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Stewart petitions this Court to grant him bail pending his appeal before the Court, because his case raises – for the first time in the Court’s history – credible subject matter jurisdiction and actual innocence claims on the basis that a crime was never committed.

INTRODUCTION

Stewart has been wrongfully incarcerated over 24 years for a crime that never occurred. Specifically, he is wrongfully convicted of killing C.A., when credible new evidence now reveals she committed suicide. As a result, he has unjustly suffered the extreme perils of prison life for over two decades. These hazards include psychological trauma from witnessing countless atrocities, physical scars resulting from acts of violence committed against him, and high blood pressure due to the unrelenting stress and anxiety prevalent in the prison environment.

Stewart has not suffered alone. His parents were cast out of their church community because they were blamed for supposedly "raising a monster". His younger siblings are still suffering the traumatic impact from their adolescent years being filled with constant bullying due to their connection to a perceived “murderer”. Stewart's daughter had to go through her entire life without her father’s presence, which had a severe adverse impact on her self-esteem. His wife lost her prominent career with the FBI due to her decision to fight for justice on his behalf.

Stewart and his loved ones have suffered tremendously for decades because of his wrongful conviction. What makes matters worse is that his wrongful conviction is for a crime that never occurred.

Credible new evidence establishes that the trial court tried Stewart for murder and imposed a sentence on him for voluntary manslaughter without jurisdiction. Specifically, two

pathology experts, including the State's trial expert, have made official statements confirming the possibility that C.A. committed suicide. Moreover, Stewart has already completed **96 percent** of the voluntary manslaughter sentence that was presumably imposed without jurisdiction.¹ These unfortunate circumstances epitomize the grossest miscarriage of justice.

Stewart therefore petitions the Court to immediately stay the execution of the voluntary manslaughter sentence by granting him bail. He prays the Court will grant this request because without such action by the Court there is a risk he will be forced to serve the remaining **4 percent** of a sentence imposed without jurisdiction while his credible challenge to this sentence is being resolved. Stewart's continued imprisonment under these circumstances would violate due process.

BACKGROUND

Stewart commenced this post-conviction relief (PCR) action with the filing of a PCR application on October 30, 2023. With the application, Stewart filed a motion to be allowed to represent himself with appointed standby counsel. Stewart began discovering admissions from Dr. Russell Harley, the State's trial pathology expert, on March 7, 2024 – five months after filing the application. On April 1, 2024, Stewart filed a motion requesting leave to conduct discovery ("Discovery Motion"), based on the newly discovered admissions from Dr. Harley and a report from Dr. J.C. Upshaw Downs, his retained pathologist. On April 18, 2024, he filed a supporting memorandum of facts ("Discovery Memo").

Respondent filed its return ("Return") on May 3, 2024, and submitted with it a proposed conditional order ("Conditional Order") for the PCR court to sign. The Conditional Order was

¹ Stewart is currently serving a consecutive sentence of 30 years for voluntary manslaughter and 9 years for desecration of human remains. He is serving the voluntary manslaughter portion of his sentence first. He is required to serve 85 percent (25 years, 6 months) of this sentence in order to complete it. He has completed 96 percent (24 years, 4 months) of this sentence. The rest of his consecutive sentence is for a nonviolent offense.

filed on August 12, 2024, and served on Stewart on August 27, 2024. Stewart was notified that he would have twenty days to submit his response to the Conditional Order stating reasons why this Order should not become final.

Stewart filed his initial response ("Response I") to the Conditional Order on June 10, 2024, prior to the PCR court signing and filing the Conditional Order, based on a copy of the same that was provided to him by Respondent. Stewart filed his supplemental response ("Response II") to the Conditional Order on September 8, 2024. On September 24, 2024, Stewart filed a motion requesting leave to supplement his Responses with two proposed orders for the PCR court to sign.

The PCR court filed the final order of dismissal ("Final Order") on October 15, 2024, and it was received by Stewart from the institution mail room on November 5, 2024. On November 7, 2024, Stewart filed a motion to alter/amend judgment pursuant to Rule 59(e), SCRCF ("59(e) Motion"). With said motion, Stewart informed the PCR court, in great detail, of all the specific facts and issues the court had failed to address. Respondent filed its return to the 59(e) Motion ("59(e) Return") on November 20, 2024, and submitted a proposed order ("59(e) Order") to the PCR court for signing. Stewart filed a reply ("59(e) Reply") to the 59(e) Return on December 3, 2024. With the 59(e) Reply, Stewart notified the PCR court that the proposed 59(e) Order, a copy of which Respondent had provided him, failed to address the issues raised by Stewart.

