

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM ABBEVILLE COUNTY
Court of Common Pleas

R. Scott Sprouse, Circuit Court Judge

Case No. 2024-CP-01-00375
Appellate Case No. 2025-002075

Steven Bixby, *Petitioner*,

v.

State of South Carolina, *Respondent*.

PETITION FOR REHEARING

Introduction

More than thirty years ago, in *Singleton v. State*, 313 S.C. 75, 437 S.E.2d 53 (1993), the Court announced both the standard to be applied when evaluating under state law whether people sentenced to death are competent to be executed and the procedures for that evaluation. In every case since *Singleton* where competency was contested, the Court held oral argument and questioned prisoners in person to ascertain their ability to understand the nature of the proceedings and rationally communicate about legal matters. Until now.

By declining review of Mr. Bixby's certiorari petition without explanation, the Court has left Mr. Bixby without a safeguard afforded to every death row prisoner before him whose competence was in question. That is a material point the Court overlooked and it merits rehearing under Rule 221(a), SCACR. The departure also denies Mr. Bixby both the equal

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protection of this standard and due process under the Fourteenth Amendment, particularly because no reason was given for it.

The need for the Court's in-person assessment here is acute. The appointed experts differed on the ultimate question of competence, but all agreed that Mr. Bixby suffers from a severe mental disorder and holds irrational beliefs about his case that he will not surrender. The PCR judge let Mr. Bixby speak but never questioned him. That gap matters. Mr. Bixby's incompetency turns not on his mental health diagnosis but on his inability to communicate rationally about his case. As this Court's precedent acknowledges, that question is best answered by this Court—the tribunal that decides the *Singleton* question—communicating with him directly.

Mr. Bixby asks the Court to reconsider its denial of certiorari review, and grant review for the purpose of hearing argument from counsel and questioning Mr. Bixby to assess his competency. Alternatively, Mr. Bixby asks the Court to remand to the PCR judge to conduct the necessary colloquy in the first instance.

Rule 221(a) Standards

Under Rule 221(a), SCACR, the Court reviews rehearing petitions to determine whether “points . . . [were] overlooked or misapprehended by the court.” *See also Kennedy v. S.C. Ret. Sys.*, 349 S.C. 531, 532, 564 S.E.2d 322, 322 (2001) (“In order to prevail on a petition for rehearing, appellants must demonstrate the Court overlooked or misapprehended their argument.”).

This rehearing petition is properly before the Court because certiorari review of Mr. Bixby's PCR petition to assess his competency to be executed does not fall within any exclusions identified under Rule 221(a).

The due process and equal protection issues discussed below in Sections II and III are properly before the Court on rehearing. A constitutional claim arising from a state high court's own ruling is properly raised on rehearing, because that is the first opportunity to present it. *Brinkerhoff-Faris Trust & Sav. Co. v. Hill*, 281 U.S. 673, 678 (1930) (federal claim first raised in rehearing petition "was timely, since it was raised at the first opportunity"); *see also Saunders v. Shaw*, 244 U.S. 317, 320 (1917) ("when the act complained of is the act of the supreme court, done unexpectedly at the end of the proceeding, when the plaintiff in error no longer had any right to add to the record, it would leave a serious gap in the remedy for infraction of constitutional rights if the party aggrieved in such a way could not come here.").

I. The Court should grant rehearing because its denial of review overlooked the *Singleton* practice of uniformly conducting in-person colloquies with capital petitioners when their competency is contested.

As Mr. Bixby argued in his reply brief, pp. 3-5, the Court's review is needed to ensure the personal assessment of his competency that has been repeatedly undertaken in *Singleton* cases. While *Singleton* itself did not involve an appellate colloquy with the petitioner, the Court immediately established this practice in every subsequent case.

