transferred to the Virginia Department of Corrections. (App. A007544).

(Attachment 2, 40 n. 17).

Thus, more than merely relating background facts, she explained in her testimony not only the "chaos in his life" and educational, parental, and role model issues, and other recognized risk factors, but the effect those things, among others, had on Mahdi's development. Moreover, the PCR hearing allowed for further insight into the investigation behind the presentation, again, as summarized by the district court:

The State ... presented testimony from Mahdi's trial attorneys and defense team, which included: James Gordon, the private investigator (App. A001742-47); Paige M. Haas, the mitigation investigator (App. A001800-26); Dr. Thomas V. Martin, the forensic psychiatrist (App. A001747-84); and Dr. Geoffrey R. McKee, the forensic psychologist (App. A001784-1800). The attorneys and investigators testified regarding the investigation, sharing information in periodic team meetings, consulting with the attorneys assigned to Mahdi's North Carolina murder case, ***and personal interactions with uncooperative family members and potential witnesses.*** Dr. Martin discussed his findings that Mahdi had a violent outlook, expressed no remorse, and was manipulative. (App. A001755-56). [FN 20] ***Those findings led Dr. Martin to diagnose Mahdi with antisocial personality disorder.*** (App. A001756) ***Dr. McKee agreed and diagnosed Mahdi with antisocial personality disorder*** with a history of alcohol abuse. (App. A001790). ***Both doctors indicated none of the information they heard or reviewed during the evidentiary hearing would have changed their opinions and, in fact, the DJJ records, which they had not previously reviewed, were consistent with their diagnoses.*** (App. A001783-84, A001799-1800).

[FN 20] Mahdi told Dr. Martin that his actions were "justified" and that "people only understand force." (App. A001761).

(Attachment 2, 56-57) (emphasis added).

The emphasized portions note the difficulties the case presented for defense counsel. Mahdi was consistently violent and had inflicted much harm. It was deeply imbedded in his character.

*Mahdi Failed to Show an Unreasonable Application of Strickland*

For an ineffective assistance of counsel claim to warrant relief, the oft quoted test is that a petitioner must show (1) that his trial counsel's performance fell below an objective standard or reasonableness, and (2) that a reasonable probability exists that but for counsel's error, the result of the proceeding would have been different. *Strickland v. Washington*, 466 U.S. 668, 694 (1985). In considering evidence omitted from the sentencing phase, a petitioner must "establish 'a reasonable probability that a competent attorney, aware of [the available mitigating evidence], would have introduced it at sentencing,' and 'that had the jury been confronted with this ... mitigating evidence, there is a reasonable probability that it would have returned with a different sentence.'" *Wong v.*

*Belmontes*, 558 U.S. 15, 20 (2009) (quoting *Wiggins v. Smith*, 539 U.S. 510, 535 (2003) (alternations in original). In the prejudice analysis, a reviewing court must “consider *all* the relevant evidence that the jury would have had before it” which requires consideration of possible mitigation with additional aggravating evidence that may also come in. *Id.*, 558 U.S. at 20 (emphasis in original).

Judge Early concluded that even if the PCR evidence could be helpful, he could not “divorce from [his] analysis the unfavorable information that would have come in through the family witnesses, had they been called at the sentencing hearing as Mahdi” argued. (Attachment 1, 115). Moreover, the district court concluded, much like Judge Early,

While the PCR evidence certainly expanded on and added depth to Ms. Hammock’s testimony and the other evidence offered at sentencing, it would not have significantly “altered the sentencing profile presented to the sentencing judge.” *Strickland*, 466 U.S. at 700.

