

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Sumter County

Honorable William P. Keesley, Circuit Court Judge

Appellate Case Number: 2026-000115

RECEIVED

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S.C. SUPREME COURT

BOBBY WAYNE STONE,

V.

RESPONDENT,

STATE OF SOUTH CAROLINA,

PETITIONER.

RETURN TO PETITION FOR WRIT OF CERTIORARI

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RESTATEMENT OF THE QUESTIONS PRESENTED

- I. Whether, given the “any evidence” standard of review, the lower court’s fact-bound holistic determination that Stone meets the criteria for intellectual disability should remain undisturbed, especially given that the PCR court relied on testimony from two evaluating experts (Dr. Boyd for the defense and Dr. Hall from DDSN) who both determined that Stone is a person with intellectual disability?
- II. Whether there is “any evidence” to support the PCR Court’s conclusion that Stone satisfies the significantly subaverage intellectual functioning prong where both evaluating experts testified that Stone’s full-scale IQ scores, along with other evidence, supported a conclusion that this prong is satisfied?
- III. Whether the Supremacy Clause requires this Court to follow the United States Supreme Court’s decisions in *Atkins v. Virginia*, 536 U.S. 304 (2002), and its progeny?
- IV. Whether the PCR Court properly addressed the merits of Stone’s *Atkins* claim, as numerous other South Carolina courts have done regarding similarly situated applicants?

STATEMENT OF THE CASE

During federal habeas proceedings, newly appointed counsel discovered evidence indicating Stone met the clinical criteria for intellectual disability. App. 428–441. Stone thereafter filed a successive PCR application asserting, among other claims, that he is a person with intellectual disability and therefore constitutionally ineligible for execution under *Atkins v. Virginia*, 536 U.S. 304 (2002) and *Franklin v. Maynard*, 356 S.C. 276, 588 S.E.2d 604 (2003). App. 370–373. This Court designated the Honorable William Keesley to resolve the application.

The State moved to dismiss the application on the grounds that it was successive to the initial PCR application. App. 377, 397–403. As to the *Atkins* claim specifically, the State argued that the freestanding *Atkins* claim could not be reached because issues that could have been raised at trial or on direct appeal cannot be asserted in a successive PCR application. App. 404–406. PCR counsel responded opposing the motion. App. 416–426. The PCR Court summarily dismissed Stone’s remaining claims but denied the State’s motion to dismiss the *Atkins* claim, finding Stone was entitled to a “fair opportunity to show that the Constitution prohibits [his] execution”

considering the Eighth Amendment's protection of individuals with intellectual disability and how the South Carolina courts had handled the issue in other death penalty cases.¹ App. 590–591. The PCR Court conducted an evidentiary hearing on July 30–31, 2024, limited to consideration of whether Stone satisfies the statutory criteria for intellectual disability. App. 576–591.

At the hearing, Stone presented evidence on all three statutory criteria: (1) significantly subaverage intellectual functioning; (2) deficits in adaptive functioning; and (3) onset during the developmental period.² S.C. Code § 16-3-20(c)(b)(10). Dr. Sarah Boyd, an expert in psychology and intellectual disability, and Dr. Alicia Hall, who was appointed by the PCR Court to independently evaluate Stone, both conducted comprehensive evaluations and opined that Stone satisfied all three criteria. App. 44, 130, 211, 225–227, 229–230, 976.

a. Significantly Subaverage Intellectual Functioning

The evidence established that Stone has significantly subaverage intellectual functioning. App. 62, 211–212. To satisfy this prong, an individual's intellectual functioning—as measured by a properly administered, comprehensive standardized IQ test—must be approximately two standard deviations below the mean. App. 50–51, 209; DSM-5-TR at 39. Clinical standards require consideration of all valid full-scale IQ testing together with other evidence of intellectual functioning. App. 48–51, 57–59, 209–210. Dr. Boyd and Dr. Hall each considered four valid, comprehensive Wechsler full-scale IQ tests administered to Stone—three during childhood as part of special education evaluations and one administered by Dr. Boyd in 2017. App. 62–66, 207–209.

Both experts testified that these scores must be considered in light of norm obsolescence,

¹ The summarily dismissed claims are not at issue in this appeal.

² Both the APA and the AAIDD employ the same three-pronged definition embodied in South Carolina's statutory definition and embraced by the South Carolina Supreme Court. *See Franklin v. Maynard*, 356 S.C. 276, 588 S.E.2d 604 (2003) (defining intellectual disability as “significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested during the developmental period”); S.C. Code Ann. § 16-3-20(c)(b)(10) (2018) (same).

commonly referred to as the Flynn effect. App. 54–56, 199. Because average IQ increases by approximately three points per decade, older IQ tests can "inflate" scores, rendering them "inaccurate and misleading." App. 52–55. Authoritative clinical guidance recommends accounting for norm obsolescence, which Dr. Boyd described as the "standard of practice at present." App. 55, 64. Dr. Hall likewise testified that accounting for the Flynn effect, where applicable, is "best practice[]" in *Atkins* evaluations. App. 200, 281, 289. Stone's four full-scale IQ scores with appropriate adjustments were:

- A 1975 Weschler Intelligence Scale for Children ("WISC"): Stone obtained a full-scale IQ of 86. App. 909–910, 971. Because the test was normed in 1949, this score adjusted to about 77. App. 71–74, 200, 973–974.
- A 1976 Weschler Intelligence Scale for Children-Revised ("WISC-R"): Stone obtained a full-scale IQ of 78. App. 74–75, 202, 911–913. Because the test was normed in 1975, Dr. Hall testified that no adjustment was necessary. App. 202.
- A 1979 WISC-R: Stone obtained a full-scale IQ between 69 and 75. App. 202–203, 914–915. Because the test was normed in 1975, this score adjusted to approximately 67 to 73. App. 203. Following this reevaluation, Stone's special education classification was changed to "EMH," or "educable mentally handicapped"—an outdated educational classification that corresponds to what is now recognized as mild intellectual disability. App. 78–79, 914.
- A 2017 Weschler Adult Intelligence Scale, Fourth Edition ("WAIS-4"): Dr. Boyd administered the WAIS-IV, on which Stone obtained a full-scale IQ of 79. App. 63, 207–208, 972–973. Because the test was normed in 2007, this score was adjusted to approximately 75 or 76. App. 63–65, 208, 972–974.