In *State v. Torrence*, 317 S.C. 45, 47, 451 S.E.2d 883, 884 (1994), the Court underscored the importance of a careful and direct discussion with the death row prisoner: "although we have conducted an in depth inquiry to ascertain whether Torrence is knowingly waiving his rights, we instruct the trial court to conduct another such colloquy to ensure that Torrence persists in his desire to abandon this appeal."

In *State v. Passaro*, 350 S.C. 499, 507, 567 S.E.2d 862, 867 (2002), the Court questioned Mr. Passaro "at length during oral arguments" and in the Court's own description, "extensively," and then relied on that questioning to assess his capacity.

In *Hughes v. State*, 367 S.C. 389, 395–96, 626 S.E.2d 805, 808 (2006), the Court not only questioned Mr. Hughes at oral argument but also reprinted a lengthy excerpt of the exchange and relied on it in finding him incompetent.

Again, in *Reed v. Ozmint*, 374 S.C. 19, 26, 647 S.E.2d 209, 212 (2007), the Court explained that it “extensively questioned Petitioner during oral arguments to ascertain whether he met the *Singleton* criteria.”

In *Hill v. State*, 377 S.C. 462, 464, 661 S.E.2d 92, 93 (2008), the Court affirmed the competency finding only after a “thorough examination of Hill during oral arguments before this Court.”

And finally, in *State v. Motts*, 391 S.C. 635, 640, 707 S.E.2d 804, 806 (2011), the Court found Mr. Motts competent to waive his capital appeals following “thorough[] questioning [of] Motts during oral arguments”

The only two cases without an appellate colloquy were ones where all experts agreed the petitioner was competent. *State v. Downs*, 369 S.C. 55, 67, 631 S.E.2d 79, 85 (2006); *State v. Wise*, No. 2005-MO-044, 2005 WL 7145295, at *1 (S.C. Sept. 26, 2005). In a third capital competency case, *Council v. Catoe*, 359 S.C. 120, 123–24, 597 S.E.2d 782, 784 (2004), the only issue on appeal was whether the judge should have stayed PCR proceedings for the duration of the petitioner’s incompetence. None of those circumstances are present here. Instead, with competing expert opinions about his competency, Mr. Bixby’s case mirrors every previous one where this Court has conducted an in-person colloquy.

Indeed, the Court has described its examinations of prisoners’ competency as part of the review itself: “In deciding the issue of a capital defendant’s competency, this Court carefully and thoroughly reviews the following . . . the capital defendant’s demeanor and personal responses to

the Court’s questions at oral argument regarding the waiver of appellate or PCR rights.” *Motts*, 391 S.C. at 645–46, 707 S.E.2d at 809; *see also Hill*, 377 S.C. at 468, 661 S.E.2d at 95; *Reed*, 374 S.C. at 24, 647 S.E.2d at 212; *Downs*, 369 S.C. at 66, 631 S.E.2d at 84; *Hughes*, 367 S.C. at 396, 626 S.E.2d at 808 (same).

That these colloquies arose in cases involving the waiver of appellate or PCR rights, rather than competency to be executed, makes no difference. The Court has applied the same *Singleton* standard to both inquiries. *See Hughes*, 367 S.C. at 397-98, 626 S.E.2d at 809 (explaining the *Singleton* “standard of competency is the same [in waiver cases] as the standard required before a convicted defendant may be executed.”); *Torrence*, 317 S.C. at 47, 451 S.E.2d at 884 (explaining that waiver and competency to be executed are decided under the same *Singleton* standard). And *Singleton* itself was a competency-to-be-executed case. Although the colloquies in the waiver cases also confirmed that the prisoner was knowingly and voluntarily abandoning his rights, *see Torrence*, 317 S.C. at 47, 451 S.E.2d at 884, the Court has made clear that they independently served the *Singleton* competency inquiry. *See Reed*, 374 S.C. at 26, 647 S.E.2d at 212 (Court “extensively questioned Petitioner during oral arguments to ascertain whether he met the *Singleton* criteria”); *Motts*, 391 S.C. at 647, 707 S.E.2d at 810 (the Court’s “thorough[] question[ing] demonstrated that “Motts was able to articulate his understanding of” the legal proceedings). If anything, the need for the Court’s inquiry is even greater here than in waiver cases. A prisoner seeking to waive his appeals asks the Court to confirm a choice he has made. In contrast, Mr. Bixby opposes his execution, and the question is whether he can communicate rationally with counsel during the final stages of his case.

