

STATE OF SOUTH CAROLINA
In The Supreme Court

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S.C. SUPREME COURT

Appeal from Abbeville County
Court of Common Pleas

Honorable R. Scott Sprouse, Circuit Court Judge

Appellate Case No. 2025-002075

STEVEN VERNON BIXBY,..... PETITIONER

v.

STATE OF SOUTH CAROLINA,.....RESPONDENT

RETURN TO PETITION FOR WRIT OF CERTIORARI

ALAN WILSON
Attorney General

DONALD J. ZELENKA
Deputy Attorney General

MELODY J. BROWN
Senior Assistant Deputy Attorney General

W. JOSEPH MAYE
Assistant Attorney General

P. SANDERS LINKER
Assistant Attorney General

Post Office Box 11549
Columbia, SC 29211-1549
(803) 734-6305

ATTORNEYS FOR RESPONDENT

TABLE OF CONTENTS

TABLE OF CONTENTS1

PETITIONER’S QUESTION PRESENTED2

RESPONDENT’S STATEMENT OF QUESTION PRESENTED2

STATEMENT OF THE CASE.....2

GENERAL SUMMARY OF THE FACTS.....4

STANDARD OF REVIEW7

ARGUMENT8

CONCLUSION.....20

PETITIONER'S QUESTION PRESENTED

Whether Steven Bixby is incompetent to be executed pursuant to *Singleton v. State* where all experts agree he holds fixed, irrational beliefs about his case—particularly that he is legally innocent of murdering two law enforcement officers—resulting from a severe mental disorder, borderline IQ, neurocognitive deficits, and childhood indoctrination by mentally ill parents.

RESPONDENT'S STATEMENT OF QUESTION PRESENTED

Whether the PCR court's finding of competency to be executed is fairly and fully supported by the record, especially where two expert witnesses concluded that Bixby understands the nature of the proceedings and has the ability to rationally communicate with counsel—though he may choose not to.

STATEMENT OF THE CASE

Steven Bixby was sentenced to death for the murders of Deputy Danny Wilson and Magistrate's Constable Donnie Outz. The murders occurred in December of 2003; the capital trial was held in February 2007. His convictions and death sentence were affirmed on direct appeal. *State v. Bixby*, 388 S.C. 528, 698 S.E.2d 572 (2010). Following that appeal, Bixby has been in near constant litigation pursuing various remedies. Bixby exhausted his ordinary state and federal remedies as of May, 2023. However, he moved to stay the issuance of an execution notice citing in part a pending civil action regarding the amended methods of execution statute, *Owens v. Stirling*. By order dated June 8, 2023, this Court stayed the issuance of a notice of execution until it resolved that litigation.

This Court issued its opinion upholding the amended statute on July 31, 2024, *Owens v. Stirling*, 443 S.C. 246, 904 S.E.2d 580 (2024). With the completion of the *Owens* litigation, this Court issued a schedule to be followed for a number of executions that had been stayed during the course of the litigation, including Bixby's. (See August 30, 2024 Amended Order, Appellate Case No. 2024-001373). As a result of the order for the notices, Bixby's notice of execution was anticipated to be issued in the Spring of 2025.

On November 26, 2024, Bixby sought a stay of execution to litigate this action. On March 13, 2025, this Court granted a stay to prohibit issuance of a notice pending expedited litigation of Bixby's competency claim, raised via an application for post-conviction relief. (App. 1616–1620). The application was filed on November 25, 2024, and raised only a claim that Bixby was not competent under the *Singleton* standard. (App. 601–607). This Court assigned the matter to the Honorable R. Scott Sprouse. *Id.*

A hearing was held on the competency claim from August 21–22, 2025 in the Greenville County Courthouse. (App. 1–309). At the end of the hearing, Judge Sprouse directed the parties to prepare proposed orders. Following the hearing and the submission of proposed orders, on September 11, 2025, Judge Sprouse adopted the State’s proposed order finding Bixby to be competent under *Singleton v. State*, 313 S.C. 75, 437 S.E.2d 53 (1993) and dismissed the application for post-conviction relief. (App. 1622–1645). On December 1, 2025, Bixby petitioned this Court for a Writ of Certiorari.

