The Supreme Court of South Carolina

The State, Respondent,

v.

Mikal D. Mahdi, Appellant.

Appellate Case No. 2025-000491

AND

Mikal D. Mahdi, Petitioner,

v.

Bryan P. Stirling, Director, South Carolina Department of Corrections, Respondent.

Appellate Case No. 2025-000524

ORDER

Mikal D. Mahdi, a death-sentenced inmate, has filed a petition for a writ of habeas corpus in this Court's original jurisdiction, along with a motion to stay his execution scheduled for April 11, 2025.

These matters are before the Court after an extensive procedural history. Mahdi is scheduled to be executed for his highly aggravated murder of Orangeburg law enforcement Captain James Myers. As we summarized in Mahdi's direct appeal:

> On July 15, 2004, petitioner [Mahdi] killed an employee while robbing a gas station in North Carolina. Petitioner shot the North

> Carolina victim twice in the face at point blank range using a gun he had stolen from his grandmother's neighbor. He was driving a vehicle stolen from Virginia, on which he had placed stolen license plates. Two days later, petitioner car-jacked a man in Columbia at 3:30 a.m. using the same weapon. Early that same morning, petitioner pulled into the Wilco Travel Plaza located off Interstate 26 in Calhoun County. Employees at the Travel Plaza became suspicious when petitioner was repeatedly unable to purchase gasoline from the pumps, while attempting to use stolen credit and/or check cards. The employees called law enforcement, and when officers arrived, petitioner fled on foot. He ran to a nearby farm property owned by Captain and Mrs. Myers. The Myers did not reside on the rural property, but there was a shed in which they kept equipment and in which Mrs. Myers had an office.
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> Petitioner found a .22 caliber semi-automatic rifle in the shed where he apparently spent the day. When Captain Myers stopped by the farm that evening, petitioner shot him nine times with the .22: three bullets struck the victim in the head. Petitioner then poured diesel fuel over the body and lit it. He stole Myers' truck and various firearms from the shed and drove to Florida, where he was arrested three days later after a chase.

Mahdi v. State, 383 S.C. 135, 136, 678 S.E.2d 807, 807 (2009) (footnote omitted).

Mahdi was indicted on charges of murder for the death of Captain Myers; grand larceny, greater than $5,000; and burglary, second degree, violent. The State filed a notice of intent to seek the death penalty. After a jury was empaneled, court security discovered a homemade handcuff key in Mahdi's pocket during a brief recess. Mahdi indicated he made the key while confined to the South Carolina Department of Corrections, had hidden it in his mouth, attempted to use it at the jail, but had not yet had the opportunity to use it at the courthouse.

The following day, after consulting with his trial counsel, Mahdi waived his right to a jury trial and pled guilty to all charges. Judge Clifton Newman accepted Mahdi's plea and scheduled a sentencing hearing. During the sentencing hearing, the State presented evidence of Mahdi's prior acts and statements, including:

- His juvenile arrests for breaking and entering and possession of stolen property

- A nine-hour standoff with police involving a fifteen-year-old Mahdi and his father after Mahdi failed to appear for sentencing, after which Mahdi told the officers who arrested him he was "going to kill a cop before [he] die[d]"
- His threats to kill his mother and attempts to reach for an officer's service weapon while being arrested for slashing his mother's tires
- His stabbing of a maintenance worker in Richmond, Virginia, puncturing one of his lungs, after the maintenance worker discovered Mahdi standing outside of a window of an apartment where he did not live
- His statement to the K-9 law enforcement officer who arrested him for Myers' murder in Florida that the only reason Mahdi did not kill the officer was because Mahdi's gun (that he had stolen from Myers) was "stuck on a three shot and I don't think I could have got you – I couldn't have shot you, the other cop, and . . . that fucking dog."