The Court’s prior approach of holding in-person colloquies makes sense given its overall view of itself as the principal tribunal for determining capital competency. The “matter is similar

to one arising in the Court’s original jurisdiction because it is this Court which must finally determine whether a particular capital defendant is mentally competent to make a knowing and voluntary waiver of his appellate or PCR rights.” *Reed v. Ozmint*, 374 S.C. 19, 24, 647 S.E.2d 209, 211 (2007); *Hughes v. State*, 367 S.C. 389, 395, 626 S.E.2d 805, 808 (2006) (same).

Similarly, “this Court is the final body to decide whether to grant [a capital petitioner’s] waiver. Because of the uniqueness of the death penalty, we carefully review, individually, a petition to waive appellate review.” *State v. Passaro*, 350 S.C. 499, 506, 567 S.E.2d 862, 866 (2002).

The need for this Court’s direct assessment is supported not only by its precedent but also by the specific circumstances of this case. Unusually, the defense, State, and PCR court experts all agree on Mr. Bixby’s diagnoses and the severity of his condition. *See* Petition at 14–16. They also agree that Mr. Bixby holds irrational legal views, instilled by his mother at an early age, which he will never abandon. *Id.* at 18–20. The experts therefore do not disagree about whether Mr. Bixby suffers from mental disorders or whether his beliefs about his case are intractably irrational. They disagree only about whether, despite both, he retains the capacity to communicate rationally with counsel. *See, e.g.*, App. 150 (State’s expert: “if you allow him to state what he wants to state and redirect him, he’s redirectable”); App. 268 (PCR court’s expert: “you’re not going to get anywhere on the [legal] issue and he’s never going to change his views, but he still will continue working with you in some capacity”).

That narrow question is precisely the kind this Court is equipped to answer. Resolving it does not require the Court to act as a psychologist. It requires the Court to do what it does consistently in *Singleton* matters: question those who appear before it to determine whether they understand, and can rationally engage with, the legal issues in a case.

Undersigned counsel believe a colloquy will show that Mr. Bixby cannot. His reaction to learning that this Court had denied certiorari illustrates the point. When counsel informed him of the denial, Mr. Bixby responded that he had already proven his innocence, that the members of this Court had sworn to preserve and protect the Constitution, and that denying review was tantamount to treason. In later conversations, he insisted that his legal team could stop his execution by reporting police corruption to the FBI, which would be required to investigate. He declared that every judge and prosecutor involved in his case should be impeached, and asked whether the impeachment papers could be filed in the U.S. Court of Appeals for the Fourth Circuit. These responses are, at a minimum, *prima facie* evidence that Mr. Bixby cannot communicate rationally about his case. The Court should hold the hearing customary in *Singleton* matters and assess for itself whether he can.

In sum, the Court has questioned the prisoner in every contested *Singleton* matter, and nothing in its precedent supports abandoning that practice here. The Court should grant rehearing so that this precedent is applied before the State executes Mr. Bixby.

II. The Court should grant rehearing because its unexplained departure from the consistent practice of questioning competency petitioners violates due process under the Fourteenth Amendment.