This Return follows.

GENERAL SUMMARY OF FACTS

The Crime

This Court provided the following summary of the events leading to the fatal standoff and shootout between Petitioner and law enforcement in the direct appeal opinion:

In December 2003, while working on a construction project in Abbeville County, officials from the South Carolina Department of Transportation (SCDOT) encountered the Bixby family. In order to expand SC–72, the SCDOT planned to take advantage of a right of way it held across the Bixbys’ property. The Bixbys did not believe that the SCDOT held a right of way across their property and, beginning on December 4, 2003, threatened violence to prevent any construction on their land. These threats culminated in the murders of Deputy Wilson and Constable Donnie Ouzts on Monday, December 8, 2003.

The following is a chronological description of the events which resulted in the murders:

Thursday, December 4, 2003

On the morning of December 4, 2003, SCDOT officials first met the Bixby family after discovering someone had tampered with the surveyor’s stakes on the family’s property. SCDOT Construction Superintendent Glen McCaffrey approached the Bixby home to discuss the road widening project. McCaffrey was accompanied by fellow SCDOT employees Dale Williams and Mike Hannah.

Superintendent McCaffrey showed the construction plans to Appellant, his mother, Rita Bixby, and father, Arthur Bixby, and attempted to persuade them that the

SCDOT held a right of way across their property. The Bixbys responded with threats of violence and claimed they would fight to the death if anyone tried to do any construction work on the property. Right of Way Agent Williams told them that SCDOT officials would have to get the Sheriff involved, to which the Bixbys responded that they would kill law enforcement officials if anyone “trespassed” on their property.

SCDOT officials McCaffrey, Williams, and Hannah went to the Sheriff’s department, reported the encounter, and conveyed that there was a “serious situation” at the Bixby home. Because these men feared the Bixbys’ threats, they requested that an officer be assigned to mediate the situation.

Friday, December 5, 2003

Around noon on Friday, December 5, 2003, Appellant discussed the road construction project with Dr. Mark Horton, a dentist whose office was near the Bixby home. Steven Bixby and Dr. Horton talked about dealings with the SCDOT. Horton told Steven Bixby that he had hired an attorney and that Dr. Horton, his lawyer, and the SCDOT had set a time to discuss the construction’s impact on Horton’s property. Describing his conversation with Appellant, Horton testified as follows:

... first he told me that he was from New Hampshire and he said that, you know, their motto was something like, you know, if I can’t—I’d rather be dead if I can’t be free, something like that. And at one point he said that, I’ve got something that’s going to blow this whole project out of the water, and I took that to mean that he had some information or something. But he was becoming somewhat agitated and I kept telling him that, well, I thought it best if he’d get an attorney and look over his situation and see if they could resolve it. So basically I wished him well and told him that you need to get an attorney, that I had to get one, and I hoped that things would get resolved. But you know, he did seem agitated and he said at one point I think that, they’ll take my land over my cold, dead body.

At approximately 3:30 p.m., SCDOT Superintendent McCaffrey contacted Rita Bixby, informing her that he had documents concerning the right of way. Also on the phone with McCaffrey were Williams, Hannah, and Joe McCurry, a fellow SCDOT employee. McCaffrey requested that the Bixbys and SCDOT officials meet the following Monday (December 8, 2003) to discuss the right of way. Rita responded by saying, “Anything you got is lies.” Although eventually agreeing to the December 8, 2003 meeting, Rita said that if the men wanted to show her the documents they could meet her at the family’s home in five minutes. Three of the SCDOT officials left to meet with Rita. Williams, however, refused to go because he feared the situation might become violent.

When the SCDOT officials arrived at the Bixby home, Rita told them that the documents were forgeries and threatened that her family “would fight till the last breath and there would be hell to pay.” She demanded that no construction take place. McCaffrey said they would have to come back with a deputy. Rita replied that the Sheriff’s department had no authority over them on private property.