Dr. Boyd testified that, after accounting for norm obsolescence, Stone's IQ scores "hang pretty close together," explaining that "they are kind of clustering together, and reflecting a "relatively consistent" pattern of his subaverage intellectual functioning, App. 61–62; she concluded these scores, together with Stone's developmental, academic, and adaptive functioning demonstrated significantly subaverage intellectual functioning, App. 77. Dr. Hall reached the same conclusion based on Stone's IQ scores and academic functioning. App. 211–212. Both experts found no evidence of malingering and found the WAIS-IV results to be valid. App. 61, 975–976.

Stone's educational history independently corroborated a finding of significantly subaverage intellectual functioning. App. 99. Stone was referred for a special education evaluation in third grade, App. 101–103, 194, received special education services through ninth grade, App. 196–198, and was reclassified from learning disabled to “educable mentally handicapped” (EMH) at age 14 after testing and school performance demonstrated the need for more intensive support, App. 77–79, 108–109, 912–915. His academic achievement testing consistently showed functioning several grade levels below expectation, App. 194, 196–198, culminating in overall fourth-grade academic performance while enrolled in the ninth grade, App. 968–969. Dr. Hall testified this development pattern is consistent with “mild ID,” because they grow and mature “at a slower pace than their neurotypical peers.” App. 206.

b. Deficits in Adaptive Behavior

The evidence presented also established Stone has significant deficits in adaptive behavior. An individual satisfies this prong by demonstrating deficits in at least one of three domains of adaptive functioning—conceptual, social, and practical. App. 82–83; *Moore v. Texas*, 581 U.S. 1, 15–16 (2017) (*Moore I*); see also AAIDD-12 at 31; DSM-5-TR at 37. Dr. Hall and Dr. Boyd identified deficits in all three domains.

i. Conceptual Skills

The conceptual domain concerns academic learning, language, reading, writing, mathematics, reasoning, and judgment.³ App. 83–86, 212. Stone's educational history reflected significant and consistent conceptual impairment throughout his childhood. App. 99, 211. He repeated first grade, failed fourth grade, and was referred for psychological evaluation at the age

³ The conceptual domain includes “competence in memory, language, reading, writing, math reasoning, acquisition of practical knowledge, problem solving, and judgment in novel situations.” DSM-5-TR at 42.

of nine because of persistent academic difficulties. App. 99–103, 175, 909–910. He was subsequently placed in special education, where he remained throughout his schooling. App. 102–103, 912–915.

In middle school, Stone continued to perform one to two grade levels below his peers on academic testing, failed the sixth grade, App. 893, and was ultimately reclassified from Learning Disabled ("LD") to Educable Mentally Handicapped ("EMH"). App. 77–79, 108–109, 914–915. Dr. Hall explained that EMH required “sub-average intellectual functioning in conjunction with deficits of adaptive behavior” and, today, “schools actually call it ‘intellectual disability’ right now.” App. 219.

Despite increasingly intensive special education services, Stone ultimately dropped out in the ninth grade. App. 196, 884–887. His final achievement testing placed him at approximately the sixth-grade level in reading and fourth-grade level overall. App. 112–113, 890. Thereafter, he performed only “menial, physical work” (e.g. tree trimming) that did not require “advanced academic skills” or “complicated multi-step processes.” App. 113–115. Dr. Boyd concluded that Stone's conceptual functioning had been “significantly impaired...since at least early childhood.” App. 115. Dr. Hall likewise found his academic deficits consistent with intellectual disability. App. 197–198, 212.

ii. Practical Skills

The practical domain concerns the daily living skills necessary for independent living, including money management, household responsibilities, employment, and community functioning. App. 83, 118–120, 213–214. Evaluating adaptive skills involves "looking at not just how are they doing in their day-to-day life . . . [but also] how is this person getting help and how formal or informal has it been.” App. 91.

Both experts testified that Stone relied heavily on others throughout his life for everyday tasks: he never independently managed finances, maintained a bank account or credit card, completed contracts or paperwork, or consistently lived independently. App. 116–118, 224–225. Instead, his mother and romantic partners managed his finances, appointments, meals, household responsibilities, and other daily activities. App. 116–118. Neither expert found evidence that Stone could perform these tasks independently. App. 117, 224.

Dr. Boyd explained that although Stone maintained employment after leaving school, his jobs were all “menial” supervised laborer positions that did not involve advance academic skills, and he never advanced to supervisory or administrative roles. App. 113–115. Dr. Hall testified that Stone “would gain employment through a family or a friend, lose that employment, and then require assistance of a family or a friend to get another position.” App. 252. Both experts therefore identified significant practical adaptive deficits.⁴ App. 116, 213.

iii. Social Skills

The social domain concerns social judgment, interpersonal communication, understanding social cues, and recognizing when others may exploit or manipulate an individual. App. 121, 213–214; *see also* DSM-5-TR at 39, 42. Dr. Hall testified that collateral witnesses described Stone as “not a good judge of character” and prone to people “tak[ing] advantage of him.” App. 222–223. Dr. Boyd explained that another witness reported that Stone remained loyal to people who “d[id] things to show him that they weren’t trustworthy” and mistreated him. App. 121–122. Both

⁴ Both experts acknowledged that Stone exhibited some relative adaptive strengths. Dr. Hall agreed that Stone “had some deficits in practical” skills and recognized his strong work ethic as a relative adaptive strength but emphasized that “just because Mr. Stone was a hard worker and took pride in his work, doesn’t negate the deficits that he had.” App. 213–215; *see also Moore I*, 581 U.S. at 15; AAIDD-12 at 40; *Brumfield v. Cain*, 576 U.S. 305, 320 (2015) (“Intellectually disabled persons may have strengths in social or physical capabilities, strengths in some adaptive skill areas, or strengths in one aspect of an adaptive skill in which they otherwise show an overall limitation.”).

concluded that Stone demonstrated deficits in the social domain.⁵ App. 98, 213.

Both experts concluded that Stone demonstrated deficits in all three domains and satisfied this prong. App. 98–99, 213–214.

c. Onset During the Developmental Period

The evidence established that Stone’s intellectual and adaptive deficits manifested during the developmental period. Both Dr. Boyd and Dr. Hall concluded that this prong was clearly satisfied. App. 120, 125–127, 227–229. Both experts relied on contemporaneous school records⁶ documenting longstanding academic impairment, repeated grades, special education placement, childhood IQ testing, and Stone’s classification of EMH at age fourteen. App. 77–82, 96–97, 185–187, 227–229. They also interviewed individuals who knew Stone during childhood and adolescence, whose accounts were consistent with the school records. App. 124–127, 189–190, 227–229.

d. Testimony from the State’s Experts at the PCR Hearing

In response, the State presented Dr. Michael Vitacco and Dr. Kimberly Kruse. Neither expert was asked to conduct an *Atkins* evaluation of Stone and neither did so. App. 312, 328–329.

