

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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S.C. SUPREME COURT

IN THE ORIGINAL JURISDICTION

MIKAL D. MAHDI,
Petitioner,

v.

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

Appellate Case No. 2025-000524

**REPLY IN SUPPORT OF
PETITION FOR WRIT OF HABEAS CORPUS¹**

Rather than address the claims that Mahdi has actually raised, the State resorts to constructing straw man arguments—and flimsy ones, at that.

The State has no real response to Mahdi’s argument that his trial attorneys performed deficiently by failing to look for mitigation witnesses outside of Mahdi’s family, after trial counsel decided that the family members would not be helpful. Petition at pp. 15-18. Instead, the State asserts that trial counsel could not have presented anything more than what they did because it would only have “resulted in the State learning of more aggravation.” Return at p. 17. This response imagines a factual record the State wishes it had, not the one it actually has. The fact is that the community witnesses outside of Mahdi’s family were available and willing to

¹ This reply brief is also filed in support of Mahdi’s companion motion for a stay of execution.

testify about Mikal's good character as a young child, the volatility and mental illness of his father Shareef, and the ways in which Shareef's crippling mental health problems caused him to abuse and traumatize a young Mikal. Petition at pp. 39-47 (describing testimony of elementary school teachers and local community leaders). None of the information from these witnesses includes further aggravating evidence about Mahdi.² In essence, then, the State offers no response to this aspect of Mahdi's ineffectiveness claim. The State's only rejoinder regarding deficient performance rests on an imaginary factual premise.

Mahdi's second argument why his trial attorneys were deficient in their representation is that they presented social history testimony from a mitigation expert, but inexplicably limited that expert's description of Mahdi's long-running complex trauma to a presentation lasting less than thirty minutes, and no more than 15 transcript pages. Petition at pp. 18-27. The State's return never really responds to this argument, again focusing predominantly on the notion that further mitigating evidence would only have opened the door to more aggravation. Yet the State never explains how it would have been damaging to Mahdi had his trial attorneys used the same strategy they employed at trial—a social history expert to describe and summarize his upbringing—but done so in a way that comprehensively described what Mahdi went through. The Court should reject the State's odd proposition that trial attorneys can adopt a defense strategy but then reasonably decide to implement it halfheartedly. *See Wiggins v. Smith*, 539 U.S.

² The additional aggravation evidence of Mahdi's potential involvement in the homicide of a drug dealer in Virginia came into evidence during the PCR hearing due to the claim of ineffective assistance of counsel, which waived the attorney-client privilege and allowed disclosure of trial counsel's files, the files of the mental health experts retained by trial counsel, and permitted these attorneys and mental health professionals to testify about statements Mahdi made to them. Clearly, during the sentencing proceedings, the State could not have called Mahdi's defense counsel or his retained experts to testify against him. *See Motion to Alter or Amend the Judgment (with attachments), PCR Appeal Appendix at pp. 257-334.*

510, 526-27 (2003) (holding that trial counsel’s explanation for their decisionmaking was “more *post hoc* rationalization . . . than an accurate description of their deliberations,” in part because trial counsel presented mitigation but did so in a “halfhearted” fashion).

Next, the State attempts to reframe the mitigating evidence presented at trial as “detailed sentencing phase testimony.” Return at p. 18. But this is more rhetoric than reality. Mahdi’s petition explains, in detail, how and why the trial testimony was sorely lacking. Mahdi asks the Court to apply a test of common sense (which aligns well with the *Strickland* test of counsel’s objective reasonableness). It strains any definition of common sense to claim that a 15-page clinical summary of extraordinary trauma is a reasonable approach to defending a person when the only task before the sentencer is to look for a hint of humanity and determine whether a life without parole or death sentence is appropriate.

The State’s real argument is that Mahdi’s crimes and history are so bad that no amount of additional mitigating evidence could make a difference. *See, e.g.*, Return at p. 32 (“The nature of this man is violence.”). As a legal matter, the Court should reject this stark and inflexible application of *Strickland*’s prejudice prong. There is “an obvious lesson [in capital cases] that is frequently overlooked: Almost without exception, [such cases] arise from extremely egregious, heinous, and shocking facts.” If heinousness “were all that is required to offset prejudicial legal error and convert it to harmless error,” habeas relief “would virtually never be available” and the Court’s review “would amount to a hollow judicial act.” *Gardner v. Johnson*, 247 F.3d 551, 563 (5th Cir. 2001); *see also Walbey v. Quarterman*, No. 08-70007, 2009 WL 113778 (5th Cir. Jan. 19, 2009) (explaining that, to overcome constitutional error, the State “must do more than baldly point out the obvious, that [the capital crime] was extremely brutal.”). Put differently, “even if it does not undermine or rebut the prosecution’s death-eligibility case,” i.e. the aggravating facts,

mitigating evidence may nonetheless “alter the [sentencer’s] selection of penalty,” for example, if it influences an “appraisal of [the defendant’s] moral culpability.” *Williams v. Taylor*, 529 U.S. 362, 398 (2000).

