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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
In The Supreme Court

On Petition for Writ of Certiorari to the Court of Common Pleas
Appeal from Marlboro County
Honorable George M. McFaddin, Jr., Post-Conviction Relief Judge

Appellate Case No. 2025-000136

Weldon W. Stewart, Jr., #295095,

Petitioner,

v.

State of South Carolina,

Respondent.

RETURN TO PETITION FOR WRIT OF CERTIORARI

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PETITIONER'S STATEMENT OF ISSUES ON CERTIORARI

- I. Whether the post-conviction relief court erred in signing deficient orders that failed to address the specific facts and issues presented by Petitioner?
- II. Whether the post-conviction relief court erred in denying discovery and summarily dismissing the action without an evidentiary hearing?

RESPONDENT'S COUNTERSTATEMENT OF ISSUE ON CERTIORARI

- I. Whether the post-conviction relief court properly summarily dismissed Petitioner's third post-conviction relief application without conducting an evidentiary hearing, where Petitioner's claims were procedurally barred by the statute of limitations, barred by the doctrine of *res judicata*, barred by the equitable doctrine of *laches*, for failing to present a *prima facie* showing of newly discovered evidence, and where Petitioner failed to present sufficient reasons why the issues raised therein could not have been raised in Petitioner's first and second post-conviction relief actions?

STATEMENT OF THE CASE

For brevity, Respondent provides the following procedural history in a condensed version, as the protracted history is accessible within the record:

- During its October 2002 term of the Marlboro County Grand Jury for murder (2002-GS-34-01919), and desecration of human remains (2002-GS-34-01918). On July 28, 2003, Petitioner pled guilty to desecration of human remains and proceeded to trial on the murder charge. The jury found Petitioner guilty of the lesser-included offense of voluntary manslaughter, and Judge Burch sentenced Petitioner to imprisonment for consecutive terms of thirty (30) years for voluntary manslaughter and nine (9) years for desecration of human remains. Petitioner subsequently appealed. On April 20, 2005, Petitioner's convictions and sentences were affirmed in an unpublished opinion. State v. Stewart, Op. No. 2005-UP-284 (S.C. Ct. App. filed April 20, 2005). The Remittitur was returned on May 23, 2005.
- Petitioner filed his *first* application for post-conviction relief on April 18, 2006 (2006-CP-34-00125) and raised the following issues:
 1. Ineffective assistance of appellate counsel:
 - a. Counsel failed to argue the trial judge erred in charging voluntary manslaughter when there was no evidence to support the charge.
 - b. Counsel failed to argue the trial judge admitted two documents where the authenticity of the documents had not been established and the documents were not relevant to the issues at trial.
 - c. Counsel failed to argue the trial judge admitted photographs that were not relevant to the issues at trial and were graphic in nature.
 - d. Counsel failed to argue the trial judge allowed hearsay testimony.

Following an evidentiary hearing on November 15, 2006, the post-conviction relief court denied and dismissed the application by written order dated January 8, 2007. Petitioner subsequently filed a notice of appeal and petitioned this Court for certiorari. On March 18, 2009, this Court denied Petitioner's petition by unpublished order. Stewart v. State, S.C. Sup. Ct. Order filed March 18, 2009. The Remittitur was returned on April 3, 2009.

- Petitioner subsequently filed a *pro se* Petition for Habeas Corpus under 28 U.S.C. § 2254 on March 31, 2009 (C.A. No. 8:09-842-SB-BHH) and raised the following allegations:

Ground One: Did the trial court deprive me of my constitutional right to due process by failing to instruct the jury on involuntary manslaughter?

Supporting facts: The trial court failed to instruct the jury on the requested jury instruction on involuntary manslaughter. There was evidence presented during the trial which supported the jury instruction and the trial court's failure to instruct the jury on this instruction deprived me of a fair trial.

Ground Two: Did appellate counsel deprive me of my constitutional right to effective assistance of counsel?

Supporting Facts: Appellate counsel was ineffective for failing to argue on my appeal: 1) the trial judge erred by charging the jury on voluntary manslaughter when there was no evidence to support the charge, 2) the trial judge admitted two documents that were not authenticated, 3) the trial judge

admitted photographs that were irrelevant and prejudicial, and 4) the trial judge allowed hearsay testimony.

The State filed its Return and Motion for Summary Judgment on July 13, 2009. The Honorable Bruce Howe Hendricks, United States Magistrate Judge, issued on December 10, 2009, a Report and Recommendation that the State's motion for summary judgment be granted. Stewart v. Warden of Lieber Corr. Inst., 8:09-842-SB-BHH, 2009 WL 6322405 (D.S.C. 2009). The Honorable Sol Blatt, Jr., United States District Judge, denied Petitioner's Petition on March 29, 2010, and accepted the Report and Recommendation for summary judgment. Stewart v. Warden of Lieber Corr. Inst., 701 F.Supp.2d 785 (D.S.C. 2010). Petitioner filed a notice of his appeal to the Fourth Circuit Court of Appeals; and the Fourth Circuit dismissed Petitioner's appeal on February 17, 2011, for want of a certificate of appealability. Stewart v. Bodison, 412 Fed.Appx. 633 (4th Cir. 2011).