Judge Newman heard further testimony regarding Mahdi's behavior while in custody and incarcerated, including:

- His attempted assault on a juvenile corrections officer and the use of threatening language/behavior
- Dozens of disciplinary violations while incarcerated as an adult in Virginia, including setting fires, possession of a sharpened instrument, and assault on a non-inmate
- Striking a South Carolina correctional officer, who suffered a concussion, and stating, "the next chance he [got], he[] [was] going to . . . kill that mother fucking officer. . . . The first chance he [got], he would finish him off."
- Possession of rope and hidden pieces of metal discovered after searches of his cell
- Possession of the above-mentioned homemade handcuff key he successfully concealed for a number of days, including during transport to and from the courthouse
- Threatening a grievance coordinator by stating, "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."

Following the sentencing hearing, Judge Newman found the State had proven two statutory aggravating circumstances beyond a reasonable doubt and sentenced

Mahdi to death. In announcing his sentence, Judge Newman stated he considered Mahdi's age at the time of the murder, but there was nothing in Mahdi's age or mentality that in any way mitigated, excused, or lessened his culpability. Judge Newman further stated he considered Mahdi's turbulent and transient childhood and upbringing, but noted there was no credible evidence of abuse and the record indicated Mahdi's family continually expressed care and concern for his well-being. Judge Newman also detailed Mahdi's prior behavior in various correctional institutions, noting he was consistently disruptive, uncooperative, threatened to kill prison employees, and was repeatedly found with homemade weapons, ropes, and other contraband, even when confined to the South Carolina Department of Corrections' highest security level facility.

In June 2009, we affirmed Mahdi's plea and sentence. *Mahdi v. State*, 383 S.C. 135, 678 S.E.2d 807 (2009). Mahdi did not file a petition for a writ of certiorari with the United States Supreme Court.

In August 2009, Mahdi applied for post-conviction relief (PCR). A PCR evidentiary hearing was held at the Broad River Correctional Institution parole courtroom.[1] The PCR court denied relief and dismissed Mahdi's application. This Court denied Mahdi's petition for a writ of certiorari. *Mahdi v. State*, S.C. Sup. Ct. Order dated Sept. 8, 2016 (Appellate Case No. 2014-002131).

In January 2017, Mahdi filed a second application for PCR, which the PCR court dismissed as time-barred, improperly successive, and procedurally barred. Mahdi filed a notice of appeal, which we dismissed pursuant to Rule 243(c), SCACR. *Mahdi v. State*, S.C. Sup. Ct. Order dated April 19, 2018 (Appellate Case No. 2017-002212).

In December 2017, the United States District Court granted the State's motion for summary judgment in Mahdi's federal petition for a writ of habeas corpus. *Mahdi v. Stirling*, No. 8:16-3911-TMC, 2018 WL 4566565, at *1 (D.S.C. Sept. 24, 2018). Mahdi appealed, and the Fourth Circuit Court of Appeals affirmed. *Mahdi v. Stirling*, 20 F.4th 846 (4th Cir. 2021). The United States Supreme Court denied Mahdi's petition for a writ of certiorari. *Mahdi v. Stirling*, 143 S. Ct. 582 (2023).

On March 14, 2025, the Clerk of Court issued an execution notice setting Mahdi's

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[1] The PCR hearing was held at Broad River due to security concerns. Mahdi and a fellow death row inmate were charged with stabbing a correctional officer multiple times while housed on death row.

date of execution for April 11, 2025. The instant petition and motion followed.

Petition for a Writ of Habeas Corpus

Mahdi contends he is entitled to a writ of habeas corpus because (1) his counsel presented no meaningful defense to the death penalty and failed to identify elementary school teachers and community members willing to testify on his behalf, violating his right to effective assistance of counsel; and (2) important new advances in psychology and neuroscience explain the course of Mahdi's life and the trauma he endured, critical information that was not available at the time of his 2011 PCR hearing.