(J.A. 507). And much of the PCR evidence was covered in the sentencing presentation, with the district court also observing that trial counsel had

assembled a team of qualified experts to assist in Mahdi's defense and specifically to investigate potential mitigating evidence. Members of the team traveled to Lawrenceville, Virginia; Richmond, Virginia; Baltimore, Maryland; and Philadelphia, Pennsylvania. (App. A001805-06). They interviewed Mahdi and several of his family members, including: Nancy; Mahdi's uncle, Nathaniel; Vera; Shareef; Mahdi's maternal aunts, Corliss Artis and Sophia Gee; Carson and Lawanda Burwell; and Mahdi's paternal aunt, Kathy. (App. A001806-08). And, the team consulted with Mahdi's North Carolina attorneys and their mitigation investigator, who had already spent time gathering information from Mahdi's family. (App. A001808). In addition, Paige Haas, the team’s mitigation investigator, testified that she attempted to speak with Saleem, but was not successful. (App. A001809).

(Attachment 2, 63-64).

The district court further noted the state court record established that counsel held scheduled meetings and shared information with the defense team, and that the mitigation investigator obtained school records and spoke to teachers. (Attachment 2, 64). The court concluded “[i]t is not

unreasonable or against prevailing professional norms for counsel to rely on a qualified mitigation investigator and other experts.” (Attachment 2, 65). *See generally Council v. State*, 380 S.C. 159, 173–74, 670 S.E.2d 356, 363 (2008) (concluding counsel erred in not retaining “a social history investigator” rather leaving the task to “his law partner and private investigator to collect potentially relevant information” observing that “neither of these individuals was qualified, in terms of social work experience, to evaluate the information to assess Respondents background”).

“[T]here comes a point at which [more information] can reasonably be expected to be only cumulative, and the search for it distractive from more important duties.” *Bobby v. Van Hook*, 558 U.S. 4, 11 (2009). Counsel was not ineffective in investigation and their strategic decisions that followed. Notably, the district court, addressing the concern that the investigation did not go deep enough into history, reasoned: “While PCR counsel may not have traced Mahdi’s lineage all the way back to 1648, as Mr. Dworkin [another expert retained for the federal habeas action] did, they did present evidence regarding Mahdi’s family’s history, racial views, and significant experiences with racism, and the very segregated nature of their environment. (Attachment 1, p. 710).

Moreover, as Judge Early found and the district court agreed, even if deficiency existed, the additional evidence Mahdi pointed to “could not counterbalance the overwhelming evidence in aggravation” such as:

- The video murder of his North Carolina victim and his casually walking out with a beer;
- That Mahdi shot Captain Myers nine times, set fire to his body, and stole his truck and his weapon in order to run from police;
- Mahdi’s statements to police when captured in Florida;
- Mahdi’s extensive history of disciplinary violations in prison, including violence and threats of violence against employees and escape attempts, even when contained in SCDC’s most secure unit; and the fact that Mahdi planned to effect escape in Judge Newman’s own courtroom.

(Attachment 2, 79, and also n. 31 (referencing “evidence of Mahdi’s apparent lack of remorse”).

The district court also noted the additional aggravation that accompanied the offered evidence such as:

- an antisocial personality disorder
- Dr. Martin’s opinion that Mahdi “was essentially becoming a racist militant in his own way. His outlook on life was quite violent. His way of surviving is by force. He seemed to have no difficulty talking about killing people if necessary in order to achieve independence”
- that Mahdi’s brother, subjected to the same environment went into the Job Corp and the Army instead of falling to criminal life
- that Mahdi had fled Virginia because of possible murder charges after his involvement in a drug deal that went awry
- that he took multiple steps to avoid detection and execute other crimes
- and, while in Florida after the murder, he wore Captain Myers’s uniform and “investigated” a report of criminal activity

(Attachment 2, 79-82).

The district court reasonably concluded “the scales remain tipped in the State’s favor.” (Attachment 2, 82-83). No relief was due. *Sigmon*, 956 F.3d at 192 (“The question of whether counsel’s deficiency prejudiced the defense “centers on ‘whether there is a reasonable probability that, absent [counsel’s] errors, the sentencer ... would have concluded that the balance of aggravating and mitigating circumstances did not warrant death.’ ”) (quoting *Williams v. Ozmint*, 494 F.3d 478, 484 (4th Cir. 2007) (alterations in original) (quoting *Strickland*, 466 U.S. at 695).