The PCR court signed the 59(e) Order on December 9, 2024, and it was filed on December 13, 2024. Stewart received the filed 59(e) Order from the institution mail room on January 2, 2025.

He filed his notice of appeal and his 243(c) Explanation with this Court on January 27, 2025. On February 4, 2025, Stewart received a letter from Patricia A Howard, Clerk of Court,

directing him to file an explanation setting forth reasons why this Court should not place prohibitions on future filings made by him. Stewart filed said explanation on February 24, 2025.

On April 2, 2025, a letter was filed from Patricia A. Howard, Clerk of Court, advising Stewart this Court “has instructed that this appeal will proceed”. This letter was received by Stewart from the Institution mailroom on April 14, 2025. This petition for bail follows.

ARGUMENT

The purpose of an appeal bond in a criminal case is to allow a defendant to go free during pendency of appeal while assuring his presence upon affirmance of his conviction or as the court may otherwise direct. *State v. Workman*, 274 S.C. 341, 343, 263 S.E.2d 865, 866 (1980). Under S.C. Code § 18-1-90, bail is not allowed when the defendant has been sentenced for a term of imprisonment more than ten years. However, the South Carolina Supreme Court retains power under the South Carolina Constitution to grant bail to such applicants. *See State v. Whitener*, 225 S.C. 244, 81 S.E.2d 784 (1954). In deciding whether to grant bail, the Court will consider the following factors: "the probability the applicant will prevail on appellate review and the nature of the relief he or she will receive; the seriousness of the criminal offense committed; the danger the applicant may pose to the community if he or she is released; the likelihood the applicant may flee if released; and the character and circumstances of the applicant". *Rule 243(k), SCACR*.

Stewart demonstrates good cause for the Supreme Court to exercise its authority to grant him bail because the circumstances in his case satisfy all these factors. These factors include that subject matter experts within the South Carolina Department of Corrections (SCDC) have determined – by awarding Stewart a minimum custody status – that he does not pose a danger to society or an escape risk. He has strong family and community ties, a stable household, and he has embarked on a charitable mission while in prison that serves the community.

Therefore, Stewart prays the Court will grant him bail based on the following:

HIGH PROBABILITY OF REVERSAL

This Court held that an applicant for bail pending appeal "is not required to show that he is entitled to reversal". *Nichols v. Patterson*, 202 S.C. 352, 25 S.E.2d 155 (1943). However, the Court held bail would not be granted "where the record shows the errors assigned are frivolous or the appeal was taken merely for delay, or where there is no reasonable ground or probable cause for the appeal". *Id.*

Because the lower court summarily dismissed his PCR application, Stewart was required to provide an explanation to this Court with his notice of appeal "to show that there is an arguable basis for asserting that the determination by the lower court was improper". *See Rule 243(c), SCACR*. In accordance with this rule, if Stewart failed "to make a sufficient showing, the notice of appeal may be dismissed". *Id.*

In the action sub judice, Stewart filed the requisite 243(c) explanation with his notice of appeal. The Court, after reviewing said explanation, "instructed that this appeal will proceed". These facts indicate the Court determined, as a prerequisite to allowing the appeal to proceed, that the appeal is not frivolous, was not taken merely for delay, and that there are reasonable grounds for the appeal.

In determining whether to grant him bail, Stewart asks the Court to consider his state of mind regarding the probability of reversal. Specifically, he asks the Court to consider that any reasonable person in his position – possessing official exculpatory statements from two pathology experts – would firmly believe he has a high probability of his voluntary manslaughter conviction being reversed. *See attached sworn affidavit from Dr. Harley and Forensic Autopsy Review Report from Dr. Downs.*

NATURE OF RELIEF HE WILL RECEIVE

Stewart has already completed 96 percent of the sentence he is currently challenging. Therefore, any relief granted will ONLY be from the remaining 4 percent he has left to serve on his voluntary manslaughter sentence. Stewart's PCR action is based on the unanimous consensus of two pathology experts who confirm that new evidence strongly suggests C.A. committed suicide. These factors establish the reasonable probability Stewart has served 96 percent of his sentence for a crime that never occurred.

With this background in mind, the ultimate relief Stewart is eligible to receive is the vacation of his voluntary manslaughter conviction and the dismissal with prejudice of all charges against him related to C.A.'s death. Were it not for the voluntary manslaughter conviction, Stewart would have completed his sentence for the desecration charge, a nonviolent offense, 20 years ago.