Habeas corpus relief is available to prisoners in South Carolina in this Court's original jurisdiction. *See* S.C. Const. art. I, § 18. Habeas corpus relief is rare and only granted when necessary to ensure fundamental constitutional rights in the face of the "very gravest of constitutional violations." *Williams v. Ozmint*, 380 S.C. 473, 477, 671 S.E.2d 600, 602 (2008). The writ will be issued "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.'" *Butler v. State*, 302 S.C. 466, 468, 397 S.E.2d 87, 88 (1990) (quoting *State v. Miller*, 84 A.2d 459, 468 (N.J. Super. Ct. App. Div. 1951)). For these reasons, a petitioner seeking a writ of habeas corpus bears a much higher burden. *Williams*, 380 S.C. at 477, 671 S.E.2d at 602; *see also Moore v. Stirling*, 436 S.C. 207, 218–19, 871 S.E.2d 423, 429 (2022) ("[T]wo components are needed to meet the standard articulated in *Butler* and other cases. The petitioner must prove (1) the existence of a constitutional violation; and (2) the denial of fundamental fairness which, in the setting, is shocking to the universal sense of justice."); *McWee v. State*, 357 S.C. 403, 406, 593 S.E.2d 456, 457 (2004) (stating a writ of habeas corpus will only be granted under "unique and compelling circumstances"). Further, this Court has noted that "[a]t 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." *Williams*, 380 S.C. at 480, 671 S.E.2d at 603.

There is a strong presumption that counsel rendered adequate assistance and exercised reasonable professional judgment in making all significant decisions in a case. *Strickland v. Washington*, 466 U.S. 668, 687 (1984) (stating to establish a claim of ineffective assistance of counsel, a PCR applicant must prove (1) counsel's performance was deficient, and (2) the deficient performance prejudiced the applicant's case). To show that counsel was deficient, the applicant must

establish that counsel failed to render reasonably effective assistance under prevailing professional norms. *Id.* When a defendant challenges a death sentence, prejudice is established when, but for counsel's deficiency, there is a reasonable probability the defendant would have received a different sentence. *Porter v. McCollum*, 558 U.S. 30, 41 (2009); *Council v. State*, 380 S.C. 159, 176, 670 S.E.2d 356, 365 (2008) (finding prejudice is established when there is a reasonable probability that, absent counsel's alleged errors, the sentencer would have weighed the aggravating and mitigating circumstances and found they did not warrant the imposition of a death sentence).

Mitigating Evidence

Mahdi contends his trial counsel were deficient because they ended their search for mitigating evidence prematurely, presented an extremely superficial picture of Mahdi's background, and, had counsel presented a more complete story of Mahdi's life with the inclusion of testimony from his elementary school teachers and community members, there is a reasonable chance Mahdi would have been sentenced to life without the possibility of parole.

Much of the evidence Mahdi now raises regarding his background, family, social, and educational history—including the testimony of his elementary school teachers and community members—was previously presented through the testimony of social worker Marjorie Hammock during sentencing, who gathered much of the mitigation evidence she presented from many of the same individuals who later testified at Mahdi's PCR hearing.

We reject Mahdi's argument that the addition of testimony from his elementary school teachers and community members would have affected the outcome of his sentencing. First, the PCR court and the district court have already determined this issue. *See Simpson v. State*, 329 S.C. 43, 46, 495 S.E.2d 429, 431 (1998) (noting habeas corpus cannot be used as a substitute for appeal or other procedure for the correction of errors for which the defendant previously had the opportunity to avail himself). The PCR court found the testimony merely cumulative to evidence already presented at sentencing, and the district court found that while the testimony may have "expanded on and added depth to Ms. Hammock's testimony and other evidence offered at sentencing, it would not have significantly 'altered the sentencing profile presented to the sentencing judge.'" *Mahdi*, 2018 WL 4566565, at *30 (quoting *Strickland*, 466 U.S. at 700).