It has long been the law that proceedings involving a prisoner's competency to be executed implicate due process. In *Ford v. Wainwright*, 477 U.S. 399 (1986), the Court analyzed whether Florida's procedure for assessing a prisoner's competency to be executed comported with "the fundamental requisite of due process of law [which] is the opportunity to be heard." *Id.* at 414 (cleaned up; citation omitted). In concurrence, Justice Powell explained that capital competency procedures implicate questions of "fundamental fairness . . . the hallmark of procedural protections afforded by the Due Process Clause." *Id.* at 424. In *Panetti v.*

Quarterman, 551 U.S. 930, 952 (2007), the Court reaffirmed that competency to be executed procedures are scrutinized for “procedural deficiencies” that “constitute[] a violation of petitioner’s federal [due process] rights.” *See also Singleton*, 313 S.C. at 84, 437 S.E.2d at 58 (1993) (adopting competency to be executed standard to “satisf[y] the mandates of federal due process, the common law, and the South Carolina Constitution.”).

The Supreme Court has also held that states may not confer and then arbitrarily revoke procedural protections in criminal cases. In *Hicks v. Oklahoma*, 447 U.S. 343 (1980), after the Oklahoma courts invalidated the defendant’s mandatory habitual-offender sentence, the state appellate court refused him a new sentencing proceeding on the theory that a jury could have imposed the same term of years. The Supreme Court rejected this premise, holding the defendant had “a substantial and legitimate expectation that he will be deprived of his liberty only to the extent determined” by state law, “and that liberty interest is one that the Fourteenth Amendment preserves against arbitrary deprivation by the State.” *Id.* at 345-46.

Similarly, the Supreme Court has repeatedly treated a statement of reasons as a safeguard against arbitrary deprivation of prisoners’ liberty interests. *See Wilkinson v. Austin*, 545 U.S. 209, 226 (2005) (procedures for imposing restrictive confinement satisfied due process where the requirement of “a short statement of reasons . . . guard[ed] against arbitrary decisionmaking”); *Superintendent, Massachusetts Corr. Inst., Walpole v. Hill*, 472 U.S. 445, 455 (1985) (“Requiring a modicum of evidence to support a decision to revoke good time credits will help to prevent arbitrary deprivations without threatening institutional interests or imposing undue administrative burdens.”); *Vitek v. Jones*, 445 U.S. 480, 495 (1980) (procedures for involuntary transfer to mental hospital satisfied due process where they included a “written statement by the factfinder as to the evidence relied on and the reasons for transferring the inmate”); *Wolff v.*

McDonnell, 418 U.S. 539, 564 (1974) (due process requires that prison disciplinary proceedings must include a “written statement by the factfinders as to the evidence relied on and reasons for the disciplinary action”) (citation omitted).

Mr. Bixby holds precisely the kind of “substantial and legitimate expectation” that the Fourteenth Amendment protects against arbitrary deprivation. *Hicks*, 447 U.S. at 346. For more than three decades, this Court has personally questioned every capital petitioner whose competency under *Singleton* was contested. That practice is not an informal courtesy. The Court has repeatedly identified “the capital defendant’s demeanor and personal responses to the Court’s questions at oral argument” as part of what it “carefully and thoroughly reviews” when deciding competency. *Motts*, 391 S.C. at 645–46, 707 S.E.2d at 809. And the Court has made clear that it, not the circuit court, bears final responsibility for that determination. *Reed*, 374 S.C. at 24, 647 S.E.2d at 211. A prisoner whose life depends on the competency determination is entitled to expect that the Court will make it the same way it has addressed every comparable matter.¹ That this expectation arises from the Court’s own decisions rather than a statute, as in *Hicks*, makes no difference. Decisions that describe the colloquy as part of the Court’s review are as much a source of state law as any statute.

