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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA COUNTY OF LEXINGTON	IN THE COURT OF COMMON PLEAS
Gary Dubose Terry, #5054 Applicant, v. State of South Carolina, Respondent.	C/A No. 2022-CP-32-00924 *CAPITAL PCR ACTION* **ORDER DENYING APPLICANT'S MOTION TO ALTER OR AMEND JUDGMENT**

This Court issued its order of dismissal in the above captioned case on June 27, 2025. Applicant filed a timely motion to alter and amend the Court's order, and the State filed a response. Upon consideration of the parties' positions, this Court denies the motion.

Petitioner argues four overall points in his motion: 1) the Court should not have adopted a proposed order; 2) the Court did not view the evidence correctly under the relevant standards; 3) the Court should not have considered the prior trial testimony when the trial was conducted prior to *Atkins v. Virginia,* 536 U.S. 304 (2002); and 4) continues in his argument that the record is not complete due to miscellaneous errors in the hearing transcript. Applicant's arguments rest largely on his mere disagreement with the findings of fact and conclusions of law in this Court's order and his continued objection to the sufficiency of the transcript that was separately ruled upon. Applicant has failed to show any change to the order is warranted. This Court sets out its reasons for the denial more fully as follows:

1. As to adopting the language of the State's proposed order, as Applicant concedes, the Court did make changes to the proposed order. (Mtn., n. 1). This Court underscores that it based its decision on the evidence and the order reflects this Court's view of the case. This Court afforded detailed review of the order and has again reviewed the order in considering the relative

positions of the parties and again affirms that the order reflects this Court's decision. This process neither offends *Hall v. Catoe*, 360 S.C. 353, 365, 601 S.E.2d 335, 341 (2004), or *Fishburne v. State*, 427 S.C. 505, 516, 832 S.E.2d 584, 589-90 (2019). The process of submitting proposed orders is built into our rules, (*see* Rule 5(b)(3), SCRCP), and custom, *Hall, supra*. To be clear, this Court carefully reviewed the proposed order in detail and found that the facts are well and fully supported, and that the order accurately reflects the Court's view of the case considering the pre-trial filings, the testimony and the post-trial filings where the parties ably presented their competing positions. *See also United States v. El Paso Nat. Gas Co.*, 376 U.S. 651, 656 (1964) (in reviewing the order from district court's adoption of entirety of proposed order, "Those findings, though not the product of the workings of the district judge's mind, are formally his; they are not to be rejected out-of-hand, and they will stand if supported by evidence."); *Patton v. State*, 784 So. 2d 380, 388 (Fla. 2000) (rejecting challenge to verbatim adoption noting,"[t]he court chose to adopt the State's arguments as an accurate and well-documented reflection of the facts and law pertaining to the issues"); *Young v. Catoe*, 205 F.3d 750, 755 n. 2 (4th Cir. 2000) ("disposition of a petitioner's constitutional claims [through adoption of one party's proposed language] is unquestionably an 'adjudication' by the state court").

Further, there is an element of waiver here. As Applicant is constrained to admit, he engaged in the proposed order process not simply by having notice of the proposed order as submitted by the State (which he did), but also by submitting *his own* proposed order. (*See* Mtn., at 2). *See generally Maybank v. BB&T Corp.*, 416 S.C. 541, 564, 787 S.E.2d 498, 510 (2016) (finding "Corporation waived its right to contest personal jurisdiction by actively participating in litigation"). *Cf. Davis v. Parkview Apartments*, 409 S.C. 266, 281, 762 S.E.2d 535, 543 (2014) (to

appeal discovery order, one must suffer contempt and appeal, and if not, the rulings "[r]ight or wrong" are "the law of the case"). Either by waiver or on the merits, Applicant's argument fails.

2. As to his complaint that the Court has accepted and applied "incorrect applications of the law of *Atkins*" and "clinical guidelines" in making its decision, (Mtn., at 4), Applicant has failed to support his assertion. Applicant first argues the Court's footnote 5, which correctly states, even by Applicant's critique of the case, the statement from a Texas jurist that supposed a reading of what a "true Eighth Amendment" analysis would entail.[1] (*See* Mtn., at 4-5). What he wholly missed is that the Court was not *applying* the observation, and the Court *declined* to consider whether *Atkins* should be revisited. (Order, at 31 n. 16). Applicant fails to cite to any perceived error in "The Applicable Definition" section that controls. (*See* Order, at 11-13). Applicant's arguments fail to show any incorrect standard set out in the acknowledgment of the controlling case or any incorrect application of *Atkins* in the Court's analysis. The remainder of Applicant's arguments simply ask the Court to again review the case and view it differently, *i.e.,* in the fashion Applicant desires. There is no basis for modification shown, and Applicant's argument fails.

3. As to his complaint that the prior sworn testimony from Applicant's original trial should not be considered here because the "1997 trial … took place before *Atkins* was decided[.]" This Court was aware of the fact and considered the prior evidence consistent with the conclusion. (Order, at 22 and 31). It would be exceedingly odd for the conclusions to differ since the condition is a developmental one, not one that can be developed after the developmental period. *See Franklin v. Maynard,* 356 S.C. 276, 279, 588 S.E.2d 604, 606 (2003) (citing S.C. Code Ann. § 16-3-20

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[1] That statement was based, in large measure, on dissents authored by Chief Justice Roberts and Justice Alito, along with principles extrapolated from Supreme Court precedent. See *Ex parte Segundo*, 663 S.W.3d 705, 712 (Tex. Crim. App. 2022). The Texas jurist was in good company.

(C)(b)(10)). Even so, this Court set out specifically, "the new evidence does not convince this Court that Applicant has carried his burden of proof." (Order, at 22). Thus, this Court treated each body of evidence separately and Appellant's argument fails.

4. As to Applicant's last argument, this Court finds his complaint is ill-phrased. Applicant complains the *transcript* of the hearing is not complete, not that the Court did not hear the evidence. The record is not materially incomplete. At any rate, the Court has already ruled on that issue and that was not a ruling made in the Order of Dismissal; thus, the complaint is not proper for a motion to alter or amend. The purpose of Rule 59(e), SCRCP to alter or amend the judgment is to request the trial judge to "reconsider matters properly encompassed in a decision on the merits." *Arnold v. State,* 309 S.C. 157, 172-173, 420 S.E.2d 834, 842 (1992), quoting *Budinich v. Becton Dickinson and Co.,* 486 U.S. 196, 200, 108 S.Ct. 1717, 1720 (1988). Applicant's argument fails.

IT IS THEREFORE ORDERED, Applicant's motion to alter or amend is DENIED.

Robert E. Hood, Presiding Circuit Court
Judge by Special Assignment

August 5, 2025

Columbia, South Carolina.