The Court is currently faced, in part, with deciding whether to remand Stewart's case to the lower court for the same to prepare an order which complies with the law. *See 243(c) Explanation pp. 4-8.*² This Court has for decades admonished counsel against preparing orders and PCR judges against signing orders that fail to address the specific facts and issues raised by PCR applicants. *See Reese v. State, 425 S.C. 108, 109-10, 820 S.E.2d 376, 377-78 (2018)(citing numerous rulings by the Court on this issue).* The facts in Stewart's case are identical to the circumstances in these cases where the Court held that remand to the lower courts was warranted.

Stewart also raises a credible challenge to the trial court's subject matter jurisdiction relating to his voluntary manslaughter conviction. This Court, quoting *Ex parte Bain*, 121 U.S.

² Stewart also presents an arguable basis for the Court to remand his case to the lower court with instructions to grant discovery and hold an evidence hearing. *Id at p.8.*

1, 7 S.Ct. 781, 30 L.Ed 849 (1887), held that "defects in subject matter jurisdiction requires correction regardless of whether the error was raised [below]". See *State v. Gentry*, 363 S.C. 93, 100, 610 S.E.2d 494, 498 (2005). By this plain language, the Court indicates it is not required to remand jurisdictional claims to the lower court, and that the Court will address jurisdictional "defects" (i.e. in the original jurisdiction of the Court) that arise from the proceedings.

In essence, the unique facts and circumstances found in this case afford the Court wide latitude in the nature of relief it can grant Stewart.

MITIGATING FACTORS TO SERIOUSNESS OF CRIME

Stewart is currently serving a consecutive sentence of 30 years for voluntary manslaughter and 9 years for desecration of human remains. There is no question the desecration charge, a nonviolent offense, qualifies Stewart for bail. However, this Court has historically granted bail pending appeal to a person convicted of voluntary manslaughter. See *State v. McFail*, 35 S.C. 595, 14 S.E. 289 (1891). One of the factors the Court considered in granting McFail bail pending his appeal for voluntary manslaughter is that he was sentenced to seven years for this offense. *Id.*

Stewart's 39-year consecutive sentence seems distinguishable on the surface. However, he has less than six years left to serve to complete his entire sentence, and approximately one year left to serve on the manslaughter portion of this sentence.³ He also becomes parole eligible in June of next year once he begins serving portion of his sentence for the nonviolent offense. The fact that Stewart has served the majority of his sentence, and he has less than six years left to serve to complete it, is consistent with the circumstances under which the Court granted bail in McFail. These facts are also consistent with the circumstances under which this Court

³ See footnote 1.

granted bail pending appeal to a person "who has served a portion of the sentence". Nichols v. Patterson, 25 S.E.2d at 156.

The significantly reduced amount of time Stewart has left to serve on his sentence is not only a mitigating factor when considering the seriousness of the offense, but it also a main contributing factor to SCDC classification experts awarding him a minimum custody status. *See SCDC Policy OP-21.04 § 8.4 (stating an offender "must have 8 years or less" left to serve his sentence to be eligible for minimum custody status)*. This custody status makes Stewart eligible to work outside the prison.⁴

The facts in Stewart's case are clearly distinguishable from the facts in cases where this Court denied bail pending appeal. For instance, in one case the petitioner was serving 50 years in prison for two murders. *See Hill v. Cohen*, 2020 WL 1941537. He petitioned the Court for bail after only serving 13 years of his sentence and while he had 37 years remaining to serve to complete his sentence. *Id.* Likewise, another petitioner was serving 21 years for attempted criminal sexual conduct in the first degree. *See Ragsdale v. South Carolina*, 865 F.2d 1259 (4th Cir. 1989). He petitioned this Court for bail after serving 3 years while he had 18 years left to serve to complete his sentence. *Id.* Unlike Stewart, both petitioners in these cases had too much time remaining to serve on their sentences to be eligible for minimum custody status. Also unlike Stewart, even if they met the time requirement, they would not have been eligible for

⁴ SCDC classification experts implemented a point system specifically designed to quantify an inmate's pattern of conduct within SCDC and the risk factors posed by his individual circumstances (i.e. if the inmate has prior convictions, escape history, gang affiliation, etc.) An inmate can score a maximum of 37 points under this system. The higher the inmate scores, the greater the threat he poses to SCDC security, and to the general public. Out of a possible 37 points, Stewart scored only 4 points. He previously scored 1 point, but 3 points were added to his score when he received a formal disciplinary infraction for supposedly flirting with a female staff member. Stewart was forced to abandon his appeal for said infraction to focus his full attention on this appeal currently before the Court, because he believes this appeal is more important. Regardless, Stewart currently maintains his minimum custody status because the only formal infraction he received in the past 7 years is for supposedly flirting with a woman. Stewart submits that this is more a matter to be sorted out with his wife than for the Court to give serious consideration to while deciding whether to grant him bail. *See attached SCDC classification reports for Stewart.*

minimum custody status based on the serious nature of their crimes.