Sunday, December 7, 2003

On the evening of December 7, 2003, Appellant, Steven Bixby went to a social gathering at the home of Alane Taylor, his former girlfriend. Appellant told Alane, “Tomorrow is the day.” Alane asked Steven to explain and he said, “We have all the guns loaded in my dad’s house and if anybody comes in the yard we will shoot and if the shooting starts I won’t come out alive.” Steven also said that this had been planned for some time and that his mother Rita planned to take his brother to Steven’s apartment while Steven and Arthur stayed at the house. Alane attempted to talk Steven out of his planned violence.

Additionally, while at Alane’s house, Appellant told Alane’s daughter, Dana Newton, he intended to shoot law enforcement if they came on his parents’ property. Newton testified that Appellant said, “I will, I’ll blow their mother f* * * * * heads off if they step one step onto my parent’s property. I will.”

Alane and Dana called Abbeville Deputy Barry New, a relative, and told him about Steven Bixby’s comments. They said they were concerned that harm would come to anyone that went to the Bixby home. Deputy New called his supervisor and left a message conveying the warnings.

Monday, December 8, 2003

At 8:30 a.m. on Monday, December 8, 2003, Deputy Wilson met with SCDOT officials McCaffrey, Williams, and Hannah to discuss SCDOT’s prior confrontation with the Bixbys and plan for that morning’s meeting with the family. After discussing the matter, Deputy Wilson headed straight to the Bixby home. SCDOT officials Williams and Hannah left shortly thereafter.

As Williams and Hannah approached the Bixby home in their vehicle, they noticed that Deputy Wilson’s car was in the driveway. However, Deputy Wilson was nowhere to be seen. Williams and Hannah drove past the Bixby home for fear that it was not safe. They drove past again and noticed that the blinds were closed but peep holes were cut into them. The third time they drove past the house they saw Appellant standing in the doorway holding a pistol in one hand and a rifle in the other.

At around 9:30 a.m., Appellant placed a phone call to his mother, Rita, who was at Appellant’s apartment with his brother. Appellant informed Rita that the shooting

had begun. Rita placed phone calls to the Governor's office, the Attorney General's office, and Dr. Craig Gagnon, a family friend and local chiropractor. Dr. Gagnon went to the Bixby residence.

Arriving at the Bixby home at approximately 9:40 a.m., Dr. Gagnon saw two law enforcement officers standing in the front yard of the Bixby home. He heard a shot come from the home and saw Constable Ouzts fall to the ground, mortally wounded. As news of the confrontation spread, several officers arrived and were able to retrieve Constable Ouzts's body. Additionally, the South Carolina Law Enforcement Division (SLED) dispatched approximately fifty agents and tactical support.

After determining Rita's whereabouts, David Alford, an investigator with the Abbeville County Sheriff's Department, apprehended her at Appellant's apartment and transported her to a temporary command center near the Bixby home. While at the command center, Rita refused to help Alford and the SLED agents diffuse the situation stating, "Why would I want to help you, I wanted to be inside with them today but they made me stay outside to tell the world why they died." All other attempts to contact Appellant and his father inside the home were unsuccessful.

At approximately 7:30 p.m., SLED sent robots equipped with cameras toward the house where they were able to peer through a window. The cameras captured footage of Deputy Wilson, who was face down on the floor of the Bixbys' living room with his hands cuffed behind him. He was dead. A team of officers entered the home and retrieved Deputy Wilson's body, which was already stiff from rigor mortis.

At approximately 8:55 p.m., SLED sent another robot into the Bixby home. Arthur fired a shot at the robot, and he and Appellant began firing at the officers outside the house. The officers returned fire and shot tear gas into the home.

The gun fight continued until at approximately 9:25 p.m. when Appellant surrendered and notified police that Arthur was wounded. Again, a robot was sent into the house. Video transmitted by the robot confirmed that Arthur had been shot and was sitting on the bathroom floor surrounded by weapons. At approximately 11:00 p.m., Arthur crawled into the living room and surrendered to authorities.

Bixby, 388 S.C. at 535–39, 698 S.E.2d at 576–78.

STANDARD OF REVIEW

The standard of review for post-conviction relief matters "depends on the specific issue" before the appellate court. *Smalls v. State*, 422 S.C. 174, 180, 810 S.E.2d 836, 839 (2018). When reviewing factual findings, the appellate court defers to the post-conviction relief court's factual

findings “and will uphold them if there is evidence in the record to support them.” *Id.* at 180, 810 S.E.2d at 839 (citing *Sellner v. State*, 416 S.C. 606, 610, 787 S.E.2d 525, 527 (2016)). However, pure questions of law will be reviewed de novo without deference to the lower court. *Id.* at 180–81, 810 S.E.2d at 839–40.