- Petitioner subsequently filed a motion for a new trial dated February 9, 2015, wherein he contended that he was entitled to a new trial based on juror misconduct. (App'x pp. 999–1006). On May 26, 2016, Petitioner appeared before the Honorable Paul M. Burch on that motion. Judge Burch orally denied Petitioner's motions from the bench. (App'x 1010–1053).
- Petitioner subsequently filed another motion for a new trial on or about May 7, 2018, which was nearly an identical filing of his June 5, 2018, post-conviction relief application. The 2018 motion appears to remain pending on the Marlboro County Public Index.
- On June 5, 2018, Petitioner filed a *second* post-conviction relief application (2018-CP-34-00121) and raised the following allegations:
 1. "Petitioner is entitled to a new trial because the solicitor's office committed a Brady violation when it suppressed the exculpatory nature of pretrial statements made by the pathologist, and the suppressed evidence could have been used to impeach the testimony of the pathologist."
 - a. "Between the months of September and December 2014, Ms. [Loretta] Stewart discovered evidence which added credibility to Petitioner's claims. She conducted professional background checks on the pathologists who performed the 'forensic autopsy' on Victim. She discovered that the lead pathologist, Russell Harley (Pathologist), lacked certification in forensic pathology and that the second pathologist was a mere student in training who followed the guidance of Pathologist in conducting the autopsy on Victim. Ms. Stewart also reviewed court documents revealing that Pathologist made pretrial statements to Daniel Blake (Solicitor) expressing Pathologist's uncertainty about the accuracy of his conclusions in reference to Victim's cause of death."
 - b. "The trial testimony of Pathologist established that his conclusions were based on the presence of a skull fracture and brain hemorrhage. Ms. Stewart's search to comprehend the significance of Pathologist's pretrial statements led to her finding publications from forensic experts on thermal injuries. Through the information found in these publications, she discovered that the pretrial statements of Pathologist revealed that Pathologist could not rule out the possibility that the skull fracture and brain hemorrhage occurred after Victim's death as a result of the fire."

- c. "[T]hough Solicitor did mention Pathologist's statements during a pretrial hearing, Solicitor never disclosed to Petitioner any information in reference to the possibility that the skull fracture and brain hemorrhage were thermal injuries. Ms. Stewart confirmed, by reviewing Court documents, that Solicitor concealed the exculpatory nature of Pathologist's pretrial statements by claiming that these statements established the possibility that victim died as a result of burning. She further noted that Solicitor failed to correct the misstatements made by Pathologist at trial indicating that the skull fracture and brain hemorrhage conclusively established that Victim died as a result of blunt force trauma."
2. "Petitioner is entitled to a new trial because the solicitor's office violated Petitioner's due process rights when it failed to correct misstatements made by the pathologist while testifying against Petitioner at trial."
 - a. "Ms. Stewart hired a forensic pathologist to review the autopsy conducted on Victim. The pathologist made a preliminary finding that it was possible the skull fracture and brain hemorrhage were thermal injuries based upon the location of the injuries, the parietal region, which is [a] common location for thermal injuries. The pathologist further explained that the location of the injuries is not common for blunt force trauma injuries. However, the forensic pathologist informed Ms. Stewart that he would not be able to complete his independent evaluation until he examined the autopsy photographs."
 - b. Applicant thereafter details a series of *ex parte* motions to attempt to obtain photographs and records, each of which were denied.
3. "Petitioner is entitled to new trial because the solicitor's office committed a Brady violation when it suppressed SLED files that were favorable to Petitioner, and the suppressed evidence could have been used to impeach the testimony of witnesses for the State."
 - a. "In June of 2017, the South Carolina Law Enforcement Division (SLED) provided Ms. Stewart with a CD containing the SLED investigative files for Petitioner's case. While reviewing these files, Ms. Stewart noticed that crime scene notes, written by SLED forensic investigator Al Stuckey (Investigator), contained evidence which was favorable to Petitioner. Ms. Stewart further noticed that other SLED investigative files were also favorable to Petitioner. Ms. Stewart shared her findings with Petitioner, who informed her that none of this evidence had been disclosed to him."

On July 12, 2019, the State filed its Return and Motion to Dismiss. A hearing was held on August 22, 2019, before the Honorable Brooks P. Goldsmith on Petitioner's motion for discovery and the State's motion to dismiss. At the conclusion of the hearing, Judge Goldsmith denied Petitioner's motion for discovery and granted the State's motion to dismiss. Counsel for Petitioner placed a motion to reconsider on the record, and the State reasserted its defenses. Judge Goldsmith denied the motion to reconsider. On December 9, 2019, Petitioner filed a motion for reconsideration. Judge Goldsmith denied Petitioner's

motion by filed order on January 9, 2020. Petitioner subsequently filed a timely Notice of Appeal. On June 20, 2020, Counsel filed a motion to be relieved as Petitioner wished to proceed in his appeal *pro se*. On July 10, 2020, Counsel filed the Explanation Pursuant to Rule 243(c), SCACR. On August 10, 2020, this Court dismissed the appeal for failing to show an arguable basis for asserting the determination of the lower court was improper. Counsel filed a Motion to Reinstate on August 24, 2020. That motion was denied by filed order on October 19, 2020. The Remittitur was returned on October 19, 2020.

- Petitioner subsequently filed a *pro se* Motion Under 28 U.S.C. § 2244 for Order Authorizing District Court to Consider Second or Successive Application for Relief Under 28 U.S.C. §§ 2254 or 2255 (Case No. 21-278). Within his Petition, Petitioner raised the following issues:
 - 1) Alleged newly discovered evidence of a Brady violation that the State concealed evidence establishing that the injuries the State claimed killed Victim were not produced until after Victim's death;
 - 2) The State knowingly presented false testimony from the State's pathologist, Dr. Russell Harley, that Victim's injuries conclusively established death by blunt force trauma, which he alleges the State failed to correct and that the State suppressed evidence showing the testimony of the pathologist was false; and
 - 3) The State concealed evidence found in the crime scene notes written by SLED Agent Al Stuckey containing observations made by the crime scene investigator, while on the scene, which strongly contradicted the State's case against Stewart.