Mahdi did not carry his burden of proof.<sup>17</sup>

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<sup>17</sup> In its amicus brief, the South Carolina Association of Criminal Defense Lawyers appears to argue that best practices are the standard for an ineffective assistance of counsel claim, rather than the *Strickland* test. For example, the brief discusses at some length the better results for capital defendants under this state’s (and other states’) new indigent defense systems. But the question is not whether Mahdi could theoretically have acquired better representation; it is whether the representation he received was adequate under *Strickland*, and even then whether adequate representation would have changed the outcome. See *Strickland*, 466 U.S. at 687 (holding that satisfying the deficiency prong “requires showing that counsel made errors so serious that counsel was not functioning as the ‘counsel’ guaranteed the defendant by the Sixth Amendment”); *id.*, at 689 (“There are countless ways to provide effective assistance in any given case. Even the best criminal defense attorneys would not defend a particular client in the same way.”). Reflective of this misunderstanding, an earlier portion of the brief says that “the difference between having the information available and not using it and not taking the time to find the same type of information is of no legal consequence.” Amicus Br. 7. But, of course, it *is* of legal consequence, because the

*New Evidence, Conditions of Incarceration Issue*

Mahdi presented Dr. Craig Haney in the 2009 PCR action to opine as to “the likely effects on Mahdi of his extensive time in prison.” (Attachment 2, 54). The district summarized his testimony as follows:

Dr. Haney, an expert in social psychology, testified regarding the likely effects on Mahdi of his extensive time in prisons. (App. A001592-1655). Based on his review of Mahdi’s records, Dr. Haney testified that Mahdi “was institutionalized for approximately eight and a half out of every 10 days of his life after the age of 14,” amounting to about eighty-six percent of his life. (App. A001608). Dr. Haney described similar risk factors in DJJ to those Mahdi experienced in his early life, including: abandonment, neglect, witnessing violence, instability, and unpredictability. (App. A001609). He indicated that, in order to avoid victimization in an institution, people who have been hurt by these experiences will project or develop a tough, angry exterior. (App. A001610). Dr. Haney attributed Mahdi’s “maladaptive” and “impulsive” behavior in DJJ to this form of self-preservation (App. A001611-12) and opined Mahdi left DJJ “with the same problems arguably worsened by the fact that he had been in this institutional setting and had developed in part as a way of trying to adjust in this setting an even more defiant and oppositional approach to conflict and to interactions” (App. A001618).

Regarding Mahdi’s time in adult prison in Virginia, Dr. Haney testified that the prison system failed to address Mahdi’s underlying psychological problems. (App. A001620). Dr. Haney stated untreated underlying psychological problems can often lead inmates to rack up disciplinary infractions for minor irrational and impulsive behaviors, and those infractions result in time in isolation or a transfer to a super-max facility. (App. A001621). Dr. Haney described studies suggesting prisoners subjected to extended solitary confinement can experience anxiety and mental deterioration and “lose their ability to initiate

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examination of counsel’s representation assesses two different points of the representation. *See Wiggins v. Smith*, 539 U.S. 510, 523 (2003) (noting that, in that case, the Supreme Court’s “principal concern” was “not whether counsel should have presented a mitigation case,” but “whether the investigation supporting counsel’s decision not to introduce mitigating evidence . . . was itself reasonable”). At any rate, Respondent maintains that this Court does not require assistance in determining the extent and application of the *Strickland* standard. *See, e.g., Green v. State*, 351 S.C. 184, 198, 569 S.E.2d 318, 325 (2002) (holding that a PCR court properly disregarded as irrelevant the opinion testimony of a criminal defense lawyer that the trial counsel rendered deficient performance, as the standard was a legal issue for the court rather than a factual one).

behavior or make responsible judgments about their own behavior.” (App. A001623-24). In addition, Dr. Haney stated “[i]f a prisoner suffers from depression that depression almost certainly will deepen inside a super-max prison.” (App. A001624). And the frustrating nature of the environment and lack of “pro-social avenues for the release of that frustration” can lead prisoners in super-max facilities to lash out impulsively and irrationally. (App. A001624-25). Dr. Haney opined these factors significantly contributed to Mahdi’s institutional behavior and that, after his time at the super-max facility in Virginia, without a transitional process or psychiatric treatment, Mahdi would have had a very difficult time reentering free society. (App. A001630-33).