ARGUMENT

The record fully and fairly supports a finding of competency to be executed. Bixby’s arguments to the contrary misapprehend the PCR court’s role in evaluating competency to be executed under *Singleton v. State* and ask this Court to disturb credibility findings thoroughly supported by the record.

Bixby currently argues that he is incompetent to be executed under *Singleton v. State* because he holds fixed, irrational beliefs (particularly his beliefs about the law and the Constitution) that make him unable to understand the nature of his proceedings and make him unable to rationally communicate with his attorneys. Ignoring the fact that the conclusions of two out of the three experts at the hearing show that Bixby understands the basic nature of his legal proceedings (including this one) and that Bixby has the *ability* to rationally communicate (though he often chooses *not to*), Bixby points to his beliefs about the Constitution, his mental/social disorders generally, his relationship with his parents, and other aspects generally that fail to address the basic grasp of *Singleton*. Bixby essentially asks this Court to reweigh the credibility determinations made by the PCR court. Under the appropriate standard of review, the PCR court’s findings should not be disturbed on appeal, especially when they are thoroughly supported by the record.

The Petition should be denied.

A. Relevant Facts

The Singleton Hearing

On August 21, 2025, the hearing began for purposes of evaluating Bixby's competency to be executed. Three experts and a fact witness testified. The State's first witness Dr. Robert Ellis, M.D., Chief of Psychiatry at the Department of Corrections' (SCDC) Death Row, testifying out of order to accommodate scheduling, recounted Bixby's frustration with his counsel's claim that he was not competent and noted that when he told Bixby that he would have to testify at the hearing, Bixby stated: "I'm not crazy. I'm not a mental health case. I may be an asshole, but I'm not crazy." (App. 8–12). Dr. Ellis diagnosed Bixby with narcissistic personality disorder and post-traumatic stress disorder (PTSD), which the other three experts would all later agree with. (App. 12). Dr. Ellis recounted that although Bixby would sometimes refuse treatment or medication, he was still able to discuss the issues with Dr. Ellis in a rational and coherent manner. Dr. Ellis emphasized that they often "worked well together." (App. 13–15).

He testified that Bixby would occasionally become irate with personnel, but would also sometimes apologize for his behavior. Dr. Ellis noted an instance where there was a misunderstanding between Bixby and staff regarding his access to counsel where Bixby later conceded his misapprehensions and thanked Dr. Ellis for his help in addressing the misunderstanding. (App. 16–17). Dr. Ellis testified that there were "similarities of trust" in engaging in communication, whether for a medical or legal purpose. Dr. Ellis noted that though the purpose for use of the information received is different, the ability to communicate is "basic;" and Bixby had demonstrated this ability to him during his care at SCDC. (App. 22–23, 26).

Bixby's expert, Dr. Richart DeMier, Ph.D., a forensic psychologist, opined that Bixby is not competent to be executed because his personality disorders cause him to be unable to maintain

a rational understanding of the legal proceedings, and that Bixby is unable to rationally communicate with his attorneys. (App. 43–45, 73–74). Dr. DeMier diagnosed Bixby with narcissistic personality disorder, paranoid personality disorder, and PTSD, but noted that he did not meet the criteria for any psychotic disorder. (App. 45–50, 147–148). Dr. DeMier described Bixby as apprehensive in the evaluation process due to his distrust of the competency proceeding but noted he was still “somewhat cooperative” and engaged in over 14 hours of interviews covering a wide range of topics. (App. 77–83, 105–107, 114–117). Dr. DeMier also indicated in his report that Bixby understood the meaning and the rationale for his death sentence, though he does not agree with it. (App. 75–76, 99).