Dr. Vitacco testified that his preparation for the hearing consisted of reviewing the reports prepared by Dr. Boyd and Dr. Hall. App. 312. Although he criticized Dr. Boyd’s and Dr. Hall’s consideration of the Flynn effect and collateral interviews, App. 312–314, he nevertheless acknowledged that the “overall framework of the evaluation was appropriate,” App. 319–320. He

⁵ Dr. Boyd identified some relative strengths in Stone’s social functioning but explained that the presence of such strengths “is extremely common” and “does not detract from the reality of existing adaptive deficits.” App. 86–88, 98, 122; *see also Moore I*, 581 U.S. at 15; AAIDD-12 at 40.

⁶ As Dr. Hall testified, school records are routinely relied upon in *Atkins* evaluations because an individual’s deficits have to be present during the developmental period, and so school records are contemporaneous records that allow us to get an insight into the person’s functioning during the developmental period . . . particularly if we’re talking about a person who is well outside of the developmental period.” App. 187.

did not interview Stone or offer an opinion as to whether Stone was a person with intellectual disability. App. 311–312.

Dr. Kruse had never conducted an *Atkins* evaluation, never met Stone, and did not administer psychological testing. App. 328–329. She nevertheless opined, based on the WAIS-IV data, that variability among Stone's index scores made his profile more consistent with a learning disability than intellectual disability. App. 332–335. On cross-examination, however, Dr. Kruse acknowledged that the AAIDD-12 states there is "no reason to question the validity of the full-scale IQ, even in individual cases where there is significant factor/part score variability," and she agreed that she was "not questioning the validity" of Stone's full-scale IQ score. AAIDD-12 at 28; App. 343.

e. *The PCR Court's Decision*

The PCR Court accepted post-hearing briefs from both parties. App. 709–807. It thereafter entered an order finding that Stone met his evidentiary burden, satisfied the statutory criteria for intellectual disability and, therefore, is categorically ineligible for the death penalty under *Atkins*. App. 1–23. Included within the order were detailed findings regarding each of the statutory criteria for intellectual disability.

As to significantly subaverage intellectual functioning, the PCR Court considered the totality of the four valid full-scale IQ tests together with evidence of Stone's special education evaluations, assessed mental age, reading level, and overall academic performance. App. 9–14. The court credited Dr. Hall and Dr. Boyd's testimony that it is appropriate to consider norm obsolescence, or the Flynn effect, when interpreting IQ scores. App. 10. It found their opinions credible and supported by the weight of the evidence, App. 7–8, and afforded them greater weight than the State's experts because neither Dr. Kruse nor Dr. Vitacco interviewed Stone or collateral

witnesses, conducted a comprehensive intellectual disability evaluation, or possessed comparable experience assessing intellectual disability. App. 9.

As to adaptive behavior, the PCR Court found significant deficits in the conceptual and practical domains, as well as deficits in the social domain. App. 14. The court found that Stone's "longstanding academic difficulties" and failure to improve despite special education services established significant conceptual deficits and that his dependence on others for basic household tasks, employment, and the ordinary demands of daily life established significant practical deficits. App. 15–16, 18–19. Although the court recognized some relative strengths in Stone's social functioning, it explained that those strengths could not negate established deficits. App. 21. In any event, because deficits need only be established in one of the three adaptive domains, the court concluded that Stone satisfied the second prong. App. 21.

Finally, the PCR Court found that Stone's deficits in intellectual functioning and adaptive behavior manifested during the developmental period. App. 22. The court relied on Stone's qualifying IQ score during childhood, his academic history, and special education evaluations documenting persistent deficits despite years of special education services, as well as testimony from collateral witnesses who knew him during his developmental years. App. 22. Having found that Stone established all three statutory prongs of intellectual disability, the court concluded that he is a person with intellectual disability and therefore constitutionally ineligible for the death penalty. Petitioner's motion to reconsider was denied, and this appeal followed.

STANDARD OF REVIEW

On certiorari in post-conviction relief cases, this Court applies the "any evidence" standard of review. *Terry v. State*, 394 S.C. 62, 66, 714 S.E.2d 326, 328 (2011) (citing *Cherry v. State*, 300 S.C. 115, 119, 386 S.E.2d 624, 626 (1989)). The Court is required to uphold the findings of the

PCR Court when “there is any evidence of probative value to support them,” and should not reverse the lower court’s decision unless it is “controlled by an error of law.” *McHam v. State*, 404 S.C. 465, 473, 746 S.E.2d 41, 45 (2013) (quoting *Suber v. State*, 371 S.C. 554 558–59, 640 S.E.2d 884, 886 (2007)).

ARGUMENT

I. The Evidence Overwhelmingly Supports the Lower Court’s Determination that Stone is a Person with Intellectual Disability.

As set forth above, the PCR Court concluded that all three criteria for intellectual disability were satisfied based on the totality of the evidence, which included unanimous agreement among the two experts tasked with evaluating Stone for intellectual disability. Petitioner raises no challenge to the lower court’s findings as to the second or third prongs and thus the correctness of the PCR Court’s determination that Stone had deficits in adaptive functioning and onset in the developmental period are not before the Court. The two complaints about the PCR Court’s assessment of the first prong are both meritless.

In its first question presented, Petitioner argues that the PCR Court erred by crediting testimony about the need to consider norm obsolescence when interpreting IQ test scores, also known as the “Flynn Effect.” Pet. at 10–13. This is a non-issue. Although there was no error in the lower court’s consideration of the Flynn Effect, Stone presented undisputed evidence that at age fourteen, he had an in-range full-scale IQ score of 69-75, irrespective of norm obsolescence, that resulted in receiving a school system diagnosis of educable mentally handicapped or, in today’s terms, intellectual disability. App. 77–79, 108–109, 219, 914–915. This evidence standing alone supports the PCR Court’s finding that Stone is an individual who has significantly subaverage intellectual functioning that manifested in the developmental period. App. 9–14, 21–22. Thus, even without consideration of the Flynn Effect, the evidence establishes that Stone was diagnosed with

intellectual disability in childhood based on an evaluation that included an IQ test score to which no adjustments for aged norms needed to be applied. App. 78–79, 192, 196, 219, 914–915.