(Attachment 2, 54-55).

Specifically, Mahdi’s PCR counsel asked Dr. Haney about the studies on isolation. (Attachment 6). Judge Early rejected Dr. Haney’s opinion as having any reasonable impact on sentencing. (*See* Attachment 1).

He now claims that certain “changes” to the science should allow for additional review. Mahdi does not show “new” evidence that would warrant any additional review, but if he did, new science – unless, perhaps it would render some evidence false which is not the case here – does not warrant upsetting a legal conviction and sentence. *Accord Moore v. Texas*, 581 U.S. 1, 13 (2017) (in context of intellectual disability determinations, precedent “does not demand adherence to everything stated in the latest medical guide”). Moreover, Mahdi’s conduct getting him to prison in the first instance, and his conduct in both juvenile and adult prisons, shows consistent violence that is reflective of the nature of the man.

#### *Summary of Mahdi’s Violent Prison Conduct*

Judge Newman heard much about Mahdi’s violent prison conduct. And Mahdi demonstrated his manipulative and dangerous nature during the circuit court proceedings. Further, his conduct remained so manipulative and dangerous that his PCR hearing had to be held inside the Department of Corrections.

The Fourth Circuit summarized Mahdi's long violent history as presented to Judge

Newman:

i. Juvenile Crimes and Convictions

Sheriff James Woodley from Brunswick County, Virginia, testified that he first met Mahdi as a young teenager while investigating a report of stolen property. Mahdi, who was fifteen at the time, was later convicted of breaking in and entering a house where he stole “speakers, [a] tape player and also ... a handgun, a .44 caliber magnum.” J.A. 1278.

After Mahdi failed to appear for sentencing in June 1998, an officer attempted to execute an order to remand him to the Virginia Department of Juvenile Justice (“DJJ”). At the same time, the officer tried to serve a show cause order on Mahdi's father, Shareef. When the officer arrived at Mahdi's grandmother's house—where they were living—Shareef came out, read the orders, said, “We're not going,” and proceeded to run back into the house. J.A. 1278. Sheriff Woodley eventually arrived at the scene and spoke with Shareef through a window. At that time, “the other officers [were] putting on their gear, the bullet proof vests and getting weapons out of the vehicle.” J.A. 1279. Sheriff Woodley heard Mahdi “holler to his father” that “[t]he mother fuckers got guns out there.” J.A. 1279. Around nine hours after the standoff began, officers breached the house and arrested Mahdi and Shareef. After he was in custody, Mahdi told the officers escorting him that he was “going to kill a cop before [he] die[s].” J.A. 1280. Sheriff Woodley made clear in his testimony that both Mahdi and his father were responsible for the standoff.

Officer Mike Koehler from the Richmond City Police Department testified about an encounter he had with Mahdi in November 2000. Officer Koehler went to Mahdi's “house with another officer ... to serve a summons on him for slashing his mother's tires” along with “an outstanding detention order.” J.A. 1307. Officer Koehler tried to take Mahdi into custody, but Mahdi “got upset” and “started to pull away.” J.A. 1308. The officers wrestled with him, and Mahdi reached for one of their guns. Eventually, after using pepper spray and an ASP baton, the officers were able to subdue Mahdi. He later told Officer Koehler that “he slashed his mother's tires because she wouldn't come to the door when he knocked,” referring to her as “a crazy bitch” and saying “that he should have killed her.” J.A. 1309–10. Mahdi also “begg[ed]” the officers to “shoot him.” J.A. 1310.

*Mahdi*, 20 F.4th at 859.