The State’s expert, Dr. Richard L. Frierson, M.D., a forensic psychiatrist, concluded that Bixby is competent to be executed under the *Singleton* standard. (App. 146). Dr. Frierson diagnosed Bixby with narcissistic personality disorder with paranoid and schizotypal traits, other specified trauma and stressor-related disorder, and alcohol-use disorder in a controlled environment. *Id.* Regarding Bixby’s understanding of the proceedings, Dr. Frierson explained:

Mr. Bixby understands that he was convicted of two counts of murder in Abbeville County for actions that happened on December 8, 2003, leading to the deaths of a police officer and a constable.

He understands that he went to trial in Abbeville County. He understands that a jury found him guilty and that he was sentenced to death by that jury.

He understands that his case has been through many appeals over the course of the last 20-plus years. . . .

He understands that, although he has exhausted his appeals, there is always direct appeals, pleadings that can be made to the United States Supreme Court. He understands the South Carolina method of execution, that he would have a choice of lethal injection, firing squad, or electric chair. He actually educated me that the default method was the electric chair. I thought it was lethal injection, so I was educated by Mr. Bixby on that point.

He understands that today's hearing is about his competency to be executed. He objects to that being raised as an issue because he does not believe he . . . lacks the competency to be executed. He believes that it negates his arguments. To be viewed as mentally ill negates his arguments about the Constitution for which he strongly believes.

He understands that other individuals may not accept his views of the Constitution, including his defense counsel. However, he made it clear to me that . . . he's not going to give up what he believes to be true regarding what the Constitution means. That he would be prepared to, if he is executed, keep his beliefs intact until the end, and to die, sort of, as a martyr representing his beliefs.

He made it clear to me that he is not afraid to die. That he is a religious man. He believes that he will be reunited with his parents in Heaven.

(App. 148–149).

Dr. Frierson also noted Bixby's own self-awareness regarding his obstinate personality, writing in his report that Bixby "prided himself on being contrary in his interactions with others: 'offensivity is my forte', 'I'm general asshole.'" (App. 584). Combined with prior interviews with Bixby for pre-trial evaluations, Dr. Frierson has conducted over 21 hours of interviews.¹ (App. 152–153). Dr. Frierson indicated that Bixby had no major cognitive impairment and did not suffer from any form of psychosis, though he is relatively undereducated. (App. 148, 171–176). Dr. Frierson indicated that personality disorders alone often do not render someone unable to rationally communicate, otherwise "a lot of people" would not be competent. (App. 181–182). Similarly, Dr. Frierson emphasized that non-mainstream political or religious beliefs do not render someone incompetent, again because otherwise many people would be incompetent. Dr. Frierson was clear in stating that Bixby's non-mainstream beliefs did not rise to the level of delusional thinking and did not constitute fixed false beliefs or evidence of psychosis. (App. 185–187, 190–193).

¹ Having previously evaluated Bixby, Dr. Frierson noted that his overall mental state has largely remained the same. (App. 153).

Dr. Donna Maddox, M.D., a forensic psychiatrist and the Court’s expert, concluded that Bixby understands the nature of the proceedings and has the ability to rationally communicate with his attorneys. (App. 244–246). Regarding the cognitive prong, Dr. Maddox had similar conclusions and observations to Dr. Frierson. (App. 247–248, 269). Dr. Maddox noted that personality disorders alone *rarely* result in a finding of incompetency. (App. 259). Additionally, she noted that while a severe personality disorder could reduce a person’s ability to act volitionally, Bixby’s disorders did not render him wholly incapable of volitional action. (App. 275–276). Regarding Applicant’s ability to rationally communicate with his attorneys, Dr. Maddox emphasized that even though Applicant does not *agree* with his attorneys’ strategies, he still understands the rationale of their actions and can choose whether to cooperate with them. (App. 274–275). At the end of the hearing, Bixby’s court appointed *guardian ad litem* Jack Duncan gave a statement to the court and, shortly thereafter, Bixby was allowed to speak to the court and give his opinions on the current proceedings. (App. 284–301). Notably, Bixby stated: “The Capital Habeas Unit has done more for me than all of my past attorneys combined, period.” (App. 300, ll. 9–10).