Mahdi’s arguments are in no way meant to minimize the nature of his conduct. Mahdi instead urges the Court to compare the surface-level picture that was offered at trial with the thorough, textured account available today. The full account of Mahdi’s life bears on his moral culpability by explaining how persistent trauma for the duration of his childhood and adolescence tragically led him down a path toward violence. The Court does not need to conclude that a life without parole sentence necessarily would follow from the more complete body of evidence; that is not what the law requires. The *Strickland* test asks only whether there is a reasonable probability of a different result. With so much of Mahdi’s life left unexplained during the trial, the chances of a different result are more than reasonable. At the very least, the Court’s confidence in the reliability of the trial verdict should be shaken. *Strickland v. Washington*, 466 U.S. 668, 694 (1984) (“A reasonable probability is a probability sufficient to undermine confidence in the outcome.”).

Consider just a few examples of the dramatic unrepresented evidence that Judge Newman did not hear:

- One of Mahdi’s earliest childhood memories is of his father slamming his mother through a glass table, with young Mikal pleading with his dad to stop.
- When Mikal was about four years old and his mother left the home because of the physical abuse, Mikal’s father falsely told Mikal his mother was dead.
- When Mikal was in second grade, he witnessed his father kidnap his mother at gunpoint and physically assault her.
- When Mikal was in fifth grade, his teachers tried to get him extra support for the emotional problems he was having as a result of the trauma in his home. Instead of accepting the help, Mikal’s father became enraged, pulled Mikal

from school, and subjected him to survivalist training in the woods, which he pretended was “home-schooling.” Mikal would never return to school.

- Mikal’s father was so unstable during this period that he was arrested for making a scene at a segregated all-white swimming pool, and shouting “extremely vile language” until an African American community leader could come and talk him out of the pool. Not long after, Shareef became enraged at his own sister and smashed in her car window with a cinderblock.
- During his juvenile incarceration from ages 14 to 17, Mikal lived through nearly 2,000 hours in isolation, often as punishment for minor transgressions like refusing to do his daily exercise or ripping out book pages.
- During his late adolescent incarceration from ages 18 to 21, Mikal lived through 6,000 more hours in solitary confinement, again, often for petty reasons like not tucking in his shirt or refusing to get a haircut. Mikal also spent almost two years at a brutal supermax prison with a documented history of human rights violations.

Petition at pp. 28-29. In the return, the State does not claim that any of this evidence was before the sentencing judge prior to Mahdi receiving his death sentence. If it was, there’s more than a reasonable probability that it would have affected the trial judge’s sentencing calculus.

South Carolina’s recent statewide history of death sentencing supports the view that a competent, thorough presentation of Mahdi’s background could have influenced his trial’s result. As the SCACDL amicus brief points out, of the 28 people recently on death row, 19 were put there before the creation of the state’s Capital Trial Division in 2008. An additional 5 prisoners sentenced to death in 2008 and 2009 were represented by court-appointed counsel rather than the Capital Trial Division. SCACDL Brief, p. 12. The fact that South Carolina has added so few people to death row since standards for capital trial defense were improved in 2008—and the stark difference in results based on the nature of defense counsel—should be instructive. Over the past 15 years, South Carolina has not had fewer or less heinous murders. What has changed is the nature of capital representation, resulting in far lower death sentencing rates. This data

undermines the State's reflexive, unsupported view that no amount of additional mitigating evidence could have changed the result of Mahdi's trial.

In its next gambit, the State asserts that even if the trial judge was not presented with a complete picture of Mahdi's upbringing, the PCR judge was. *See, e.g.*, Return at p. 2 ("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."). The State, however, ignores the serious flaws in Judge Early's analysis (which was actually drafted by the State through its proposed order, adopted in its entirety by Judge Early). Most glaring, with respect to deficient performance in failing to identify and call non-family witnesses, Judge Early's order does not even address this issue, or discuss the reasonableness of trial counsel failing to have these witnesses testify. 2025APP 1376-1384.