The Fourth Circuit also summarized the various issues Mahdi had in juvenile corrections:

i. The DJJ

The State called Linda Coulson, a former counselor at the DJJ's Reception and Diagnostic Center, who worked as “part of an assessment team to evaluate all [committed] juveniles,” including Mahdi. J.A. 1285. Coulson testified that when she met Mahdi, he “was tested to have a full scale IQ of 108,” which is considered “in the upper average range.” J.A. 1288. During his intake interview, Mahdi “described himself as a quiet person who [was] always up to something. He denied ... [having] any strengths except for robbing people.” J.A. 1288. Mahdi also advised Coulson “that he had been involved in selling crack cocaine.” J.A. 1289. He relayed his history of escapes and attempts to elude law enforcement. At bottom, Mahdi's comments suggested to Coulson “that he had little respect for the rights and property of others. He expressed no remorse” or “empathy for the impact of his acts upon others.” J.A. 1290. In her final assessment, Coulson observed that Mahdi was “the product of a dysfunctional single parent family characterized by a lack of involvement with his mother, an absence of a positive adult role model, instability, unemployment, and a lack of structure and supervision.” J.A. 1703.

Barbara Amos, who worked as a DJJ counselor, introduced portions of Mahdi's records from his time in custody there. These records reflected: Mahdi's regular meetings with counselors; consistent efforts by Shareef and Mahdi's grandmother, Nancy Burwell (“Nancy”), to visit and communicate with him and his counselors; as well as his various disciplinary violations for conduct including, among other things, attempted assault on an officer and the use of threatening language/behavior. At one point Mahdi made “suicidal statements” to his counselor before stating that “he would become homicidal first. He gave very graphic descriptions of how he would hurt others. He also graphically described how [DJJ staff] would find [Mahdi's victims and him after he committed suicide] (i.e. ‘hanging’).” J.A. 1978–79.

*Mahdi*, 20 F.4th at 860–861.

It did not end there. Though Mahdi presented an expert to opine that he could adapt to a prison environment, Judge Newman also heard:

## ii. VDOC

To introduce Mahdi's VDOC records, the State called Cindy Collins, VDOC's criminal records manager. According to a summary of Mahdi's disciplinary record, he had a couple dozen violations, including setting fires, "[p]ossession of a sharpened instrument," and "[a]ssault on [a] non-inmate." J.A. 1698. Mahdi was transferred twice during his time in VDOC's custody due to his "continued poor institutional adjustment and increase in security level." J.A. 1698.

## iii. SCDC

The State called several SCDC officers to testify about Mahdi's behavior while awaiting trial. Officer Henry Johnson spoke about a disciplinary hearing where Mahdi was charged with striking a correctional officer (who suffered a concussion). During the hearing, Mahdi said that "the next chance he [got], he[ ] [was] going to ... kill that mother fucking officer.... The first chance he [got], he would finish him off." J.A. 1465. Officer Johnson also testified about a search he conducted in Mahdi's cell where he discovered "[s]ome rope and ... some pieces of metal." J.A. 1466. Officer Terrance Prioleau testified about a separate search where officers discovered a piece of metal Mahdi had hidden in a hole in the wall. Officer Janet Driggers testified about a grievance form she received from Mahdi, where he wrote,

I cannot be diplomatic with you people, so my last action would be to kill you. Why not? You're no good to anybody. I could easily get someone to murder you. What is wrong with you, bitch? I bet you'll respond quick to this, won't you? You people think this shit is a game.

J.A. 1482. Officer Driggers testified that "[i]n [her] capacity as a grievance coordinator," this was the only time she "was ever threatened to be killed." J.A. 1489.

SCDC disciplinary officer Annie Sellers testified that Mahdi made additional threats during the subsequent disciplinary hearing. Even "[a]s he was being removed from the area and while he was out in the hallway, he was still making threats towards [Officer Driggers]." J.A. 1497.

Eventually, SCDC officials determined that Mahdi should be

moved to more restrictive custody in the Kirkland Maximum Security Unit (“Kirkland”). Captain Gary Lane testified that Kirkland is “a 50 bed facility” reserved for “the worst of the worst inmates in the State of South Carolina.” J.A. 1500. Within the facility, there are six cells in what is called the “High D Wing,” where “the lights are kept on 24 hours a day, seven days a week” and inmates are monitored by video cameras “24 hours a day.” J.A. 1501. That is where the SCDC housed Mahdi, meaning “he [was] one of the six most secure inmates in the whole department of corrections” at the time of his sentencing. J.A. 1502.