The PCR Court’s Findings & Conclusions

The PCR court was aware of the *Singleton* standard and the legal issue that Bixby’s case would present in advance of the hearing and had received pre-hearing briefings from the parties. (See App. 1604–1615). In setting forth its findings, the PCR court opened by phrasing the key issue as follows, borrowing Dr. Maddox’s grounded metaphor: “[T]he question is whether Applicant has the ‘tools on [his] tool belt’ to be able to understand the proceedings and rationally communicat[e] with his attorneys.” (App. 1633). The court then found Bixby to be competent based on the credible testimony of Drs. Maddox and Frierson. (App. 1634). First, the court found that Bixby possesses the cognitive capacity required under *Singleton* to be competent for

execution.² Specifically, the court concluded that Bixby understands the nature of the proceedings, the reason for his punishment, and the implications of his death sentence. *Id.* Although Bixby holds strong constitutional and religious beliefs—some of which are conspiratorial or outside the mainstream—the court emphasized that the expert testimony showed that these beliefs do not rise to the level of delusions or psychosis. *Id.* The court credited the testimony of Dr. Frierson and Dr. Maddox, both of whom found Bixby capable of understanding his legal situation and the rationale behind his sentence. (App. 1634–1635). Their opinions were supported by extensive interviews and prior experience with Bixby, lending depth to their assessments. (App. 1634–1637).

In contrast, the court found the testimony of Bixby’s expert, Dr. DeMier, unpersuasive due to internal inconsistencies and an overemphasis on Bixby’s belief system rather than his actual cognitive abilities. (App. 1635). Dr. DeMier acknowledged that Bixby understood key aspects of the proceedings, including the purpose of the hearing, the finality of death, and the consequences of a finding of incompetence. (App. 1635–1636). These admissions undermined his conclusion that Bixby lacked the requisite cognitive ability for execution. *Id.* The court also highlighted examples of Bixby’s ability to reassess situations and apologize when presented with new information, demonstrating his capacity for rational thought and self-reflection. (App. 1636–1637).

Second, the court concluded that Bixby possesses the ability to rationally communicate with his attorneys, satisfying the assistance prong of the *Singleton* standard. (App. 1637). The court emphasized that this prong does not require agreement with counsel or conformity to mainstream

² The court, however, initially acknowledged the fact that “in the order granting a stay in this matter, two justices have called the *Singleton* standard into question. (*See* March 13, 2025 Order, granting stay (Few., J. dissenting with James, J., joining in dissent)).” In any event, the court assessed both prongs of *Singleton*. (*See* App. 1626–1627).

legal interpretations, but rather the capacity or the ability to engage in reciprocal, rational communication that allows for the identification of exculpatory or mitigating information. *Id.*

As alluded to previously, the court found particularly persuasive Dr. Maddox’s explanation that rational communication is about having the “tools” to engage, regardless of whether the individual chooses to use them. *Id.* Bixby’s ability to discuss complex topics—including the rationale behind his attorneys’ strategies and the implications of the competency proceedings—demonstrated that he can process and respond to legal information in a meaningful way. (App. 1637–1638). Refusal to adopt their legal positions or cooperate was attributed to conscious choice, not cognitive incapacity. (App. 1638–1639). The court also noted that Bixby expressed appreciation for his current counsel and continued to engage with them, further supporting the conclusion that he is capable of rational communication; he simply does not approve of their current legal argument.³ (App. 1642).

In contrast, the court found Dr. DeMier’s opinion that Bixby’s personality disorders impair his ability to communicate with counsel unconvincing. (App. 1640–1641). Dr. DeMier acknowledged that Bixby was cooperative and responsive during interviews, and that he could discuss the same topics discussed with Drs. Maddox and Frierson. (App. 1641).⁴ The court rejected the argument that Bixby’s communication with mental health professionals is fundamentally different from communication with attorneys, citing Dr. Maddox’s testimony that rational capacity in one context generally translates to others. (App. 1643). Additionally, the court noted that Bixby’s

³ The court also found compelling the fact that Bixby largely cooperated with the evaluation process for Drs. Frierson and Maddox despite previous disagreement and distrust of them. (*See* App. 1638, fn. 7).

⁴ As referenced previously, the court noted that these subjects discussed are the same “potentially exculpatory or mitigating subject matter that an attorney would seek to investigate on behalf of their client. . .” *Id.*

long history of litigation, including trial, appeals, and collateral proceedings, indicates prior engagement with counsel.