Additionally, although Petitioner now claims that evidence of the Flynn Effect was “arguably not even . . . admissible in South Carolina,” Pet. at 12, the State *never objected* to this testimony at the PCR hearing and Petitioner’s own witnesses conceded that consideration of the Flynn Effect is a well-established clinical practice, as numerous other courts have likewise concluded. Thus, even if the lower court had erred on this topic (which it did not), Petitioner’s argument is not preserved for this Court’s review. *State v. Aldret*, 333 S.C. 307, 312, 509 S.E.2d 811, 813 (1999) (“[A] party must object at the first opportunity to preserve an issue for appellate review.”); *State v. Sheppard*, 391 S.C. 415, 420–21, 706 S.E.2d 16, 19 (2011) (“Our law is clear that a party must make a contemporaneous objection that is ruled upon by the trial judge to preserve an issue for appellate review.”) (citations omitted).

a. There was no error in the PCR Court’s consideration of the Flynn Effect.

In its order, the PCR Court discussed Stone’s four full-scale IQ scores⁷ as part of its overall discussion of the evidence before it on the significantly subaverage intellectual functioning prong. App. 9–14.⁸ As the PCR Court recognized, the evidence before it established that one “factor that can affect the interpretation of test scores is norm obsolescence, or the Flynn effect, which

⁷ Petitioner disingenuously represents to this Court that, because the Court recognized the Flynn Effect, it “made its decision on Stone’s petition while considering the wrong numbers.” Pet. at 13. The Court’s order clearly sets forth Stone’s IQ test scores alongside what the Flynn-adjusted scores. App. 11. Nothing in the Court’s order indicates that its analysis of significantly subaverage intellectual functioning hinged solely on these IQ scores, rather that they were part of its overall analysis. App. 9-14.

⁸ As discussed more fully *infra* in issue II, assessing whether someone satisfies the significantly subaverage intellectual functioning prong requires more than just assessing available IQ testing. Petitioner attempts to flatten this diagnostic prong to just IQ scores, which is contrary to the clinical guidance and governing precedent. Substantial evidence, including IQ test scores, academic achievement test results and other measures of brain functioning, supports the PCR Court’s finding that Stone has significantly subaverage intellectual functioning.

recognizes that testing norms become outdated over time, and the age of the norms should be taken into account.” App. 10. Further, it is well-established by extensive empirical data “that, generally, the population’s intelligence rises about 3 IQ points every decade,” and “[t]he common practice is to multiply the number of years between when an IQ test was normed by either 0.3 and 0.33.” *Id.* The Court “recognize[d] and yield[ed] to the expertise of Dr. Hall and Dr. Boyd in accepting that it is proper to consider norm obsolescence or the Flynn Effect,” and proceeded with its analysis of Stone’s intellectual functioning. App. 10. The PCR Court considered all four of Stone’s IQ scores, accounted for the Flynn adjustments, and, in conjunction with other evidence of his intellectual functioning, concluded Stone had established significantly subaverage intellectual functioning prong. App. 9–14.

The PCR Court heard evidence from all four testifying psychologists that applying the Flynn Effect, or considering “norm obsolescence,” is widely accepted clinical consensus practice. At the PCR hearing, the evidence established that accounting for the Flynn effect by applying it to IQ scores from tests with outdated norms at the time of administration is accepted within the scientific community, App. 199–200, is “encourage[d]” by the “authoritative guidance,”⁹ App. 55,

⁹ The current leading diagnostic manuals for intellectual disability are the Diagnostic and Statistical Manual of Mental Disorders, 5th edition text revision (“DSM-5-TR”), which is published by the American Psychological Association, and *Intellectual Disability: Definition, Diagnosis, Classification, and Systems of Support*, 12th edition (“AAIDD-12”), which is published by the American Association on Intellectual and Developmental Disabilities. These manuals set the standards for how clinicians evaluate and, when appropriate, diagnose intellectual disability. Both the DSM-5-TR and the AAIDD-12 explicitly recognize the legitimacy of the Flynn effect and the practice of accounting for norm obsolescence. DSM-5-TR at 38; AAIDD-12 at 42. The clinical consensus is clear that “[c]urrent best practice guidelines recommend that in cases in which an IQ test with aged norms is used as part of a diagnosis of ID, a correction of the full-scale IQ score of 0.3 points per year since the test [] norms were corrected is warranted.” AAIDD-12 at 42. Recent guidance from the APA particularly supports applying the Flynn Effect in forensic settings. *See* APA Guidelines on Diagnosis of Intellectual Disability in Forensic Settings, Guideline 5.2 (requiring psychologists to “strive to consider the effect of norm obsolescence when interpreting test scores.”), available online at <https://www.apa.org/about/policy/intellectual-disability-forensic-settings.pdf>. The United States Supreme Court has repeatedly recognized the AAIDD’s clinical manual and the DSM as the best sources for the current medical guidance for how to properly evaluate intellectual disability. *See, e.g., Atkins*, 536 U.S. at 308, 353; *Hall*, 572 U.S. at 704–05, 722; *Moore I*, 581 U.S. at 7.

and is “really considered to be best practice in *Atkins* evaluations.” App. 199–200. Stone’s evaluator, Dr. Boyd, and the State evaluator, Dr. Hall, testified that, in line with the governing clinical guidance, they applied and considered the Flynn effect in conducting their evaluations.¹⁰ App. 52–55, 63–65, 199–200. Moreover, as the Court’s order explicitly recognized, both of Petitioner’s experts, neither of whom evaluated Stone, agreed that applying the Flynn effect was “clinically appropriate.” App. 10; *see also* App. 322–323 (Dr. Vitacco stating that he “personally wouldn’t use the Flynn effect, but it’s a judgement call,” agreeing he “didn’t have any criticism of either of the experts for using it,” and acknowledging that the Flynn effect is referenced and encouraged by the clinical standards), App. 337–338 (Dr. Kruse explaining that applying the Flynn effect “is not mandatory,” but acknowledging “there’s a place for the Flynn effect” when evaluating IQ scores).

Considering the Flynn effect is also supported by how courts have considered the topic in other *Atkins* cases. Courts considering *Atkins* claims are required to be “informed by the views of medical experts.” *Moore I*, 581 U.S. at 13 (quoting *Hall v. Florida*, 572 U.S. 701, 721 (2014)). In doing so, courts should rely on “the most recent (and still current) versions of the leading diagnostic manuals.” *Id.* As discussed *supra*, both governing diagnostic manuals advise practitioners to consider the Flynn Effect when evaluating for intellectual disability, regardless of whether the evaluation is happening for the purpose of an *Atkins* assessment. DSM-5-TR at 38; AAIDD-12 at 42.