Captain Lane testified about separate incidents at Kirkland when they discovered various contraband in Mahdi's cell including: a “hammer-like weapon,” J.A. 1502; “two pieces of a metal, one sharpened to a point,” J.A. 1506; and pieces of “knotted rope,” J.A. 1506.

*Mahdi*, 20 F.4th at 861.

Even while Mahdi has been incarcerated and contained on Death Row, a high security unit in the South Carolina Department of Corrections, his records reflect these events relevant to his violent history and escape:

1/6/2005:

**Assault and battery of an employee:** Struck an officer in the face with a concrete block

1/18/2005:

**Threatening to kill an employee:** Threatened to kill the same employee he struck on 1/6/2005 during a disciplinary hearing.

3/10/2005:

**Escape (attempt):** Mahdi refused an order to remove the covering from his cell door window. When officers removed the covering and entered the cell, they found that Mahdi had made a rope by weaving the cotton together from his blanket. Officers also found several metal objects in his light fixture.

5/6/2005:

**Possession of a weapon:** Small metal object (2x1) found in his cell.

6/7/2005:

**Threatening to kill an employee:** Sent message in writing threatening to kill an employee

12/02/2009:

**Assault and battery of an employee with intent to kill or injure:** Mahdi and Quincy Allen assaulted an officer in the living unit. Both inmates had homemade weapons.

11/16/2012:

**Possession of a weapon:** During a routine weekly shakedown, officers found a 17-inch piece of sharpened metal near the TV stand in a corner of the wall.

10/3/2014:

**Possession of escape tools:** During a shakedown search, officers found two homemade keys and a piece of metal in the wall.

6/4/2015:

**Possession of a weapon:** During a scheduled move from one cell to another, Officers searched Mahdi's property before moving it. They found five pieces of sharpened metal in various sizes hidden around the bed frame, and two pieces of sharpened metal in an air vent. One of the pieces was 12x3 inches; the other was 8x2 inches.

11/28/22:

**Possession of escape tools:** Officers saw Mahdi standing on his toilet with his hands in the ceiling vent. He was restrained, and the cell was searched. Officers found an Allen wrench inside the vent, which is only accessible to his cell.

SCDC Media Summary, March 2025.

The nature of the man is violence – it preceded incarceration, it actually caused instances of isolation for necessary containment, and it continues.

Consider also that the record shows that PCR counsel presented Dr. DeRosset Myers, Jr., “an expert in child and adolescent psychology” to opine on “developmental issues in the first sixteen to seventeen years of Mahdi’s life.” (Attachment 2, 55).<sup>18</sup> He opined “Mahdi suffered from major

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<sup>18</sup> As to mental health diagnoses, both Dr. Thomas Martin and Dr. Geoffrey McKee found that Mahdi was not suffering from any major mental illness at the time he murdered Capt. Myers, and they diagnosed him with anti-social personality disorder at the time of this murder. When admitted

depression and severe attachment disorder in his childhood and adolescence.” (Attachment 2, 55). Notably, he referenced “Mahdi’s records from the Walter Carter Center,” a treatment center Mahdi was referred to at nine years of age. (Attachment 2, 55). In his PCR order, Judge Early observed regarding those Carter Center records:

The records themselves detail Mahdi’s disruptive and manipulative behavior. Mahdi assaulted other patients, attempted to escape, admitted he fabricated a child abuse claim, damaged property, and used profanity against staff of the hospital. Mahdi also threw furniture at hospital staff, falsely pulled a fire alarm. and threatened to suffocate a staff member with a pillow.

(Attachment 1, 122). (*See also* Attachment 1, 33 and 57 (paternal uncle Carson Burwell explaining “Mahdi was manipulative and faked abuse and suicidal gestures,” “Mahdi acted out while at the Carter Center and *had to be placed* in isolation,” “Mahdi would only talk about suicide when he did not get his way or did something wrong,” “the incident which led to Mahdi’s commitment to the Carter Center was more of Mahdi’s manipulative behavior and was not a real suicide attempt”).