On December 1, 2021, the State filed its response to Petitioner's motion. On December 7, 2021, Petitioner filed his reply to the State's response to the motion. On March 9, 2022, the United States Court of Appeals for the Fourth Circuit appointed Dawinder Sidhi to represent Petitioner. On July 25, 2022, Petitioner filed his Opening Brief in support of his motion. On August 29, 2022, the State filed its Response Brief Opposing Motion for Authorization Pursuant to 28 U.S.C. § 2244. On September 14, 2022, Petitioner filed his reply to the State's response. On January 26, 2023, oral arguments were held before the Fourth Circuit Court of Appeals Judges Roger L. Gregory, Pamela A. Harris, and A. Marvin Quattlebaum, Jr. On August 21, 2023, by **published** opinion, the Fourth Circuit Court of Appeals denied Petitioner's motion to file a successive federal habeas. In re Stewart, 78 F.4th 690 (4th Cir. 2023).

- On October 30, 2023, Petitioner filed his *third* post-conviction relief application (2023-CP-34-00282) wherein he raised the following issues:
 1. Trial Court Lacked Subject Matter Jurisdiction
 - a. [Petitioner] has discovered new evidence establishing the strong probability that C.A., the deceased person in this case, committed suicide a year after being forced by her mother to undergo a partial birth abortion. [Petitioner] believes C.A. committed this act by secretly ingesting something, while she distracted him by asking him to get her something to drink. If C.A. committed suicide, then [Petitioner] did not commit a crime related to her death. Therefore, the criminal court lacked subject matter jurisdiction in this matter, simply because no crime was committed.
 2. Actual Innocence

- a. It is unconstitutional for [Petitioner], an innocent man, to be subjected to the punishment of a person who has been "duly convicted." As such, [Applicant]'s incarceration violates USCA Const Amend. 13 § 1.

3. Mental Incompetence

- a. [Petitioner] was tried while he was suffering from dissociative amnesia, a mental disorder that severely impaired his factual recall of events. Therefore, [Petitioner] was unable to assist with his defense, or to provide crucial details that would have exonerated him. [Applicant]'s trial, which was held while he was in this incompetent mental state, was fundamentally unfair.

On April 1, 2024, Petitioner filed his Motion for Court to Grant Leave to Conduct Discovery. On April 18, 2024, Petitioner filed his Memorandum of Facts In Support of Motion for Leave to Conduct Discovery. On May 3, 2024, the State filed its Return and Motion to Dismiss and Return to Motion for Discovery wherein the State asserted the action should be summarily dismissed as untimely, barred by the statute of limitations, successive to Applicant's previous applications, barred by the doctrine of *res judicata*, barred by the equitable doctrine of *laches*, for failing to make a *prima facie* showing of newly discovered evidence pursuant to S.C. Code Ann. § 17-27-20, § 17-27-45, and § 17-27-90, and for failing to comply with the Uniform Post-Conviction Procedures Act, S.C. Code Ann. § 17-27-10 *et seq.* (2014). On June 10, 2024, Petitioner filed his Response to Proposed Conditional Order of Dismissal and Denial of Discovery. On August 12, 2024, the Honorable George M. McFaddin, Jr., issued the Conditional Order of Dismissal and Denial of Motion for Discovery in Successive PCR Action. On September 8, 2024, Petitioner filed his Supplemental Response to Conditional Order of Dismissal and Denial of Discovery. On September 22, 2024, Petitioner filed his Motion for Leave to Supplement Filed Response, his proposed Order of Denial of Summary Dismissal and Granting Leave to Conduct Discovery, and his proposed Order to Examine Autopsy Materials by Retained Pathologist. On October 15, 2024, Judge McFaddin issued the Final Order of Dismissal. On November 7, 2024, Petitioner filed his Motion to Alter/Amend Judgement Pursuant to Rule 59(e). On November 20, 2024, the State filed its Return to Applicant's Motion Pursuant to Rule 59(e), SCRPC. On December 3, 2024, Petitioner filed his Reply to Respondent's Return Pursuant to Rule 59(e), SCRPC. On December 13, 2024, Judge McFaddin issued the Order Denying Applicant's Motion Pursuant to Rule 59(e), SCRPC. This appeal follows.

STATEMENT OF THE FACTS

As Petitioner admitted in his 2018 federal habeas motion for authorization, "From the onset of the case, there has been no dispute that (1) Petitioner was present at the time of Victim's death, and (2) Petitioner set Victim's body on fire a few hours after death." (Supp. App'x pp. 6–7). Petitioner also asserts that "[t]he sole dispute in this case from the beginning revolved around how the Victim died." Id. Petitioner presented a defense of accident.

Petitioner opted to represent himself at his jury trial, held from July 28 to August 1, 2003. The local public defender acted as standby counsel. Prior to trial, on October 17, 2002, Petitioner was arraigned on both charges and pleaded guilty to the charge of desecration. Petitioner also, at that time, challenged the wording of the murder indictment, which included "burning" as a possible method of death, asserting that the autopsy report reflected "death was caused by blunt trauma to the head." (App'x pp. 61–63). No action was taken on the challenge to the murder indictment at the October 2002 proceedings.