Ultimately, the court found that Bixby’s personality disorders may make him a difficult or obstinate client, but they do not render him incapable of rationally communicating with counsel. His ability to provide relevant information, understand legal strategy, and make decisions—even if contrary to counsel’s advice—demonstrates that he meets the assistance prong of the *Singleton* test.⁵ (App. 1644). Accordingly, the court concluded that Bixby failed to prove he lacks the capacity to assist counsel and is therefore competent to be executed under South Carolina law. (App. 1644–1645).

B. Discussion

The Eighth Amendment bars execution if the condemned inmate’s “mental illness prevents him from comprehending the reasons for the penalty or its implications.” *Ford v. Wainwright*, 477 U.S. 399, 417 (1986) (plurality opinion). In this jurisdiction, the *Singleton* standard has been recognized as the guide for such determinations. The *Singleton* standard, as outlined by this Court, is as follows:

The first prong is the cognitive prong which can be defined as: whether a convicted defendant can understand the nature of the proceedings, what he or she was tried for, the reason for the punishment, or the nature of the punishment. The second prong is the assistance prong which can be defined as: whether the convicted defendant possesses sufficient capacity or ability to rationally communicate with counsel.

Singleton, 313 S.C. at 84, 437 S.E.2d at 58.

⁵ The court emphasized that Bixby’s argument purports to distort the inquiry of *Singleton*’s assistance prong, noting “Applicant’s argument . . . instead seeks to litigate whether or not a defendant can accept certain legal and constitutional interpretations as inherently ‘correct,’ such that he then *agrees* with counsel and rationally communicates *within that framework of agreement*.” (App. 1642) (first emphasis added).

As noted above, Bixby complains only that he does not meet the *Singleton* standard and has not argued he is incompetent under the federal standard.

The PCR applicant has the burden of showing, “by a preponderance of the evidence that he lacks the requisite competency for execution.” *State v. Motts*, 391 S.C. 635, 653, 707 S.E.2d 804, 813 (2011). Under this Court’s standard of review, the factual findings of the PCR court should be upheld “if there is evidence in the record to support them.” *Smalls*, 422 S.C. at 180, 810 S.E.2d at 839. Although this Court conducts a *de novo* review of the PCR court’s legal conclusions, the fact-intensive nature of the *Singleton* inquiry requires a strong deference to the PCR court’s factual findings and credibility determinations. In the case of evaluating competency to be executed under *Singleton*, the inquiry is thus whether the PCR court’s factual findings relating to Bixby’s competency are supported by the record. In this case they are.

The Cognitive Prong

The PCR court’s conclusion that Bixby has the requisite cognitive capacity is thoroughly supported by the record. The PCR court correctly recognized that Bixby not only has the capacity to understand the nature of the proceedings but *actually does understand* the nature of the proceedings as demonstrated by his own statements, the credible testimony of Drs. Frierson and Maddox, and the apprehensive acknowledgements by Bixby’s expert Dr. DeMier. The mere fact that Bixby may have a different view as to what proceedings *should* be undertaken or how things *should* be handled is simply irrelevant for purposes of the *Singleton* inquiry. The acknowledgements by Dr. DeMier alone are fatal to Bixby’s claim:

Dr. DeMier testified on direct examination that Mr. Bixby does not have an understanding of the nature of the proceedings [App. 43], but admits on cross examination and in his report that Applicant (1) has no deficits in his ability to understand and appreciate punishment, (2) understands the meaning of and the rationale for punishment, (3) has a clear understanding of the State’s rationale for

his execution- appreciating that his execution could be approaching soon, (4) that he understands and recognizes the finality of death, (5) that he was able to understand the content and purpose of the forensic evaluation form, (6) that he was able to understand the limits of confidentiality related to his examination, (7) that he understood the potential disposition of Dr. DeMier' s report, (8) that he understands the purpose of the conducted hearing was to present the experts' findings as to his competency to be executed, and (9) that he understands a finding of incompetence would essentially commute his death sentence to a life sentence. [App. 75, 88–89, 90–92].