This Court’s decisions recognize that the colloquy carries due process significance. The Court adopted the *Singleton* standard because it “satisf[ies] the mandates of federal due process . . .” 313 S.C. at 84, 437 S.E.2d at 58. From the outset, the Court has resolved the standard’s

¹ For the same reason, Mr. Bixby’s due process rights were also violated because withdrawing arbitrarily a step the Court treats as necessary is fundamentally inadequate to vindicate the substantive rights provided. *See Dist. Attorney’s Off. for Third Jud. Dist. v. Osborne*, 557 U.S. 52, 69 (2009) (“Federal courts may upset a State’s postconviction relief procedures only if they are fundamentally inadequate to vindicate the substantive rights provided.”).

second prong, the capacity to communicate rationally, by looking to the prisoner's own responses to direct questioning. In *Singleton* itself, the Court concluded that “[b]ased on the direct examination in the record, there can be no doubt that Singleton is incapable of rational communication.” *Id.* In every contested case since, the Court has conducted that examination itself. The in-person colloquy is thus not incidental to *Singleton* review. It is how this Court has ensured that its competency determinations meet the federal due process requirements *Singleton* was adopted to satisfy. Withholding it here, without explanation, gives Mr. Bixby a lesser version of the process South Carolina has always used to meet those requirements, in a case where rational communication is the central dispute.

Nor can the deprivation be excused on the theory that the outcome would have been the same without the colloquy. In *Hicks*, the state court's assumption that a jury would have imposed the same sentence did not cure the loss of a procedure state law guaranteed. So too here. Any assumption that the written record makes the colloquy unnecessary cannot substitute for it, particularly where the key question is whether Mr. Bixby can communicate rationally about his case, and no court has tested that by conversing with him.

That certiorari review is discretionary does not change the analysis. “[W]hen a State opts to act in a field where its action has significant discretionary elements, it must nonetheless act in accord with the dictates of the Constitution—and, in particular, in accord with the Due Process Clause.” *Evitts v. Lucey*, 469 U.S. 387, 401 (1985) (holding that “[a] first appeal as of right . . . is not adjudicated in accord with due process of law if the appellant does not have the effective assistance of an attorney.”). That principle applies with particular force here, because the Court has described competency review as its own responsibility, not an ordinary exercise of certiorari

discretion: “it is this Court which must finally determine whether a particular capital defendant is mentally competent.” *Reed*, 374 S.C. at 24, 647 S.E.2d at 211.

The deprivation is arbitrary because it is unexplained. Mr. Bixby does not contend that due process requires the Court to explain every denial of certiorari. His point is narrower. When the denial of review operates to withdraw a safeguard the Court has treated as part of its own competency decision in every comparable case, the absence of any reason for that departure renders it arbitrary.

The Court’s order denying certiorari gives no reason for departing from its uniform practice, and nothing in the record distinguishes Mr. Bixby from the petitioners the Court questioned before him. To the contrary, his case presents exactly the circumstances in which the Court has always conducted a colloquy: the appointed experts disagree about his competence, yet all agree he suffers from a severe mental disorder and holds irrational beliefs about his case that he will not surrender. The U.S. Supreme Court has treated a reasoned explanation as a basic safeguard against arbitrary decision-making in settings where far less is at stake, such as the loss of good-time credits, transfer to a mental hospital, or placement in restrictive confinement. *See Wolff*, 418 U.S. at 564; *Vitek*, 445 U.S. at 495; *Walpole*, 472 U.S. at 455; *Wilkinson*, 545 U.S. at 226. If due process requires an explanation before a prison disciplinary board may revoke good-time credits, it requires no less before this Court withholds, without comment, a safeguard it has afforded every prior contested *Singleton* petitioner, in a proceeding that will decide whether Mr. Bixby may be executed.

III. The Court should grant rehearing because its decision to deny Mr. Bixby the colloquy afforded every prior contested *Singleton* petitioner violates the Equal Protection Clause of the Fourteenth Amendment.