During pre-trial proceedings in December 2002, Petitioner moved to conduct an interview with the autopsy pathologist. Petitioner indicated that he had reviewed the autopsy report and noted that the stated cause of death was blunt force trauma. It did not suggest anything about the possibility that the cause of death was burning, yet he argued that the prosecutor had stated that possibility in the indictment. (App'x pp. 82–87). The judge inquired whether Petitioner would like to rethink having counsel, "who could not only interview this pathologist, but seek out another pathologist?" Id. at 88. Petitioner declined, and the judge ordered that Petitioner be provided an opportunity to personally interview the autopsy pathologist concerning his opinion on the cause of death. (App'x pp. 82–89).

In a June 2003 hearing, Petitioner again asserted that he had reviewed the autopsy report, and it reflected an opinion of death by blunt force trauma, but that the indictment still included burning, which he argued was inconsistent. (Respondent's Attachment 1, pp. 22–26)¹. Petitioner declared: "It is the contention of the defense that the Victim's death was unintentional." Id. at 26. Petitioner moved for a forensic pathologist to assist him. Id. at 22–23. The prosecution noted that Petitioner had not yet spoken with the autopsy pathologist but would be able to do so pursuant to the prior court order. Id. at 24. While the judge denied Petitioner's motion at the time, he cautioned that he would "not ... contend that Petitioner cannot bring it back up, but," instead, he thought it was prudent to wait for Petitioner to complete the interview. He explained that after Petitioner interviewed the autopsy pathologist, "may or may not leave Petitioner needing to come back and renew [the] motion...." Id. at 29–30. Petitioner did not renew the motion.²

At trial, Petitioner repeatedly told the jury that he was the only surviving witness to the incident, which he described in detail as an accident. (App'x pp. 232–233; 522–531; 735; 761).³ The jury, during deliberations, even requested to rehear Petitioner's very descriptive opening statement that included statements and assertions such as:

- "I'm going to show you that on the morning of December 6, 2000, my girlfriend's death was accidental."
- That, though the minor Victim's parents had tried to stop her contact with Petitioner, she had quietly left her house that night voluntarily to clandestinely meet with Petitioner for sex.

¹ Respondent's Attachment 1 was included in Respondent's return to Petitioner's motion.

² Petitioner admitted in his 2018 federal habeas motion for authorization that he later interviewed the pathologist and that, because the State removed the allegation in the indictment subsequently, Petitioner "believed that the matter for which he had requested a forensic pathologist had been resolved." (Supp. App'x p. 19).

³ Consistently, Petitioner also argued to the trial court in challenging the admission of certain evidence: "The only issue is whether the death of Ms. Allen was intentional or unintentionally caused by myself." (App'x p. 454).

- That Petitioner admitted that they "did get into a little argument that night" prior to her death; That the Victim resisted leaving him and that "[s]he never wanted to go back home when it was time for her to go back home."
- That Petitioner "was just trying to convince [his] girlfriend that she needed to go back home ... but she was upset," and he eventually "picked [Victim] up to try to carry her" but "she was twisting and turning. She wasn't ready to go back home" then Petitioner "tripped and fell with her in [his] arms over one of the sticks in the path." Petitioner told the jury he "fell on top of her. This was an accident" a serious accident, "and she lost her life as a result of this accident."

(App'x pp. 814–820).

In his trial testimony, Petitioner further asserted that the Victim had previously been pregnant by Petitioner but had an abortion that she regretted. (App'x p. 915). Petitioner claimed they were attempting to have another child. Id. at 917. However, he asserted that on the night of her death, the Victim became morose when Petitioner showed her a "memorial" to the child she had aborted. Id. at 930. Petitioner testified he was in the process of taking the young Victim back home and, while walking down a wood-lined path, the two began to argue. According to Petitioner, the Victim pulled out a box cutter and swung it towards him a couple of times. He grabbed her arm, spun around behind her, and picked her up. Id. at 930–935. He claimed he was attempting to carry her, but she was not calming down, and she began to twist around. Id. at 934–935. Petitioner claimed he caught his right foot "on something" and then "stumble[d]" and eventually fell. According to Petitioner, the Victim fell out of his arms, and he fell on top of her. Id. at 936.

Petitioner testified that "she turn[ed] over and she [sat] up." Id. Petitioner asserted that though she would "usually just jump[] right back up" if she fell, this time, she did not stand. Petitioner testified that, instead, she twice called his name and asked for help, but, thinking it was a "hard to get" ploy, Petitioner did not respond. Id. at 936–937. Petitioner testified that "the third time ... when she called my name it sounded like – it sounded like she's getting scared, but her voice was low." Then, "she was like Stew, I'm happy. I'm happy. I'm happy ... back to my baby,"

at which point she fell over, making "strange sounds" that "didn't sound human." Id. at 937. Petitioner testified that he saw blood coming from her mouth, "realized something was wrong with her," and started toward a nearby home. Id. at 937–939. As he carried her, he smelled urine and a bowel movement, then laid her back down. Id. Petitioner testified he was dazed, then began to shake her, and "bent down to her mouth and tried to blow in it," but stopped as blood came into his mouth. Id. at 939. Petitioner testified that he left to find his friend "Bo" (Stanton Wright). Petitioner had a beer and was looking for his cigarettes when he saw Wright driving nearby. Id. at 940. When he connected with Wright, he took him to see the body. Id. at 940–942. Petitioner claimed that he told Wright he had tripped as an explanation for what happened. Id. at 943.

Forensic pathologist Dr. Russell Harley testified at trial concerning the findings from the autopsy.⁴ Dr. Harley testified that the body was "badly charred on the outside," but he could examine the remains internally for signs of trauma. Though there were multiple broken bones, he could differentiate between those caused by the fire and those inflicted before the fire because he could look for signs of bleeding. (App'x p. 278). Dr. Harley ruled out injury for certain fractures due to the lack of bleeding, attributing the brokenness to the heat of the subsequent fire. Id. However, in the skull, he found evidence of trauma:

In the skull, in the right-hand side under the parietal bone ... There was a fracture here that was epidermal hemorrhage, which is hemorrhage on top of the heavy lining of the surface of the brain. And there was a subdural hemorrhage as well so there was a big blood clot in the ear.