Regarding deficient performance in failing to present a more complete social history through their expert, Judge Early completely failed to grapple with the fact that the social history offered at trial was little more than a vague summary compared with the exhaustive trauma account that was offered during PCR. 2025APP 1388-1391. Judge Early also believed trial counsel were not deficient in failing to present the more thorough social history because it could have led to the introduction of further aggravating evidence of Mahdi's conduct while institutionalized. 2025APP 1390. Yet at the same time, Judge Early acknowledged—and in fact used against Mahdi—the fact that the trial record already contained evidence of his poor prison behavior and disciplinary violations. 2025APP 1436. How could trial counsel be deemed reasonable for taking steps to avoid the introduction of aggravating evidence that was already in the trial record anyway? Rather than deferring to Judge Early's prior adjudication, this Court should treat his circular reasoning as a basis on which to revisit Mahdi's ineffectiveness claim.

Judge Early’s prejudice analysis is flawed for the same reasons. *See* 2025APP 1432-1447. He repeatedly invokes the mantra that the additional PCR evidence was cumulative of the trial evidence. However, repeating these words does not make them true. The reality is that the 15-page trial summary suggested only a vague outline of the deep childhood trauma Mahdi endured. This Court should not allow Mahdi’s execution to proceed when the basis for his death sentence rests on such thin ice.³

Compounding this error, Judge Early believed that the aggravating evidence at trial was overwhelming, *see* 2025APP 1433; at the same time, Judge Early reasoned that trial counsel could not have offered any more mitigating evidence than they did because the additional mitigation had potential downsides for Mahdi, *see* 2025APP 1436-47. In its return, the State adopts the same view.⁴ But if accepted, this reasoning would make it effectively impossible for

³ Moreover, even if some of the PCR evidence was cumulative of the trial evidence in limited respects, Judge Early failed to account for the fact that having live witnesses testify to their firsthand observations of Mahdi’s damaging childhood—as the elementary school teachers, in particular, would have been able to do—would have made an important difference in the quality of the trial presentation. *See, e.g.*, 2003 ABA Death Penalty Defense Guideline 10.11, Commentary (“Community members such as co-workers, prison guards, teachers, military personnel, or clergy who interacted with the defendant or his family, or have other relevant personal knowledge or experience often speak to the jury with particular credibility.”). Without such witnesses, trial counsel could only offer a sterile, expert driven account when their presentation could and should have conveyed the emotional force of Mahdi’s upbringing. *See Sowell v. Anderson*, 663 F.3d 783, 795 (6th Cir. 2011) (explaining that experts often “[speak] in generalities that lack[] details” while firsthand eyewitness accounts have “far more evidentiary power”).

⁴ It is not surprising that the State and Judge Early would express identical views, since Judge Early signed the State’s proposed order without making any changes. It should give this Court pause that Mahdi could be executed based on a state court order that did not reflect any independent reasoning or analysis by the judge. *See Hall v. Catoe*, 360 S.C. 353, 365, 601 S.E.2d 335, 341 (2004) (“strongly encourag[ing] PCR judges to draft their own findings of fact and conclusion of law in death penalty cases”); *Fishburne v. State*, 427 S.C. 505, 516, 832 S.E.2d 584, 589 (2019) (explaining that the “preparation and finalization of a PCR order is often a collaborative effort” between both parties and the PCR judge, who “must carefully review the proposed order to ensure it includes appropriate findings of fact and conclusions of law as to all

Mahdi to defend himself from a death sentence. In Judge Early and the State's view, faced with overwhelming aggravation, Mahdi was constrained to present only a bare mitigation case, out of fear that more aggravation could come in. But this cannot be true when the aggravation is already overwhelming. Overwhelming is overwhelming. There's no such thing as a little overwhelming, or a lot. Mahdi's *Strickland* claim deserves further review because he should not be executed pursuant to such circular, self-defeating reasoning.