In essence, aside from a credible claim Stewart's manslaughter conviction is void because no crime was committed related to C.A.'s death, he provides the Court with several mitigating factors to the seriousness of this offense based on the unique circumstances in this case.

STEWART DOES NOT POSE A DANGER TO THE COMMUNITY

This Court has defined danger to the community as “the danger that if free the accused will commit a crime of like character”. See *Nichols v. Patterson, supra*. Stewart has not committed any criminal offenses during his 24-year incarceration. He also provides the Court with measurable data (SCDC classification reports) conclusively establishing he presents an extremely low risk of posing a danger to the community, or fleeing, if he is released on bail. Specific data points include that Stewart has no prior convictions, no escape history, and no gang affiliations. His risk assessment scores are low – ranging between 1 and 4 out of a possible 37 points – based on annual reviews conducted by SCDC classification experts. This data strongly supports a reasonable conclusion that he will not pose a danger to the community if he is released on bail.

Stewart also has a wealth of community supporters who will motivate him and keep him focused. See *attached letters expressing community support*. Particularly, his wife, who currently works from home, will be constantly present in the home with him and will personally ensure he complies with the conditions of bail. Stewart's wife is a highly responsible law-abiding citizen who will provide him with a stable home environment equipped with a complete home office he can use to effectively represent himself. Stewart's dog and two cats he rescued

from prison will be his constant companions for emotional support.⁵

Stewart's current state of mind is also pertinent to determining if his release on bail will potentially pose a danger to the community. His state of mind is largely dictated by his perceived chances of success on appeal. In Stewart's mind, the credible evidence of his innocence he currently has in his possession, which he believes will only get stronger once he is granted discovery, firmly convinces him that he will eventually be cleared of all crimes related to C.A.'s death. With that mindset, he is motivated to work relentlessly and single-mindedly towards achieving that end.

Stewart's current state of mind is also reflected in the fact that he has demonstrated sensitivity to C.A.'s family. Specifically, he declined a job offer to work outside the prison at Cheraw State Park, solely because he would have been working in the town where C.A.'s family lives.⁶ In essence, if he is released on bail, Stewart will maintain his demonstrated pattern of keeping a respectful distance between himself and C.A.'s family.

Stewart acknowledges the rights of victims are very important. However, these rights must be balanced with the interests of justice, which are best served when a potentially innocent man is given a fair opportunity to prove his innocence. The need to strike this balance is especially applicable to the facts in Stewart's case, where credible new evidence establishes that the "victim" committed suicide one year after being forced to undergo a horrific partial birth

⁵ Stewart's dog was with him in the dog program at Allendale Institution and has been with his wife for six years. His two cats, Lecrae and Fat Girl, came from his current prison where Stewart started a cat program to rescue the stray cats at the prison. He is especially close to Fat Girl, as he nursed her back to health from severe malnutrition by spoon-feeding her when she was a kitten.

⁶ This job offer was made to Stewart while he was incarcerated at Evans Institution in his hometown of Bennettsville, South Carolina. Though working at the state park is a coveted position for minimum custody inmates, Stewart declined this job offer out of respect for C.A.'s family. While at the same prison, Stewart was housed for over 10 months – from July 1, 2021 through May 24, 2022 – with Terry Anthony Watson, Jr., a witness who testified against Stewart for the State at trial. Though Watson's testimony was the main evidence the State used to convict Stewart of voluntary manslaughter, Stewart did not make any attempts to threaten or harm Watson, despite their close proximity being equivalent to them living on the same street. With this conduct, Stewart further demonstrates he does not pose a danger to the community, the registered victims, or witnesses who testified against him.

abortion. These facts further establish that no crime was committed related to C.A.'s death. *See S.C. CONST Art. 1 § 24(C)(2) (victim's rights extend to the spouse, parent, or child of "crime victims who are deceased")*.

By making this distinction, Stewart does not intend to downplay the devastating impact of C.A.'s death on her family. However, like them, Stewart's family has suffered the devastating impact of his wrongful conviction. Stewart implores the Court to contemplate a just balance between these opposing factors while considering his request for bail.

STEWART DOES NOT POSE AN ESCAPE RISK

As mentioned in the previous section, Stewart provides the Court with conclusive measurable data establishing that he does not pose a risk of fleeing if he is granted bail. Specifically, his current minimum custody status makes him eligible to work outside the prison. He has performed outside job duties at two different prisons, one of which is located in his hometown. If Stewart's intent was to escape from prison, he would not have to wait for the Court to grant him bail. He could have simply escaped while he was working outside the prison. Stewart's pattern of conduct while working outside the prison clearly reflects he has no desire to escape. Rather, his diligence in appealing his case demonstrates that he seeks to prove his innocence in a court of law and to be released from prison the right way.