⁴ At the time of trial, Dr. Harley testified that he had 30 years of experience with the Pathology Department at the Medical University of South Carolina and had been qualified as an expert in forensic trials multiple times, specifically approximately 6 times in "forensic homicide trial[s]." (App'x pp. 274–275). Petitioner did not object to Dr. Harley's qualification as an expert in forensic pathology. Id. at 276.

Id. at 278–279. Dr. Harley agreed that this finding contributed to his finding of blunt force trauma, but he could not opine on what "hit her head or that her head hit." Id. at 279. Dr. Harley opined, "something cracked her skull," and she had internal bleeding. Id. Because her body was so charred and damaged from the fire, he could not opine on external bleeding, bruises, or defensive wounds. Id. at 279–280. Dr. Harley found, however, that the hyoid bone and structures around that area were intact or revealed no abnormalities, so there was no evidence of strangling. Id. at 280. Dr. Harley concluded that his opinion of the cause of death was "blunt force trauma to the right parietal." Id. at 281.

Under cross-examination by Petitioner, the doctor agreed that it was possible that the skull fracture could have occurred as a result of a fall. Id. at 282–283. Dr. Harley explained that even though the body was burned such that they could not see the surface, he did see a fairly sizable skull fracture. It may have been enlarged because of the heat, he stated, but the fracture was caused by something hitting the Victim's skull. Id. at 283.

On redirect, the pathologist stated the Victim would have had to fall on something hard enough, like a root or a rock, for such an injury, but did not think "ordinary turf" would have caused it. Dr. Harley opined a branch may have been able to cause that type of injury, noting the Victim had "a small, thin skull, and it wouldn't take a whole lot of force to fracture it." Id. at 284.

On re-cross by Petitioner, Dr. Harley confirmed that the Victim had to fall hard to fracture the skull. Dr. Harley stated that it was unlikely, but possible, that it would be caused by her falling alone, but acknowledged that it would be more probable if she fell and Petitioner fell on top of her. Dr. Harley opined that the Victim would have had to hit something "fairly large" to cause a fracture the size of a lemon, as observed, and most likely "something about six inches wide by six or more inches long." Id. at 284–286.

Stanton Wright testified that Petitioner called him and that he met Petitioner at Petitioner's request. Wright recalled that Petitioner provided two flashlights and that they walked together toward the wood-lined path. Wright testified that, en route, Petitioner asked whether Wright was his "homeboy, right?" Id. at 307–309. Petitioner shone a light on the Victim's body, and Wright became upset. Id. at 308 and 312. Wright, who was demonstratively hesitant at trial, was asked to read his prior statement to police, which reflected, "As we walked towards the path, he told me that [the Victim] said that she had sex with another dude before she had sex with him, and she didn't shower. And then he--and then he said that he flipped." Id. at 311. Wright testified that Petitioner asked him to help Petitioner move the Victim's body. Id. at 316.

On cross-examination by Petitioner, Wright agreed that the Victim appeared to want to see Petitioner at the initial meeting that night and did not appear "upset about anything." Id. at 322–323. Although on cross-examination, Wright also agreed with Petitioner that Petitioner could have said "tripped" instead of "flipped" (Id. at 327), when pressed on redirect, Wright testified, "If I recall, he said he flipped." Id. at 334. Wright testified that he did not see the Victim's "head area" when Petitioner showed him the body. Id. at 336. Wright further testified that he never saw the Victim with a box cutter. Id. at 337.

Anthony Watson, who was in school with the Victim at the time, was in a relationship with the Victim around the time of her death. Anthony testified not only that Petitioner had threatened him (calling multiple times) but also that he heard Petitioner on a phone call threatening the Victim should she see another man. Id. at 417–418; 420–421. Anthony stated that Petitioner was angry because the Victim was seeing another man. Id. at 419–420. Anthony confirmed that he had been intimate with the Victim for a "[m]onth or longer" before she died. Id. at 422. Anthony testified

that he also received threatening calls after Petitioner was in jail, indicating Anthony was "next and all that." Id. at 420–421.

Deloris Watson, Anthony's mother, similarly testified about the phone calls she made to her son. Deloris testified that on one occasion, she picked up the home phone, heard an announcement from a correctional institution or detention center, and heard "you next." Deloris testified that she listened to several of Petitioner's calls to her son, where "he was fussing about the next time, you're on your way, too," and also heard in one call, "[t]he next time you leave the house, you better tell your mother you won't see her no more. ... You better kiss her before you leave." Id. at 431–433; 437; 440. Deloris clarified on redirect that she received calls from Petitioner at her home both before and after the Victim's death. Id. at 443.

Officer John Boston testified that Petitioner first told him that Petitioner and the Victim "got into an argument" at approximately 4 a.m. while on a path behind Petitioner's house, and "that she pulled a knife on him." Id. at 491. As he tried to hold her, the Victim fell, and Petitioner heard a "popping sound," then he fell on top of her. When he tried to pick the Victim up, she was "limp," was not moving, and was unresponsive. Id. "Petitioner mentioned something about she had got mad about another female." Id. In a written statement, Petitioner claimed the Victim had a razor blade but reiterated that they had struggled. He then claimed he tripped and fell on top of the Victim. Id. at 496. The officer testified that Petitioner stated that after he went home and got a flashlight, he had assumed she was dead because he had "checked her heartbeat and pulse before [he] left where she was lying." Id. at 496–498.