Additionally, courts in South Carolina have routinely accepted the Flynn effect in *Atkins* cases. *See* Order Finding Defendant Mentally Retarded, *State v. Pearson*, 96-GS-32-3338 (S.C.

¹⁰ Additionally, much like the PCR Court’s determinations on the significantly subaverage intellectual functioning prong, neither evaluating expert hinged their entire opinion about Stone’s intellectual functioning on his IQ scores. App. 62, 80–82, 193–212, 227. Doing so would be contrary to the clinical consensus practice and the case law regarding *Atkins* cases. DSM-5-TR at 37–38, 42; App. 212.

Cir. Ct. Gen. Sess. Dec. 14, 2005); Order Granting Post-Conviction Relief Pursuant to *Atkins v. Virginia*, 536 U.S. 304 (2002), Vacating Death Sentence, *Bell v. State*, 03-CP-04-1857 (S.C. Ct. Comm. Pleas Nov. 16, 2016); Order, *State v. Brown*, 2011-GS-30-1523 (S.C. Ct. Gen. Sess. Apr. 14, 2016). Similarly, courts across the country have also acknowledged it is appropriate to consider norm obsolescence when considering IQ scores as part of an *Atkins* claim.¹¹

The PCR Court acted in line with the evidence before it and this well-established consensus. As such, there was no error in its analysis of the significantly subaverage intellectual functioning prong.

II. The PCR Court Did Not Err in Assessing Stone’s Intellectual Functioning.

In its second question presented, Petitioner erroneously claims that only one of Stone’s four IQ scores satisfies prong one and suggest that this Court should “clarify how multiple scores are to be considered under South Carolina law.” Pet. at 14. These assertions are without merit. The PCR Court carefully and thoughtfully considered the evidence regarding Stone’s intellectual functioning in accordance with governing legal and clinical principles and properly found that Stone had met his evidentiary burden. App. 9–14. Overwhelming probative evidence in the PCR record, including all four full-scale IQ scores, supports the PCR Court’s finding that Stone satisfied the first prong of an intellectual disability diagnosis.

¹¹ *State v. Williams*, No. 2023-T-0008, 2023 WL 8440882, at *4, 23–24 (Ohio Ct. App. Dec. 4, 2023); *State ex rel. Johnson v. Blair*, 628 S.W.3d 375, 382–83 (Mo. 2021); *Jackson v. Payne*, 9 F.4th 646, 654–55 (8th Cir. 2021); *United States v. Roland*, 281 F.Supp.3d 470, 501–03 (D.N.J. 2017); Order Granting Habeas Corpus Relief, *In re Noel Jackson*, RIC475367/CR23480 (Cal. Sup. Ct. July 29, 2016), at 30; *Smith v. Schiro*, 813 F.2d 1175, 1184–85 (9th Cir. 2016); Decision Barring the Death Penalty, *State of Ohio v. Willie L. Dumas*, No. 14CR-2806 (Ohio Ct. Comm. Pleas Dec. 2, 2015); Order Granting Post Conviction Relief, *Russell v. Mississippi*, No. 10,130 (Miss. Cir. Ct. Dec. 31, 2014); Court’s Partially Adopted Findings of Fact and Conclusions of Law, *Maldonado v. State*, No 51,612-02 (Tx. Dist. Ct. Dec 13, 2012); *Brumfield v. Cain*, 854 F.Supp.2d 366, 390–92 (M.D.La. 2012); *United States v. Smith*, 790 F. Supp. 2d 482, 491 (E.D.La. 2011); *United States v. Lewis*, 2010 WL 5418901, 2010 U.S. Dist. LEXIS 138375, at *14–17, 29–30 (N.D. Ohio Dec. 23, 2010); *Wiley v. Epps*, 668 F.Supp.2d 848, 894 (N.D.Miss. 2009); *Thomas v. Allen*, 614 F.Supp.2d 1257, 1280–81 (N.D.Ala. 2009), *affirmed* in *Thomas v. Allen*, 607 F.3d 749 (11th Cir. 2010); *United States v. Davis*, 611 F.Supp.2d 472, 478, 485–89 (D.Md. 2009).

Petitioner’s actual complaint is that it disagrees with the lower court’s assessment of the evidence. In an obvious attempt to avoid the standard of review for factual determinations, Petitioner attempts to portray their arguments as addressing a legal issue concerning the consideration of multiple IQ scores. Pet. at 14–16. But Petitioner *never raised* an issue about how to aggregate multiple IQ scores below, nor was it ruled on by the trial court.¹² In any event, Petitioner now suggests to this Court that several methods of aggregation should be considered, including expert testimony about the “central tendency” of a set of scores. The PCR Court did, in fact, hear expert testimony about the “central tendency” of Stone’s IQ scores, and that central tendency supports a finding of intellectual disability.

a. The lower court’s assessment of the intellectual functioning evidence was proper.

A person meets the significantly subaverage intellectual functioning prong if his intellectual functioning, as measured by a comprehensive standardized IQ test, is approximately two standard deviations below the population mean. AAIDD-12 at 29; DSM-5-TR at 38. This generally means a full-scale IQ score of approximately 75 or, in some cases, slightly higher. AAIDD-12 at 29; *Atkins*, 536 U.S. at 309 n.5; DSM-5-TR at 42 (“[A] person with deficits in intellectual functioning whose IQ score is somewhat above 65-75 may nevertheless have such substantial adaptive behavior problems . . . that the person’s actual functioning is clinically comparable to that of individuals with a lower IQ score”). However, the proper interpretation of an IQ score involves much more than observing the reported result and taking that number at face

¹² Petitioner first suggested in its motion for reconsideration that the PCR Court erred in finding Stone had significantly subaverage intellectual functioning because Stone’s multiple IQ scores “should have weighed more heavily” in the court’s analysis. Petitioner made no specific arguments as to how the multiple scores should have been considered. App. 817–818. Petitioner has therefore waived these arguments, and this alone would be grounds for denying certiorari. Cf. *Palmetto Constr. Grp. v. Restoration Specialists, LLC*, 444 S.C. 328, 348, 907 S.E.2d 129, 139 (Ct. App. 2024) (citing *State v. Johnson*, 363 S.C. 53, 58, 609 S.E.2d 520, 523 (2005) and recognizing that appellate issues need to be raised with specificity when presented to trial courts to consider in order to be properly considerable on appeal).

value. There are a variety of scientific factors that must be considered, including the standard error of measurement, and the effects of norm obsolescence. Courts and clinicians both recognize that determining whether an individual has significantly subaverage intellectual functioning requires consideration more than mere observation of an individual's reported test scores, as "intellectual disability is a condition, not a number." *Hall*, 572 U.S. at 723; *Moore I*, 581 U.S. at 15; *Brumfield v. Cain*, 576 U.S. 305, 316 (2015); *Hamm v. Smith*, 601 U.S. 1, 2 (2024); DSM-5-TR at 42. Because of this, the Supreme Court has held that when a person has an IQ score within the range of intellectual disability, a court must continue its analysis and consider all the evidence related to intellectual disability, including evidence related to adaptive behavior and the age of onset. *Moore I*, 581 U.S. at 12, 15; *Hall*, 572 U.S. at 723.