(App. 1635–1636). The PCR court was correct in giving little weight to Dr. DeMier’s testimony and instead following the opinions by Drs. Frierson and Maddox that were informed not only by their wealth of forensic experience, but also by their great knowledge of the facts and Mr. Bixby himself. Bixby’s attempt to conflate a non-mainstream belief system with lack of cognitive ability was correctly shut down by the court: “Dr. DeMier appears to contaminate his opinion with concerns that Appellant [sic] *disagrees* with what his hearing “*should*” be about, and as such far exceeds the parameters of the *Singleton* standard. [App. 91].” (App. 1636). The PCR court correctly recognized that Bixby’s often offensive, hostile, or contrarian nature demonstrates cognitive choice rather than a lack of cognitive function:

The Court also finds persuasive the assessments of doctors Frierson, Maddox, and Ellis indicating Applicant has shown stability in his condition, the ability for self-reflection, the ability to change incorrect assumptions, and the ability to modulate his emotions (though Applicant appears to enjoy being contrary or actively offensive, even finding humor in that). While Applicant has expressed disagreement with the legitimacy of these proceedings and the legal system generally, he has the ability to understand and shows a rational understanding of the potential consequences of this proceeding as well as his conviction and sentence.

(App. 1637).

The Assistance Prong

The PCR court’s conclusion that Bixby has the requisite ability to rationally communicate with counsel is thoroughly supported by the record. The PCR court correctly recognized that Bixby’s capability to engage in reciprocal conversation, to answer questions, and to discuss legal strategy (though he does not agree with the strategy ultimately pursued) reflect the “hallmark indications of one’s ability to communicate rationally with others, including counsel, . . .” (App. 1637). Again, Bixby’s attempt to conflate his personality disorders and a non-mainstream belief system with an inability to rationally communicate were correctly refuted by the PCR court:

In contrast to the testimony offered by Dr. Maddox and Dr. Frierson, . . . Dr DeMier opined that Applicant’s personality disorders impair his ability to rationally communicate with counsel—citing his bizarre beliefs and inability to consider alternative legal strategies. As mentioned above, *Singleton* does not encapsulate such as part of its two-pronged analysis of competency for execution. Moreover, the credibility of Dr. DeMier is questionable because Dr. DeMier *readily admits* that Applicant was a cooperative, albeit at times domineering, conversationalist during his various forensic interviews and that he was able to discuss and engage with Applicant *on the same spectrum of topics* discussed by Dr. Frierson and Dr. Maddox. This Court views *those subjects as being the same potentially exculpatory and mitigating subject matter an attorney would seek to investigate on behalf of their client* . . .

(App. 1640–1641) (emphasis added).

Similarly, the PCR court properly rejected Bixby’s other attempted distortion of the assistance prong:

Applicant’s argument has attempted to distort that question and instead seeks “to litigate whether or not a defendant can accept certain legal and constitutional interpretations as ‘currently accepted’ (which the record demonstrates Applicant *does* recognize), and whether a defendant can accept those current legal and constitutional interpretations as inherently ‘correct,’ such that he then agrees with counsel and rationally communicates *within that framework of agreement*. Neither distortion is appropriate.

(App. 1642).

Thus, the record clearly demonstrates that Bixby has the capability to rationally communicate with counsel and the PCR court's findings to that effect should be given the proper deference demanded by the standard of review. The record demonstrates that Bixby has the cognitive ability to understand the proceedings and has the ability to rationally communicate with counsel.

The Petition should be denied.

CONCLUSION

WHEREFORE, based on the foregoing, this Court should deny the petition; or in the alternative, grant certiorari review but dispense with further briefing and proceed to a final order affirming the PCR court's finding that Petitioner is competent to be executed.

Respectfully submitted,

ALAN WILSON
Attorney General

DONALD J. ZELENKA
Deputy Attorney General

MELODY J. BROWN
Senior Assistant Deputy Attorney General

By: s/ Melody J. Brown

W. JOSEPH MAYE
Assistant Attorney General

By: s/ W. Joseph Maye

P. SANDERS LINKER
Assistant Attorney General

By: s/ P. Sanders Linker

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211-1549
(803) 734-6305

ATTORNEYS FOR RESPONDENT

Columbia, South Carolina
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