We agree with the PCR court and the district court, and find that the evidence

raised in Mahdi's instant petition is merely cumulative to that raised at sentencing. *See Wong v. Belmontes*, 558 U.S. 15, 22 (2009) (noting PCR evidence that is merely cumulative to evidence presented at trial fails to meet the prejudice prong of *Strickland*). Further, the record reflects many of the potential witnesses that counsel sought out to testify on Mahdi's behalf at sentencing—including his own family members—were reluctant to help, plainly hostile to his defense team, or only had unhelpful information to share about Mahdi.[2] The PCR court found the witnesses' behavior was understandable because, at the time of sentencing, Mahdi's crimes were still recent, the community and those who knew the victims were still outraged, and Mahdi's family was likely shocked, angry, embarrassed, disappointed in his actions, and unwilling to assist. However, following the passage of many years, when the case was on PCR and no longer at the forefront of the community's or the victim's family's mind, and Mahdi's family's anger or embarrassment had largely dissipated, only then did Mahdi's family and community members become cooperative and insist they would have cooperated at the time of trial, when in fact they were originally hesitant, did not want to be involved, or refused to testify.

Second, it appears from the record that Mahdi's counsel attempted to build the best mitigation case possible from the circumstances presented to them. Counsel hired Hammock, mitigation investigator Paige Tarr, and private investigator James Gordon to investigate and develop Mahdi's family and social history in preparation for trial and sentencing. Tarr traveled to North Carolina and met with Mahdi's North Carolina defense team. Tarr and Hammock traveled to Virginia, Maryland, and Pennsylvania to interview members of Mahdi's immediate and extended family. Counsel hired mental health experts Dr. Thomas Martin and Dr. Geoffrey McKee to evaluate Mahdi, reached out to and traveled to North Carolina to coordinate with Mahdi's North Carolina defense team, and held numerous team meetings at which Hammock, Tarr, and Drs. Martin and McKee met and exchanged information with counsel.

We are also aware that both Drs. Martin and McKee and two of Mahdi's PCR

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[2] The record reflects there was extensive evidence that several family members believed Mahdi was manipulative, had lied about being abused by relatives, and claimed to be suicidal while confined to the Virginia Department of Juvenile Justice solely to be placed in special housing where he believed he would receive more recreation time.

mental health experts diagnosed him with antisocial personality disorder.[3] This diagnosis was an enormous obstacle to the ability of Mahdi's trial team to present a compelling mitigation narrative at the sentencing hearing. Even the evidence Mahdi contends was not presented would not have led to a plausible claim of diminished capacity, and any defense testimony about antisocial personality disorder could have easily been seized upon by the State as more proof of Mahdi's future dangerousness. *See Littlejohn v. Royal*, 875 F.3d 548, 564 (10th Cir. 2017) ("Importantly, courts have characterized antisocial personality disorder as the prosecution's 'strongest possible evidence in rebuttal.' In other words, evidence of antisocial personality disorder tends to present an *aggravating*, rather than mitigating, circumstance in the sentencing context." (citations omitted) (quoting *Evans v. Sec'y, Dep't of Corr.*, 703 F.3d 1316, 1327 (11th Cir. 2013)); *see also Ward v. Neal*, 835 F.3d, 698, 703–04 (7th Cir. 2016) (discussing dilemmas capital defense trial counsel face when confronted with a client's antisocial personality disorder diagnosis). Accordingly, we find Mahdi has failed to prove trial counsel were deficient. *See Strickland*, 466 U.S. at 687; *Bobby v. Van Hook*, 558 U.S. 4,

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[3] Psychiatrist Dr. Thomas Martin testified that Mahdi told him the reason he left Virginia was to "avoid homicide detectives" because he "had murdered . . . in a bad drug deal another individual[,] which he thought had not been discovered." Forensic psychologist Dr. Geoffrey McKee testified that Mahdi told him he had left Virginia because he "felt that his life was in danger . . . because of a rumor that he . . . had killed this other guy's cousin." Dr. Martin further testified that he diagnosed Mahdi with antisocial personality disorder and determined Mahdi did not appear to be acting under any influence of any depression at the time of Myers' murder and, instead, described very clearly what he was feeling during the murder stating he "was justified," and, "Great leaders or mass murderers, people only understand force." Dr. McKee also diagnosed Mahdi with antisocial personality disorder and opined that Mahdi was not suffering from any other mental illness at the time of Myers' murder. Both Dr. Martin and Dr. McKee testified that they relayed their findings and diagnoses to trial counsel and told counsel they did not believe their testimony would be helpful for Mahdi's case.