Officer John Valdaleso testified that he spoke to Petitioner when he responded to a call for police aid at Petitioner's house after Petitioner burned the body. According to the officer, Petitioner insisted that he wanted to tell Officer Valdaleso what happened, and Petitioner declared that he and

the Victim had argued, that she fell and made "funny sounds," he then walked to his house, but when he later returned, she was no longer breathing. Petitioner told the officer he panicked and tried to dispose of the body. Id. at 517–520.

Officer Dallas Gurley testified to one writing from Petitioner mailed to her, and one Petitioner hand-delivered. The mailed document indicated Petitioner was enraged over the Victim's involvement with another man. Id. at 573. The other document stated the possibility of shifting blame to another and suggested how to interview for favorable facts, even though Petitioner had not previously indicated that someone else may have killed the Victim. Id. at 579; 584–589.

Also of note, Petitioner questioned Monique Bright, who was in the car with Petitioner and Wright when they picked up the Victim, about the Victim's mood. Bright testified, in response to Petitioner's own questioning, that the Victim was "happy" she and Petitioner "were playing around." Id. at 352.

STANDARD OF REVIEW

The standard of review for post-conviction relief depends on the specific issue before the appellate court. Smalls v. State, 422 S.C. 174, 810 S.E.2d 836, 839 (2018). When reviewing factual findings, the appellate courts defer to the post-conviction relief court's factual findings and will uphold them if any probative evidence in the record supports them. Buckson v. State, 423 S.C. 313, 320, 815 S.E.2d 436, 440 (2018); Smalls, 422 S.C. at 180-81, 810 S.E.2d at 839-40. However, pure questions of law will be reviewed *de novo* without deference to the post-conviction relief court. Id. Appellate courts will reverse the decision of the post-conviction relief court when it is controlled by an error of law. Goins v. State, 397 S.C. 568, 573, 726 S.E.2d 1, 3 (2012).

ARGUMENT

The post-conviction relief court properly summarily dismissed Petitioner's third post-conviction relief application without conducting an evidentiary hearing, where Petitioner's claims were procedurally barred by the statute of limitations, barred by the doctrine of *res judicata*, barred by the equitable doctrine of *laches*, for failing to present a *prima facie* showing of newly discovered evidence, and where Petitioner failed to present sufficient reasons why the issues raised therein could not have been raised in Petitioner's first and second post-conviction relief actions.

On petition for certiorari, Petitioner argues that the post-conviction relief court erred in signing deficient orders that failed to address the specific facts and issues presented by Petitioner, erred in denying discovery, and erred in dismissing the action without an evidentiary hearing. Specifically, Petitioner contends the post-conviction relief court wholly ignored the newly discovered evidence of an affidavit from Dr. Russell Harley, the pathologist from trial, who now "confirmed that forensic omissions were made during the autopsy that presumably contributed to the misdiagnosis of [the Victim's] suicide as a homicide." (PWC p. 1). Petitioner further contends "two pathology experts issued official statements expressing serious doubts in the accuracy of the pathological conclusions reached through [Victim's] autopsy" and "[n]one of this new evidence—including the reasonable doubt that [Petitioner] killed [Victim] expressed by the pathologist who conducted her autopsy—was heard by the jury that convicted [Petitioner] of voluntary manslaughter."⁵ (PWC p. 3). However, Petitioner's presentation to this Court is fundamentally flawed and casts the affidavit of Dr. Harley in a light that mischaracterizes its intent. Furthermore, as the post-conviction relief court found, aside from the procedural bars of time and *laches*,

⁵ Curiously, Petitioner footnotes that "during a post-trial hearing, the trial court found that one of the jury members had previously attempted to kill [Petitioner] because the juror member and [Petitioner] dated the same girl." (PWC at fn 2). This is patently not true, and a review of the record that Petitioner cites to shows that Judge Burch never made that finding; instead, it was hearsay testimony from Victim's mother, Peggy Alford.

Petitioner failed to establish a *prima facie* showing of newly discovered evidence where the evidence Petitioner provided is, simply put, *not* newly discovered. Instead, Petitioner presents a new version of the case, as all prior versions were unsuccessful in prior courts, which, again, simply put, is *not* newly discovered. Accordingly, this Court should deny certiorari.

The Uniform Post-Conviction Relief Act states that a person may institute a post-conviction relief action if "there exists evidence or material facts, not previously presented and heard, that require vacation of the conviction or sentence in the interest of justice." S.C. Code Ann. § 17-27-20(A)(4). If the petitioner contends there is evidence of a material fact not previously presented, the post-conviction relief application must be filed within one year after the date of actual discovery of the facts by the applicant or after the date when the facts could have been ascertained by the exercise of reasonable diligence. S.C. Code Ann. §17-27-45(C). A petitioner requesting a new trial based on after-discovered evidence after a conviction must show that the evidence:

1. Is such as would probably change the result if a new trial was had;
2. Has been discovered since the trial;
3. Could not by the exercise of due diligence have been discovered before the trial;
4. Is material to the issue of guilt or innocence; and,
5. Is not merely cumulative or impeaching.

Clark v. State, 315 S.C. 385, 387–88, 434 S.E.2d 266, 267 (1993); see Hayden v. State, 278 S.C. 610, 611, 299 S.E.2d 854, 855 (1983) (setting forth the five factors to be analyzed when considering a newly-discovered evidence claim) (citing State v. Caskey, 273 S.C. 325, 256 S.E.2d 737 (1979)); see, e.g., United States v. Connolly, 504 F.3d 206, 212 (1st Cir. 2007) ("Every element of this test . . . is essential, and a failure to establish any one element will defeat the motion.").