The PCR evidence established that Stone has significantly subaverage intellectual functioning. Undisputed evidence was presented that Stone took four full scale IQ test scores throughout his life, all of which were approximately two standard deviations below the population mean. App. 62–63, 65, 70–72, 74–77, 198–200, 202–203, 206–208, 331, 853–856, 909, 911–914, 971–972. The expert opinions from Dr. Hall and Dr. Boyd are that these scores were significantly subaverage when compared to the population. App. 79–80, 208–210, 212.¹³

¹³ Petitioner's expert Dr. Kruse testified that she had no reason to question these full-scale IQ scores, but in her opinion, based on examining the subtest results from Stone's 2017 IQ testing demonstrating lower functioning in perceptual reasoning than in other areas of functioning, Stone had nonverbal learning disorder. App. 333–334, 340–341, 343. The medical community's clinical consensus establishes that "part score interpretation should not be standard practice during the consideration of ID diagnosis and eligibility." Randy G. Floyd, et al., *Theories and Measurement of Intelligence* in 1 AMERICAN PSYCHOLOGICAL ASSOCIATION HANDBOOK OF INTELLECTUAL AND DEVELOPMENTAL DISABILITIES 385, 412–413. (Laraine Masters-Glidden ed. in chief, Leonard Abbeduto, Laura Lee McIntyre, Marc J. Tasse eds. 2021); see also AAIDD-12 at 28. Moreover, as was testified to at the hearing, learning disorder and intellectual disability are not mutually exclusive, and these conditions frequently co-occur. App. 299–300, 335, 341. See also DSM-5-TR at 45 (recognizing learning disorders commonly co-occur with intellectual disability); *Moore I*, 581 U.S. at 17 (recognizing that "many intellectually disabled people also have other mental or physical impairments," and counseling courts that the existence of a comorbid condition "is not evidence that a person does not also have an intellectual disability."); *Brumfield*, 576 U.S. at 319–20 ("The diagnostic criteria for [Intellectual Disability] do not include an exclusion criterion; therefore, the diagnosis should be made . . . regardless of and in addition to the presence of another disorder.").

Additional evidence was presented that bore on the PCR Court’s analysis of Stone’s intellectual functioning. Stone was flagged for special education services early in his academic career in the third grade, after he had already repeated the first grade. App. 101–103, 890, 909–910. He ultimately had to repeat the fourth grade, App. 102–103, 881, and remained engaged in special education until he dropped out of school in the ninth grade. App. 110–111, 196–198. Despite being in special education, Stone still struggled academically, and his academic achievement testing consistently demonstrated that he was “typically at least a couple of grades below what would be expected” for someone in his grade level. App. 80–81; *see also* App. 196, 203–204, 206. This culminated in the Sumter County School system changing his classification in the seventh grade to “educable mentally handicapped,”¹⁴ as his results from testing and grades demonstrated that he needed more special education support than he was receiving. App. 77–79, 196, 203, 914–915. Stone’s final academic achievement testing in the ninth grade showed that his overall academic performance was at a fourth-grade level. App. 112–113, 968–969.

In the evaluating experts’ opinions, this information cumulatively supported finding he had significantly subaverage intellectual functioning. As Dr. Hall explained, understanding has changed over time and clinicians, “now understand that having that strict bright red line” may “in fact make us misdiagnose” someone who is intellectually disabled. App. 209. This requires clinicians to “be more flexible,” and look at the individual’s “functionality” when looking at if the diagnostic criteria are met. App. 209–210. Dr. Hall saw a significant difference in functioning from

¹⁴ During Stone’s school years, the classification of educable mentally handicapped was parallel with the diagnostic criteria for intellectual disability. As Dr. Hall testified, to qualify for the educable mentally handicapped classification at school, a student would need to “have below average or sub-average intellectual functioning in conjunction with deficits of adaptive behavior.” App. 192. She explained that “schools actually call it ‘intellectual disability’ right now.” App. 196, 219. It was established at the hearing that “educable mentally handicapped” was a designation used by the Sumter County school system to classify students as needing special education supports and services parallel to the kinds of supports and services needed by individuals with mild intellectual disability. App. 78–79, 192, 196, 203, 219, 240–241.

what was expected for kids of his age in Stone’s academic achievement testing and found it relevant to her prong one analysis, finding that the IQ testing, along with this information demonstrated that Stone had significantly subaverage intellectual functioning. *Id.*; App. 212, 976. Dr. Boyd reached a similar conclusion, testifying that Stone’s IQ scores “cluster together,” and “that, taken together with the other pieces, support his diagnosis,” as intellectually disabled. App. 62. Considering the evidence before it, the PCR Court reached the same conclusions as the evaluators.

b. Petitioner’s reliance on Hamm v. Smith is misplaced.

Petitioner stakes most of its argument on dissenting opinions in *Hamm v. Smith*, 146 S.Ct. 1251 (2026), a case involving multiple IQ scores. Pet. at 15–16. Dissenting opinions are not, of course, holdings of the Court, and they have no precedential value. Notably, the United States Supreme Court dismissed the Government’s Petition for Writ of Certiorari in *Hamm v. Smith* as improvidently granted, thereby upholding the Eleventh Circuit’s holistic assessment of all information relevant to Smith’s significantly subaverage intellectual functioning. *Smith v. Comm’r Ala. Dep’t, of Corr.*, 2024 WL 4793028, 2024 U.S. App. LEXIS 28981 (11th Cir. Nov. 14, 2024) (per curiam). Here, the PCR Court similarly conducted a holistic assessment of the intellectual functioning evidence to determine if the prong was satisfied. App. 9–14.