At PCR, Dr. Craig Haney testified Mahdi was diagnosed with intermittent explosive disorder and antisocial personality disorder after he was arrested for the stabbing of the maintenance worker in Richmond. Dr. Donna Schwartz-Watts testified she diagnosed Mahdi with major depression, anxiety disorder, paranoid personality disorder, and antisocial personality disorder. Dr. Schwartz-Watts further testified that when Mahdi murdered Myers, Mahdi was not depressed, suffering from post-traumatic stress disorder, or irritable.

11 (2009) ("This is not a case in which the defendant's attorneys failed to act while potentially powerful mitigating evidence stared them in the face . . . or would have been apparent from documents any reasonable attorney would have obtained." (citations omitted)).

Third, even if the testimony of Mahdi's elementary school teachers and community members had been presented at sentencing, it is unlikely that evidence would have influenced Judge Newman's decision in light of the overwhelming evidence of aggravation, the brutal nature of Mahdi's crimes, and his demonstrated lack of remorse. Therefore, we find Mahdi has failed to prove prejudice. *See Rosemond v. Catoe*, 383 S.C. 320, 326, 680 S.E.2d 5, 9 (2009) (stating that when determining whether a lack of mitigation evidence resulted in prejudice, courts must examine whether that evidence, taken as a whole, would have influenced the fact finder's appraisal of the defendant's culpability); *Jones v. State*, 332 S.C. 329, 339, 504 S.E.2d 822, 827 (1998) (noting the absence of a "fancier" mitigation presentation does not render the prior mitigation case constitutionally inadequate where such evidence would not have had any impact on the outcome at trial and sentencing); *see also Simpson v. Moore*, 367 S.C. 587, 606–07, 627 S.E.2d 701, 711–12 (2006), *abrogated on other grounds by Smalls v. State*, 422 S.C. 174, 810 S.E.2d 836 (2018) (reversing the PCR court's decision that the applicant suffered prejudice from counsel's failure to offer sufficient social history in mitigation where the record showed counsel did, in fact, conduct an adequate investigation and present similar mitigation evidence).

New Advances in Psychology and Neuroscience

Mahdi claims that, in the years following his 2011 PCR hearing, significant new information has come to light that more fully explains the extent of the trauma he experienced as a child, teenager, and young adult through his adverse childhood experiences, repeated placement in solitary confinement, experiences of unconscious racial bias, and intergenerational trauma. Mahdi also avers that we should consider the fact that his crime occurred when he was twenty-one years old, at a point when his brain was still developing. Mahdi contends we should take into consideration the cumulative effect of the evidence counsel did not present in mitigation, as well as this after-discovered psychological and neuroscientific evidence that did not exist at the time of sentencing.

After-discovered evidence may be considered through a motion for a new trial pursuant to Rule 29(b), SCRCrimP. To prevail on the motion, an appellant must show the after-discovered evidence: (1) is such that it would probably change the

result if a new trial were granted; (2) has been discovered since the trial; (3) could not in the exercise of due diligence have been discovered prior to the trial; (4) is material; and (5) is not merely cumulative or impeaching. *State v. Spann*, 334 S.C. 618, 619–20, 513 S.E.2d 98, 99 (1999).

We find this alleged after-discovered evidence to be either cumulative or capable of discovery before trial. First, evidence regarding Mahdi's adverse childhood experiences, including his father's instability, mental health issues, and treatment of his son; Mahdi's witnessing violence from an early age; and his family's history was introduced during PCR. While PCR counsel may not have specifically proffered an argument grounded in trauma, Mahdi's father's abusive nature, racial issues, and race's implications for and impact on Mahdi and his family pervaded much of the testimony and evidence presented.