(A) The Post-Conviction Relief Court's Order Satisfied S.C. Code § 17-27-80 and Rule 52(a), SCRPC

Petitioner contends the post-conviction relief court signed three Respondent-drafted orders that "patently" misstated the factual predicate of his claims and never mentioned the pathologist's evidence. He cites specific examples: the Conditional Order allegedly framed his subject-matter-jurisdiction claim as an indictment-sufficiency issue (App'x p. 1581) and his newly-discovered-evidence claim as a 2023 Rule 5 discovery failure (App'x p. 1583). (PWC pp. 8–11). Notwithstanding Petitioner's fundamentally flawed characterization, these arguments misapprehend both the record and the legal standard.

This Court requires post-conviction relief orders to contain "specific findings of fact, and state expressly its conclusions of law, relating to each issue presented." S.C. Code § 17-27-80; Rule 52(a), SCRPC. Here, the Conditional Order expressly summarized Petitioner's core theory: that he had "discovered new evidence establishing the strong probability that C.A., the deceased person in this case committed suicide a year after being forced by her mother to undergo a partial birth abortion." (App'x p. 1576). The post-conviction relief court correctly understood that this theory was being advanced both as newly discovered evidence and as a basis for claims of subject-matter jurisdiction and actual innocence. While the order referenced procedural arguments from Petitioner's prior post-conviction relief actions when discussing certain sub-issues, that shorthand does not render the order deficient. The post-conviction relief court ultimately dismissed the application on multiple independent procedural grounds — untimeliness under S.C. Code Ann. § 17-27-45(C), the successive-application bar of S.C. Code Ann. § 17-27-90, barred by the doctrine of *res judicata*, and barred by the doctrine of *laches* — that apply regardless of the precise phrasing Petitioner prefers.

Petitioner filed a detailed Rule 59(e), SCRCP, motion and reply specifically flagging the alleged misstatements. The post-conviction relief court's decision not to revise its order after Petitioner's various motions reflects its determination that its original characterizations and conclusions were legally sound, not a failure to consider Petitioner's arguments. Courts are not required to address every argument in the exact manner or with the specific characterization preferred by a petitioner. The record demonstrates that the post-conviction relief court was aware of Petitioner's contentions regarding suicide and the pathologists' statements, as these were summarized in the Conditional Order, but the post-conviction relief court determined these claims were procedurally barred regardless of how they were characterized. The post-conviction relief court's denial of the Rule 59(e), SCRCP, motion with the statement that the original order 'contains the appropriate findings of fact and conclusions of law' indicates the post-conviction relief court considered Petitioner's arguments but found them unpersuasive, not that it failed to consider them at all.

Turning to Petitioner's claim that precedent supports remand for deficient orders. Petitioner's case is distinguishable from the precedents he cites. Unlike cases such as Fishburne⁶ and Reese⁷, where post-conviction relief courts completely failed to address key claims or made no findings whatsoever on central issues, the post-conviction relief court here acknowledged Petitioner's claims and provided legal reasoning for dismissal. The post-conviction relief court was not lost on Petitioner's assertion of newly discovered evidence being a veiled attempt to circumvent procedural bars so that he can argue his case yet another way, where his previous attempts to change the narrative failed. The post-conviction relief court determined that

⁶ 427 S.C. 505, 832 S.E.2d 584 (2019).

⁷ 425 S.C. 108, 820 S.E.2d 376 (2018).

Petitioner's claims were procedurally barred regardless of their factual nuances. This Court has not held that post-conviction relief courts must accept a petitioner's characterization of claims or address every factual contention in exactly the manner the petitioner desires. Rather, post-conviction relief courts must provide sufficient findings and conclusions to enable appellate review, which the orders in this case accomplish by explaining the procedural grounds for dismissal. Petitioner's disagreement with the post-conviction relief court's characterization of his claims does not rise to the level of the complete omissions that have warranted remand in previous cases.

(B) The Post-Conviction Relief Court Correctly Denied Discovery and Summarily Dismissed the Application Where Petitioner's Claims Are Procedurally Barred and Fail the Clark Test for Newly Discovered Evidence

Petitioner asserts that the 2024 sworn statement from Dr. Russell Harley and the report from Dr. J.C. Upshaw Downs constitute "newly discovered evidence" that required discovery and an evidentiary hearing. This evidence does not qualify as newly discovered, and the procedural bars independently foreclose relief.

(i) Multiple Procedural Bars Apply

This is Petitioner's *third* PCR application. Successive applications are strongly disfavored. S.C. Code Ann. § 17-27-90 mandates that all grounds be raised in the original application unless the applicant shows "sufficient reason" why they could not have been raised earlier. Aice v. State, 305 S.C. 448, 409 S.E.2d 392 (1991); Foxworth v. State, 275 S.C. 615, 274 S.E.2d 415 (1981); Land v. State, 274 S.C. 243, 262 S.E.2d 735 (1980); Arnold v. State, 309 S.C. 157, 420 S.E.2d 834 (1992). Petitioner has never met this burden.

Any newly-discovered-evidence claim must also be filed "within one year after the date of actual discovery of the facts by the applicant or after the date when the facts could have been

ascertained by the exercise of reasonable diligence." S.C. Code Ann. § 17-27-45(C). Petitioner's affidavit from Dr. Harley is from March 2024 — more than twenty years after the 2000 autopsy and trial. The equitable doctrine of *laches* further bars relief, given the extraordinary delay.