Even if this Court were inclined to rely on the *Hamm* dissent, as Petitioner requests, (and even if this issue was not otherwise unpreserved), Justice Alito’s dissent actually supports the PCR Court’s assessment of Stone’s significantly subaverage intellectual functioning. Justice Alito discussed several mechanisms for considering multiple IQ scores in his dissent and opined that, in his view, lower courts may rely on “any reasonably sound method,” to determine an individual’s “true” intellectual functioning, including relying on an expert witness’s testimony about “the

central tendency” of an individual’s IQ scores as part of the assessment. 146 S.Ct. 1276–77. This is precisely what the PCR Court did when considering Stone’s IQ scores as part of the assessment of Stone’s functioning. *See* App. 61–62. (establishing that Stone’s IQ scores “hang pretty close together” and “cluster together,” demonstrating a “relatively consistent pattern” of subaverage intellectual functioning”). Petitioner has identified no deficiency in that assessment, and this Court should not disturb the judgment of the PCR Court.

III. *Atkins* is Settled and Established Precedent From the United States Supreme Court. Granting Certiorari to Reconsider Clearly Settled Federal Law Would Violate the Supremacy Clause, and This Court Should Decline Petitioner’s Request to do so.

Petitioner asks this Court to grant certiorari “to lay the groundwork for a re-evaluation of *Atkins*.” Pet. at 16. This Court should decline that invitation. *Atkins v. Virginia*, 536 U.S. 304 (2002) established that the Eighth Amendment prohibits the execution of persons with intellectual disability, and the United States Supreme Court has repeatedly reaffirmed that holding, including as recently as May of 2026. *See, e.g., Hall*, 572 U.S. 701; *Brumfield*, 576 U.S. 305; *Moore I*, 581 U.S. 1; *Moore v. Texas*, 586 U.S. 133 (2019) (*Moore II*); *Hamm v. Smith*, 146 S.Ct. 1251 (2026). Petitioner again relies on dissenting opinions, which do not alter the binding nature of *Atkins* and its progeny.

Petitioner also suggests that the standard for determining intellectual disability is so unclear that it cannot be followed. *E.g.*, Pet. at 17. This is also not true. South Carolina courts have routinely applied the clinical guidelines and South Carolina’s statutory definition of intellectual disability¹⁵ when assessing *Atkins* claims.¹⁶ *Hall* and *Moore* provide clear guidance: courts

¹⁵ S.C. Code § 16-3-20(c) (defining intellectual disability); *Franklin v. Maynard*, 356 S.C. 276, 278–79, 588 S.E.2d 604, 605 (2003) (finding that § 16-3-20(c) complies with *Atkins*).

¹⁶ *See, e.g.*, Order Finding Defendant Mentally Retarded in *State v. Pearson*, 96-GS-32-3338 (S.C. Ct. Gen. Sess. Dec. 14, 2005); Order Granting Post-Conviction Relief in *Franklin v. South Carolina*, 96-CP-45-117 (S.C. Ct. Comm. Pleas

determining intellectual disability must “be informed by the medical community’s diagnostic framework.” *Moore I*, 581 U.S. at 12–13 (quoting *Hall*, 572 U.S. 719). This approach is not only clearly workable, as it has been consistently applied by South Carolina courts and does not require modification or clarification.¹⁷

Finally, this Court lacks the authority under the Supremacy Clause to reconsider binding United States Supreme Court precedent. “The Supremacy Clause provides that the Constitution, federal statutes, and treaties constitute ‘the Supreme Law of the Land.’” *Kansas v. Garcia*, 589 U.S. 191, 202 (2020) (quoting U.S. Const. Art. VI, Cl. 2). Because *Atkins* and its progeny are well-established federal constitutional law, this Court has no authority to override or reconsider them. Petitioner provides no basis for this court to do so. This Court should therefore deny Petitioner’s request to grant certiorari for this purpose.

IV. Allowing Successive Actions Raising *Prima Facie Atkins* Claims is Necessary to Prevent Unconstitutional Executions.

Petitioner complains that the PCR Court should have summarily dismissed Stone’s *Atkins* claim but identifies no error in the PCR Court’s application of the standard governing summary dismissal, nor does it explain why the court was required to dismiss a claim alleging that Stone is constitutionally exempt from execution without first developing the factual record. Instead, Petitioner asks this Court to create a categorical rule barring successive *Atkins* claims. That request goes well beyond correcting any error in the PCR Court’s ruling and would require this Court to

Jan. 26, 2011), Order Granting Post-Conviction Relief in *Elmore v. South Carolina*, 05-CP-24-1205 (S.C. Ct. Comm. Pleas Feb. 1, 2010); Order Granting Post-Conviction Relief in *Simmons v. South Carolina*, 05-CP-18-1368 (S.C. Ct. Comm. Pleas Oct. 15, 2013); Order Granting Post-Conviction Relief in *Bell v. State*, 03-CP-04-1857 (S.C. Ct. Comm. Pleas Nov. 16, 2016); Order Finding Defendant Intellectually Disabled in *State v. Brown*, 2011-GS-30-1523 (S.C. Ct. Gen. Sess. Apr. 14, 2016).

¹⁷ The PCR Court in this case followed this exact framework, evaluating expert testimony, clinical assessments, and evidence in light of current medical standards. The PCR Court’s thorough application of the *Atkins* framework demonstrates that the constitutional standard is both clear and administrable. Petitioner’s dissatisfaction with the outcome of a properly conducted *Atkins* hearing does not render the constitutional standard unworkable.

eliminate a procedural avenue that has previously been afforded to other similarly situated applicants and one that is necessary to ensure the State does not execute a person whom the Constitution prohibits it from executing.

a. *The PCR Court properly denied the State's motion to dismiss.*

As an initial matter, Petitioner identified no basis for summarily disposing of Stone's *Atkins* claim beyond its assertions that the claim was "improperly successive and untimely." Pet. at 18. The PCR Court concluded that those procedural objections did not warrant dismissal without an opportunity to develop the facts and determine whether Stone is constitutionally exempt from execution. App. 582.