Second, Mahdi's PCR counsel asked Dr. Craig Haney to opine as to the likely effects on Mahdi due to his extensive time in prison and the effects of isolation and solitary confinement. 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. He described similar risk factors in juvenile confinement as those Mahdi experienced in his early life, including abandonment, neglect, witnessing violence, instability, and unpredictability. Regarding Mahdi's time in prison in Virginia, Dr. Haney testified that the prison system failed to address Mahdi's underlying psychological problems, and such untreated issues can often lead inmates to rack up disciplinary infractions for minor irrational and impulsive behaviors, and those infractions result in time in isolation or transfer to a super-max facility.

Dr. Haney also described studies suggesting prisoners subjected to extended solitary confinement can experience anxiety and mental deterioration and "lose their ability to initiate behavior or make responsible judgment about their own behavior." Dr. Haney testified that if a prisoner suffers from depression, that depression will almost certainly deepen inside a super-max prison, and the frustrating nature of the environment and lack of "pro-social avenues for the release of frustration" can lead prisoners to lash out impulsively and irrationally. Dr. Haney opined these factors significantly contributed to Mahdi's institutional behavior and that, after his time at a super-max facility in Virginia, without a transitional process or psychiatric treatment, Mahdi would have had a very difficult time reentering free society.

Additionally, PCR counsel specifically asked Dr. Haney about studies conducted

on the effects of extensive solitary confinement. Dr. Haney noted there were "many, many studies" completed on solitary confinement dating back to the nineteenth century. He explained that solitary confinement is an extraordinarily stressful environment and noted some prisoners experience "isolation panic" and have full-blown anxiety or emotional reactions resulting in their removal from the prison setting for treatment, only to be later placed back in the same environment. Dr. Haney testified that prisoners kept in isolation begin to deteriorate mentally, and if a prisoner suffers from depression, that depression will almost certainly deepen.[4]

Third, Mahdi avers that a key feature of his case is that the murders he committed occurred when he was twenty-one years old, at "a time of life when the brain is still developing." Mahdi claims that while the PCR court heard evidence of his turbulent upbringing and psychological background, no evidence was presented about the science of the developing brain or the fact that advances in science since his 2011 PCR hearing have confirmed that the human brain is not fully developed until the mid-twenties.

We find this argument echoes one of the many arguments Mahdi raised in his amended PCR application in which he alleged that, at the time of his offenses, he was "developmentally impaired such that he had the 'mental age' of a juvenile due to his atrocious background of deprivation, neglect, abuse, and institutionalization." While studies published since Mahdi's PCR hearing may have shed new light on the age at which the brain fully matures, the core of Mahdi's argument is the same as that raised at PCR: that he suffered from developmental impairment at the time of his crimes.

Finally, we find Mahdi has failed to demonstrate that the addition of the evidence he now raises would probably alter the result if a new sentencing proceeding were granted. In addition to testimony regarding the violent and remorseless nature of the murders Mahdi committed, the State presented extensive testimony regarding Mahdi's long and violent history spanning from crimes he committed as a juvenile and his detentions to the crimes he committed as an adult and his incarcerations,

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[4] In addition to Dr. Haney's testimony regarding prior studies on isolation in prison settings, the potential harmful psychological and psychiatric consequences of prolonged solitary confinement have been recognized for decades. *See, e.g.*, *Apodaca v. Raemisch*, 586 U.S. 931, 931 (2018) ("As far back as 1890, this Court expressed concerns about the mental anguish caused by solitary confinement." (citing *In re Medley*, 134 U.S. 160 (1980))).

during which he attempted to escape; threatened the lives of prison officials; constructed various weapons, escape implements, and a working handcuff key; and violently attacked corrections officers.

For the foregoing reasons, we reject Mahdi's claim of after-discovered evidence.

Conclusion

Mahdi has not met his burden of showing a constitutional violation that, in this setting, constitutes a denial of fundamental fairness shocking to the universal sense of justice. We, therefore, deny his petition for a writ of habeas corpus and deny as moot his motion for a stay of execution.

John Kittredge C.J.

J.

J.

J.

J.

Columbia, South Carolina
April 7, 2025

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