STEWART'S CHARACTER AND UNIQUE CIRCUMSTANCES

Stewart's case is exceptional, and it has very unique circumstances. For instance, Stewart raises a credible claim supported by new evidence establishing the trial court imposed a sentence on him for voluntary manslaughter without jurisdiction. *See State v. Funderburk*, 259 S.C. 256, 261, 191 S.E.2d 520, 522 (1972) ("the acts of the court with respect to a matter which it has no jurisdiction are void"). Stewart's continued imprisonment while litigating this action

Remarkably, Stewart, despite his incarceration, is making positive contributions to society through the cat program he started to rescue the stray cats at the Trenton prison. He organized a network of community partners – outside volunteers, local nonprofit organizations, veterinary clinics, local law enforcement officials – and through their collaborative efforts they have spayed/neutered over sixty cats and have facilitated the adoption of over forty cats into loving homes. He is passionate about continuing his charitable work in the community once he is released from prison.⁷

Stewart has several options for employment. His wife has secured a job opportunity for him. Other job opportunities have been secured for him by some of his friends who have been released from prison and who have successful careers. However, Stewart's immediate plan, upon being released on bail, is to focus his full attention on perfecting his appeal.

Though he is far from perfect, Stewart's actions clearly demonstrate his strong desire to be a productive member of society, even from prison. He has strong family and community ties, a stable household, and a strong motivation to work diligently to resolve his appeal. His request for bail is supported by measurable data and credible evidence. Additionally, the circumstances surrounding said request are exceedingly rare, which will set a high legal standard that will not be easily met by future applicants.

CONCLUSION

Based on the foregoing and for good cause being shown, Stewart respectfully requests that the Court release him on bail of his own recognizance pending the resolution of his appeal. He further respectfully requests that the Court stay the time limit for him filing his petition for

⁷ Stewart informed the Trenton staff that he was applying for bail, and he asked would he be able to return to the prison to care for the cats if he was released on bail. The Trenton staff advised that unfortunately SCDC policy would prohibit him from returning inside the prison until he was out of prison for at least six months. However, he could train another inmate to care for the cats inside the prison, and he could serve other functions within his cat program from society. Stewart has selected and began training an inmate to care for the cats if the Court grants him bail.

would violate due process.

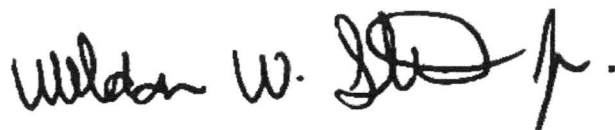
In addition, Stewart is representing himself in this action and he is being placed at a serious disadvantage in his representation efforts by the abundant distractions in the prison environment. Stewart is required to spend countless hours conducting legal research and drafting documents, most of which must occur in an open living area he shares with fifty-five other inmates. The noisy conditions under which Stewart is forced to do the bulk of his legal work is comparable to his working in the middle of a packed stadium during a major sporting event. Such conditions make it extremely difficult for Stewart to concentrate while working on his case, and causes him to experience unnecessary stress and anxiety.

There are also many undue restrictions imposed on Stewart by his imprisonment. He is unable to confidentially conduct legal correspondences, as all his means of communication are monitored by SCDC staff. He lives in such close quarters with other inmates that his legal phone discussions can be easily overheard by other inmates. Additionally, his work on his case is often abruptly interrupted by security protocols. (i.e. unscheduled roll call counts, fire and tornado drills, dorm searches, etc.) Further restrictions imposed on Stewart's ability to represent himself by his incarceration include that he cannot attend oral arguments, cannot receive sensitive discovery materials at the prison (i.e. death scene and autopsy photographs), and cannot confidentially interview potential witnesses.

It could be argued that Stewart's representation issues could be resolved by appointing him an attorney. However, this would also place him at a serious disadvantage because he has demonstrated a uniquely keen understanding of the factual and legal nuances involved in his case. Conversely, the appointed counsel would not have sufficient time (i.e. due to a heavy workload) to devote to gaining the factual and legal knowledge of Stewart's case that he has achieved by working on it for decades.

writ of certiorari until after his petition for bail has been decided, as the Court's decision on the petition for bail is pertinent to Stewart's ability to perfect his appeal.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Weldon W. Stewart, Jr." with a stylized flourish at the end.

April 24, 2025

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