Summary dismissal of a PCR application is only appropriate when "(1) it is apparent on the face of the application that there is no need for a hearing to develop any facts and (2) the applicant is not entitled to relief." *Leamon v. State*, 363 S.C. 432, 434, 611 S.E.2d 494, 495 (2005). Where, as here, when no evidentiary hearing has been held and the record does not establish that the applicant is plainly barred from relief, summary dismissal is inappropriate. The PCR Court therefore properly denied the State's motion and allowed Stone's *Atkins* claim to proceed.¹⁸

b. *This Court should reject Petitioner's invitation to abolish successive freestanding Atkins claims.*

Petitioner asks this Court to abolish or severely restrict a death-sentenced individual's ability to bring an *Atkins* claim in a successive PCR application. Pet. at 19–20. This Court should reject that invitation. Once an individual is determined to be a person with intellectual disability,

¹⁸ The PCR Court also correctly recognized, "*Atkins* represents a complete categorical bar on the execution of the intellectually disabled," and a person with intellectual disability "cannot be executed under *any* circumstances." App. 581 (emphasis added). The PCR Court found that depriving Stone of an opportunity to establish intellectual disability would "raise [procedural] form over [the] substance" of the claim—a practice which "has explicitly been discouraged by the Supreme Court of the United States." App. 582–583 (citing *Hall*, 572 U.S. at 704).

the State lacks the authority to execute him. *Moore I*, 581 U.S. at 12 (*Atkins* “restrict[s]...the State’s power to take the life of’ *any* intellectually disabled individual”) (emphasis supplied). Petitioner has presented no argument, persuasive or otherwise, on why it should be permitted to execute a person who falls within the Eighth Amendment’s categorical ban.

As this Court has recognized, procedural rules cannot be applied so rigidly that they deprive an applicant of a full and fair opportunity to litigate a substantial constitutional claim. *See Robertson v. State*, 418 S.C. 505, 795 S.E.2d 29 (2016). As such, Petitioner’s reliance on *Robertson* is misplaced. *Robertson* did not foreclose successive PCR applications; it recognized that procedural rules may yield when their rigid application would deprive an applicant of a full and fair opportunity to litigate a substantial claim. *Id.* at 513, 795 S.E.2d at 33. There, this Court permitted a successive application because Robertson’s prior PCR counsel was unqualified. *Id.* at 516–17, 795 S.E.2d at 35. That principle applies with even greater force here, where Stone’s successive application concerns not merely a statutory or procedural right, but a constitutional bar on the State’s authority to execute him.

This Court has likewise allowed successive *Atkins* claims to proceed when applicants presented a prima facie case of intellectual disability. *See, e.g.*, Third 120 Day Status Report, *Aleksey v. State*, No. 2015-CP-38-00764 (S.C. Ct. Comm. Pleas Jun. 7, 2017); *Woods v. State*, No. 2019-001713, 2019 WL 6898088 (S.C. Dec. 18, 2019) (per curiam) (ordering a PCR hearing on intellectual disability where counsel previously raised and voluntarily dismissed an *Atkins* claim); *State v. Terry*, No. 1997-006197 (S.C. Apr. 6, 2022). In *Woods*, this Court specifically recognized the categorical nature of the *Atkins* bar and ordered further proceedings notwithstanding the claim’s procedural history. *Woods*, 2019 WL 6898088, at *1.

The history of *Atkins* litigation in South Carolina further confirms that allowing such claims to proceed has not opened the floodgates. Only a small handful of death-sentenced individuals have pursued *Atkins* claims through successive PCR proceedings, and those claims were supported by indicia of significantly subaverage intellectual functioning, adaptive deficits, and developmental onset, as well as expert opinions supporting a prima facie case of intellectual disability. Moreover, since *Atkins* was decided, 23 people have been executed in South Carolina. None of them attempted to derail their executions by lodging a last minute, unsupported claim they were intellectually disabled. There is simply no evidence that this exception is being used frivolously or for the purposes of delay.

Nor do unsuccessful *Atkins* claims justify eliminating the opportunity to litigate meritorious ones. The existing system permits courts to consider the evidence, evaluate expert opinions, and reject claims that fail the constitutional standard while preserving an avenue for claims that succeed. *See, e.g.,* Order Granting Post-Conviction Relief in *Elmore v. South Carolina*, 05-CP-24-1205; Order Granting Post-Conviction Relief in *Bell v. State*, 03-CP-04-1857. The rarity of these cases, and the fact that courts have both rejected and granted *Atkins* claims, demonstrates that the process can distinguish unsupported claims from meritorious ones.

The question, therefore, is not whether successive *Atkins* litigation is generally burdensome (it is not), *see* Pet. at 19, but whether Stone should be denied the same opportunity afforded to other applicants who presented a prima facie case of intellectual disability. Stone has presented evidence of significantly subaverage intellectual functioning, adaptive deficits, developmental onset, and expert opinions supporting intellectual disability. Given this Court's treatment of similarly situated applicants, denying Stone an opportunity to litigate his claim would be

inconsistent and particularly troubling where the consequence could be execution of a person whom the Constitution prohibits the State from executing.

Petitioner's reliance on *State v. Torrence*, 305 S.C. 45, 406 S.E.2d 315 (1991) is equally misplaced. Pet. at 20. *Torrence* abolished the judicially created *in favorem vitae* doctrine, which required appellate courts to independently review the entire record in death penalty cases for legal error, including unpreserved issues. *Id.* at 60–61, 406 S.E.2d at 324. In abolishing the doctrine, this Court concluded the doctrine was no longer necessary because other procedural safeguards adequately protect defendants from wrongful convictions and unlawful death sentences. *Id.* at 61–62, 406 S.E.2d at 324. Nothing in *Torrence* eliminated a defendant's constitutional rights to challenge a sentence the State lacks authority to impose. *See Franklin*, 356 S.C. at 280, 588 S.E.2d at 606; S.C. Code Ann. § 17-27-20(a). Unlike *in favorem vitae*, a procedural mechanism created by courts, *Atkins* established a constitutional limit on the State's authority to execute.

This Court need not create a broad exception to procedural rules to reach the right result here. It need only apply the same principle it has applied to other *Atkins* applicants: where a death-sentenced individual presents a *prima facie* case of intellectual disability, he should be permitted to litigate whether the Constitution prohibits his execution. Stone asks for no more. He asks only for the same opportunity this Court has afforded others—and for the Court not to permit procedural rules to produce the very result *Atkins* forbids.

CONCLUSION

For the reasons set forth in this Return, the PCR Court's finding that Stone is a person with intellectual disability and therefore ineligible for the death penalty pursuant to *Atkins v. Virginia*, 536 U.S. 304 (2002), is supported by ample, probative evidence. The State's Petition for Writ of Certiorari should be denied.

Respectfully submitted,

s/ Rosalind S.D. Major

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September 11, 2026.