(ii) The Evidence Fails the Clark Test

Even ignoring the procedural bars, Petitioner cannot satisfy the five Clark factors. Clark v. State, 315 S.C. 385, 387–88, 434 S.E.2d 266, 267 (1993). Most importantly, Petitioner's repeated description of Dr. Harley's affidavit dramatically overstates its content. One must strain mightily to read into the affidavit the sweeping "admission" or "reasonable doubt" Petitioner portrays. The discrepancies are as follows:

First, Dr. Harley does *not* confirm any "probability" of misdiagnosis. The cited sentence appears in context as: "It was my impression at the time of the autopsy that the right parietal skull fracture was probably caused by blunt force trauma, *but I could be wrong.*" (App'x p. 1592) (emphasis added). This is merely a candid acknowledgment of the possibility of alternative interpretation in light of Dr. Downs' heat-related fracture opinion. Dr. Harley nowhere retracts his original findings, declares them erroneous, or suggests that the cause or manner of death should be reclassified. The Petitioner's phrasing converts a professional caveat into an affirmative concession that the affidavit does not contain.

Second, Dr. Harley does *not* characterize the information provided by Mrs. Lori Stewart as "credible new evidence" that "raises questions of whether C.A. committed suicide." He simply recounts the claims of repressed memories, dissociative amnesia, prior abortion-related depression, and the suicide-by-ingestion theory. (App'x pp. 1592–1593). Dr. Harley then promptly notes the objective autopsy results that undermine that theory: "No such pill was found in the stomach fluid, and nothing unusual was found in the blood at the toxicology exam." (App'x p.

1593). Dr. Harley offers no opinion on the credibility of the new material and does not adopt the suicide hypothesis as his own.

Third, Dr. Harley makes *no* statement confirming "procedural omissions" or that any such omissions "could have adversely impacted the accuracy of his autopsy conclusions." He states only that *had suicide been suspected at the time*, he "would have gotten more extensive toxicological studies" and "would have wanted to review her mental health records." (App'x pp. 1593–1594). This conditional, hypothetical language describes what additional steps he might have taken had he had different information; it does not constitute an admission that the 2000 autopsy was deficient or unreliable.

In short, Dr. Harley's affidavit reflects a retired pathologist's appropriate willingness to revisit his original impressions and to identify what further testing he would have pursued if suicide had been raised as a possibility in 2000. It contains no admission of misdiagnosis, no endorsement of the new evidence as credible, and no concession that procedural shortcomings undermined his conclusions. The Petitioner's characterization, while creative, goes well beyond the sworn text and does not fairly represent what Dr. Harley actually stated under oath.

A faithful summary of Dr. Harley's affidavit is this: Dr. Harley states that his original impression was blunt-force trauma, but now acknowledges he "could be wrong" in light of Dr. Downs' heat-fracture opinion, and he confirms that had suicide been suspected, he would have performed more extensive toxicology and reviewed mental-health records. Anything beyond that is pure Petitioner fiction.

Nevertheless, the argument that Dr. Harley's affidavit is newly discovered evidence is wholly refuted by the record before this Court. As the post-conviction relief court properly found, the newly discovered claim fails Clark factor 3, that the newly discovered evidence could not have

been found prior to trial. Petitioner wholly ignores the other proper finding of the post-conviction relief court, that the matter was procedurally barred by the doctrine of *res judicata*. Indeed, the post-conviction relief court had before it the record in which Applicant had already adjudicated these exact claims, or claims with factually nuanced changes intended to circumvent the procedural bars. See App'x pp. 999–1409; see also Supp. App'x pp. 1–391.

Turning to Dr. Downs' report, it had already been presented to a circuit court and the federal court prior to this action, and was rejected. The current materials amount, at best, to additional opinion or impeachment of the original trial testimony—precisely what Clark factor 5 excludes.

(iii) No Good Cause Existed for Discovery or an Evidentiary Hearing

The pathologists' statements, while raising theoretical questions, do not conclusively establish that the victim committed suicide rather than died by homicide. Dr. Harley's statement that he "could be wrong" falls short of recanting his trial testimony or definitively establishing an alternative cause of death. The lack of certain forensic procedures or the theoretical possibility of post-mortem fractures does not overcome the substantial evidence supporting the conviction, including Petitioner's own actions in burning the victim's body. Discovery in post-conviction relief proceedings is not automatic but requires good cause, which the post-conviction relief court reasonably found lacking given the procedural posture of the case and the speculative nature of the claims.

Finally, the extensive record before this Court shows that the post-conviction relief court did not summarily dismiss Petitioner's action arbitrarily; quite the opposite, Petitioner's claims have already been litigated—however artfully recast—in a veiled attempt to avoid procedural defaults. Furthermore, the post-conviction relief court astutely recognized Petitioner's finessed

allegations, which, quite frankly, are cleverly guided by the previous courts' rulings and correctly summarily dismissed the action.

Therefore, this Court should affirm the post-conviction relief court's summary dismissal and deny certiorari.

CONCLUSION

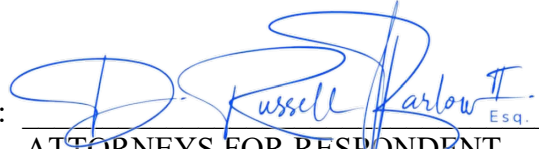
For the reasons stated above, this Court should deny the Petition for Writ of Certiorari and affirm the post-conviction relief court's summary dismissal. Should this Court grant certiorari, Respondent requests permission under the rules to brief the issues discussed above fully.

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