This both indicates a problem before isolation, and a consistency in behavior after isolation. Any “causation” argument would not withstand the lightest of scrutiny.

At any rate, further general evidence about his period of incarcerations that may question severe sanctions would not show the reasonable probability of a positive impact in sentencing based

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to Virginia’s Department of Corrections, Mahdi was diagnosed with intermittent explosive disorder and antisocial personality disorder. While Dr. Martin testified that Mahdi had suffered from some recurrent depression in his life, he did not find any evidence Mahdi was suffering from depression at the time he murdered Capt. Myers. (*See* Attachment 1 at 42-43; *see also* 48 n. 20). Further, though Mahdi was examined, many times, including by Dr. (Schwartz-Watts) Maddox for the PCR, *see* Attachment 2, 56; *see also* Attachment 1, 122), the PTSD diagnosis offered at this last minute was not before the PCR court. That simply shows that theories can change. At any rate, there is no guarantee of effective assistance of an expert, nor is counsel ineffective for not “second-guess[ing]” an expert’s conclusion. *Wilson v. Green*, 155 F.3d 396, 403 (4th Cir. 1998). It remains that the information would barely if, at all, change the picture at sentencing.

on the totality of the available sentencing picture.<sup>19</sup> But again, all of this has been available for many, many years, and actually explored, in the PCR. (See Attachment 6). Mahdi shows nothing new of any moment.

The petition should be denied.

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

There are other reasons to deny the petition, as well. “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

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<sup>19</sup> The amicus brief filed by Time Served, the Criminal Practice Clinic at the University of South Carolina Joseph F. Rice School of Law, and the Gault Center, is largely devoted to presenting new studies repackaging old science as new facts that emerged after Mahdi’s proceedings. For example, amici note a statement put forward by the American Academy of Child and Adolescent Psychiatry in 2012 “oppos[ing] the use of solitary confinement[.]” See Juvenile Justice Reform Comm., *Solitary Confinement of Juvenile Offenders*, AM. ACAD. CHILD ADOLESCENT PSYCH. (Apr. 2012), [https://www.aacap.org/aacap/policy\\_statements/2012/solitary\\_confinement\\_of\\_juvenile\\_offenders.aspx](https://www.aacap.org/aacap/policy_statements/2012/solitary_confinement_of_juvenile_offenders.aspx). However, that statement itself shows that there was hardly anything new about the conclusion; in fact, it cited studies dating back as far as 1990 to support its position. “The potential psychiatric consequences of prolonged solitary confinement are well recognized and include depression, anxiety and psychosis. Due to their developmental vulnerability, juvenile offenders are at particular risk of such adverse reactions.” *Id.* (footnotes omitted). Nor are the consequences anything new to the judicial system or lawyers; the notion of psychological harm from isolation is a longstanding concern. See, e.g., *Apodaca v. Raemisch*, 586 U.S. 931, 139 S. Ct. 5, 6, 202 L. Ed. 2d 251 (2018) (Sotomayor, J., statement on denial of certiorari) (“As far back as 1890, this Court expressed concerns about the mental anguish caused by solitary confinement.” (citing in a footnote, *In re Medley*, 134 U.S. 160, 168, 10 S. Ct. 384, 33 L.Ed. 835 (1890))); *Thompson v. Montemuro*, 383 F. Supp. 1200, 1204 (E.D. Pa. 1974) (“There is, moreover, persuasive evidence that solitary confinement under degrading conditions has an especially devastating impact upon a minor's sense of identity.”). New details about the mechanisms that cause long-observed problems are not new evidence in any meaningful way; they are further explanations of mitigating evidence that was already available to Mahdi’s counsel in earlier proceedings.

those issues which were necessarily decided in the former case.”). This doctrine should apply here were Mahdi introduced these very concepts in the initial PCR action.

A new review of his issues should also be 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)). Mahdi’s disagreement with sentencing, with the prior PCR resolution, and the federal decisions does not remove the preclusive effect of the prior litigation. 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 Mahdi 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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