Certainly, as the sentencer, Judge Newman did not apply circular reasoning when landing on a death sentence. On the contrary, Judge Newman explained his "commitment . . . to temper justice with mercy and to seek to find the humanity in every defendant that I sentence." 2025APP 533. The rub here was not Judge Newman's reasoning, it was that trial counsel failed to present the available, ample evidence of Mahdi's humanity. This too was an infirmity in Judge Early's PCR order. In his prejudice analysis, Judge Early completely failed to take into account that the sentencing judge was open to hearing mitigating evidence, but was simply not presented with it in any meaningful sense. This Court should not defer to a prior PCR prejudice determination that is flawed in so many ways.

Further, even if Judge Early's prejudice analysis were not inherently flawed, it still should not preclude this Court from looking closely at whether there could have been a reasonable probability of a different sentencing result. Judge Early's prejudice conclusion was based on an "objective" legal analysis under *Strickland*, 466 U.S. at 695 ("The assessment of prejudice should proceed on the assumption that the decisionmaker is reasonably, conscientiously, and impartially applying the standards that govern the decision. It should not

issues raised."). A judge's wholesale adoption of one side's proposed order raises questions about whether careful review of the proposed order actually occurred.

depend on the idiosyncrasies of the particular decisionmaker. . . .”). This objective determination need not be the final word on whether the trial result could have been different, because it does not account for the trial sentencer’s actual authority. Mahdi’s sentencing judge was in the same position a sentencing jury would have been to make “a reasoned moral” judgment of whether life or death was appropriate. *Penry v. Lynaugh*, 492 U.S. 302, 328 (1989) (“[T]he sentence imposed at the penalty stage should reflect a reasoned moral response to the defendant’s background, character, and crime.”) (internal citation omitted). Thus, regardless of what Judge Early concluded, there is a reasonable probability that a full presentation about Mahdi’s background could have resulted in a subjective, moral judgment that life imprisonment is the proper punishment.⁵

Turning finally to Mahdi’s after-discovered evidence claim, the State questions whether the evidence is actually new, and whether “it would render some evidence false” or perhaps otherwise undermine some previously relied-upon premise supporting Mahdi’s death sentence. Return at p. 27. Yet these are not reasons to summarily deny Mahdi relief. They are reasons to hold a hearing to address the factual disputes the State has raised about Mahdi’s after-discovered evidence. “The credibility of newly discovered evidence is for the trial court to determine. Only the trial court and not the appellate court has the power to weigh the evidence [It is] the gatekeeping role of the trial court in making a credibility assessment.” *State v. Harris*, 391 S.C.

⁵ In view of the flaws and limitations in Judge Early’s order on the ineffectiveness claim, the prior order should not, as the State contends, have preclusive effect on the instant litigation. *See* Return at pp. 34-35. Indeed, the State does not dispute or even address the law cited in Mahdi’s petition, that procedural bars are not mandatory in the original jurisdiction context. Petition at p. 9. Moreover, the PCR statute expressly authorizes a flexible “interest of justice” standard. S.C. Code § 17-27-20(A)(4); *Mangal v. State*, 421 S.C. 85, 99, 805 S.E.2d 568, 575 (2017) (“there are situations where the interests of justice require PCR courts to be flexible with procedural requirements *before* PCR applicants suffer procedural default on substantial claims.”) (emphasis in original).

539, 545, 706 S.E.2d 526, 529 (Ct. App. 2011) (internal citations omitted). Before carrying out the ultimate irreversible execution of Mahdi by firing squad, the Court should take the reasonable and measured step of ordering an evidentiary hearing so that a lower court can evaluate the credibility and impact of his newly available evidence. Such a hearing can be conducted on a timely basis to ensure the State's interest in finality is balanced alongside Mahdi's interest in full and fair proceedings prior to his execution.

CONCLUSION

The State notes in its conclusion, that “corresponding 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.” Return at p. 36 (quoting *State v. Gilbert*, 277 S.C. 53, 59, 283 S.E.2d 179, 182 (1981)). In this respect, at least, Mahdi and the State agree. The State's interest in finality is balanced against Mahdi's interest in a fair trial. Here, that did not occur. On the facts, the State does not dispute the paltry nature of Mahdi's trial defense to the death penalty. Functionally, Mahdi had no direct appeal because no issues were preserved. And while meaningful evidence was presented during PCR, the PCR judge's analysis of the evidence was deeply flawed. Today, there is even more new evidence, not previously available or heard by any court, giving critical insight into Mahdi's traumatic childhood. Given this backdrop, there is no reason to rush toward an execution when a hearing on the evidence of Mikal Mahdi's extraordinary, harrowing childhood can be held without significant delay.

Respectfully submitted on March 31, 2025.

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