The Court's departure from its uniform practice also denies Mr. Bixby the equal protection of the laws. The Equal Protection Clause protects individuals, not only groups, against arbitrary differential treatment. "Our cases have recognized successful equal protection claims brought by a 'class of one,' where the plaintiff alleges that she has been intentionally treated differently from others similarly situated and that there is no rational basis for the difference in treatment." *Vill. of Willowbrook v. Olech*, 528 U.S. 562, 564 (2000) (per curiam). The Equal Protection Clause's purpose "is to secure every person within the State's jurisdiction against intentional and arbitrary discrimination, whether occasioned by express terms of a statute or by its improper execution through duly constituted agents." *Id.* (quoting *Sioux City Bridge Co. v. Dakota County*, 260 U.S. 441, 445 (1923)). Thus, "when it appears that an individual is being singled out by the government, the specter of arbitrary classification is fairly raised, and the Equal Protection Clause requires a 'rational basis for the difference in treatment.'" *Engquist v. Oregon Dep't of Agric.*, 553 U.S. 591, 602 (2008) (quoting *Olech*, 528 U.S. at 564).

This case presents the circumstance *Olech* addressed. As the Supreme Court later explained, what mattered in *Olech* "was the existence of a clear standard against which departures, even for a single plaintiff, could be readily assessed." *Id.* at 602. The village there consistently required a 15-foot easement from property owners but demanded 33 feet from Ms. Olech. *Id.* at 603. This Court has likewise applied a clear and consistent standard: in every *Singleton* matter where competency was contested by competing expert opinions, it has questioned the prisoner at oral argument and relied on his responses. The Court has described that exchange as part of what it reviews in deciding competency. *Motts*, 391 S.C. at 645–46, 707

S.E.2d at 809. Mr. Bixby is situated identically to the petitioners who received that colloquy. His competency is contested, the experts disagree, and the dispute turns on his capacity to communicate rationally. Yet he alone has been denied.

Engquist's limitation on class-of-one claims does not apply. *Engquist* held that some government decisions, such as public employment actions, "by their nature involve discretionary decisionmaking based on a vast array of subjective, individualized assessments," so that treating like individuals differently "is an accepted consequence of the discretion granted." *Id.* at 603. The Court's example was a traffic officer who cannot stop every speeder and so tickets only some. *Id.* at 603–04. That reasoning has no application here. The colloquy is not a scarce resource this Court must ration. The Court has held one in every contested case. Nor does the Court's decision to question a prisoner turn on subjective, individualized judgments. The reasons the Court has given for the practice—that "it is this Court which must finally determine" competency, *Reed*, 374 S.C. at 24, 647 S.E.2d at 211, and "the uniqueness of the death penalty," *Passaro*, 350 S.C. at 506, 567 S.E.2d at 866—apply to Mr. Bixby exactly as they applied to every petitioner before him. And *Engquist* rested on the distinction between the government acting as employer and as sovereign, and was expressly limited to public employment. 553 U.S. at 598. Whether the State may execute a person is an exercise of sovereign power in its gravest form.

The differential treatment here is intentional and lacks any rational basis. Mr. Bixby asked the Court to follow its practice and question him. Reply Brief, pp. 3-5. The denial of that request was thus a deliberate departure, and *Olech* requires no showing of ill will. 528 U.S. at 565 ("We . . . do not reach the alternative theory of 'subjective ill will' relied on by" the circuit court). Nor does any conceivable reason distinguish Mr. Bixby from the petitioners the Court

questioned before him. Any rationale for dispensing with the colloquy here, such as the adequacy of the written record, would have applied equally in prior contested cases, and the Court conducted the colloquy anyway. Absent any basis for treating Mr. Bixby differently, the Equal Protection Clause requires that he receive the same process as every contested *Singleton* petitioner before him.

Conclusion

For more than thirty years, this Court has not decided a contested *Singleton* case without hearing from the prisoner. Mr. Bixby's should not be the first.

Mr. Bixby respectfully requests that the Court grant his rehearing petition, schedule this case for oral argument and a colloquy with Mr. Bixby, or in the alternative, remand to the PCR judge to conduct the direct examination of Mr. Bixby that should have occurred but did not.

Respectfully submitted on October 1, 2026.

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