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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
In the Supreme Court

On Petition for Writ of Certiorari to Spartanburg County
Court of Common Pleas (Post-Conviction Relief)
The Honorable Daniel D. Hall, Circuit Court Judge

CAPITAL CASE

RICKY LEE BLACKWELL, SR.,

Petitioner,

v.

STATE OF SOUTH CAROLINA,

Respondent.

Appellate Case No. 2025-001377

RETURN TO PETITION FOR WRIT OF CERTIORARI

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PETITIONER'S QUESTIONS PRESENTED

I.

Whether the PCR court erred by finding that Blackwell is not a person with intellectual disability where all three experts who evaluated him opined that he meets the criteria, including the State's own trial expert.

II.

Whether the PCR court erred by finding that newly discovered evidence cannot be "material" under S.C. Code § 17-27-20(A)(4) unless the new evidence, standing alone and without consideration of the totality of the evidence, dictates a different outcome.

III.

Whether the PCR court erred by finding that trial counsel was not ineffective in their handling of petitioner's *Atkins* claim at trial.

IV.

Whether the PCR Court erred by finding that trial counsel was not ineffective in their investigation and presentation of mitigating evidence.

V.

Whether this case should be remanded to the PCR Court for compliance with *Fishburne v. State*, 427 S.C. 505, 832 S.E.2d 584 (2019), or alternatively, whether this Court should hold that *Fishburne* is inadequate in the capital PCR setting and requires judges to write their own order in those cases.

(Pet. 1-2).

RESPONDENT'S COUNTERSTATEMENT OF QUESTIONS PRESENTED

I.

Whether the PCR court properly applied the well-established Simmons Rule in finding Blackwell was not allowed to present a freestanding claim of intellectual disability when the claim was previously raised at trial and on appeal, and, because Blackwell has failed to appeal the procedural ruling, the application of the bar is dispositive of his freestanding *Atkins* claim rendering further review unnecessary?

II.

Whether the PCR court fairly determined, based on the case presented in post-conviction relief and at trial, the genetics opinion evidence failed to support a credible showing “[t]hat there exists evidence of material facts, not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice” as S.C. Code Ann. § 17-27-20 (A)(4) demands?

III.

Whether Blackwell has shown any need to grant review of the PCR court’s assessment of trial counsel’s performance in present his *Atkins* claim when counsel made reasonable investigation into the exemption and was guided by and presented experts in support of the defense’s presentation both to the trial judge pre-trial, and the jury in sentencing?

IV.

Whether Blackwell has shown any need to grant review of the PCR court’s assessment of trial counsel’s investigation when the record shows vast support for a reasonable investigation into mitigating evidence?

V.

Whether this Court should revisit its holding in *Lindsey v. State*, 447 S.C. 93, 924 S.E.2d 104 (2025), *cert. denied sub nom. Lindsey v. South Carolina*, No. 25-1176, 2026 WL 2976420 (U.S.S.C. Oct. 5, 2026), expressly approving the use of a proposed order process in capital cases where (1) all parties are advised of the request and have opportunity to respond and (2) the judge makes reviews before adopting the proposed order as the court’s, which the record shows was done in this case?

STATEMENT OF THE CASE

Petitioner, Ricky Lee Blackwell, appeals the from the April 7, 2025 order denying his post-conviction relief action. To follow is the relevant procedural history:

Charges and Trial Proceedings

A Spartanburg County Grand Jury indicted Blackwell in July 2009 for kidnapping and murder. The State gave notice of its intent to seek the death penalty.¹ The State subsequently served and filed its notice of statutory aggravating circumstances on June 8, 2012. The Court assigned the Honorable Roger L. Couch jurisdiction over the capital proceedings. William McGuire, Esq. of the South Carolina Commission on Indigent Defense, Capital Trial Division, along with Clay Allen, Public Defender for the Seventh Juridical Circuit, represented Blackwell. S. Boyd Young, Esq., also of the South Carolina Commission on Indigent Defense, Capital Trial Division, assisted during the trial. The State was represented by the Honorable Barry Barnette, Solicitor of the Seventh Judicial Circuit, Deputy Solicitor Derrick Balsa and Assistant Solicitor Russell Ghent.

On February 19, 2014, a hearing began pursuant to *Franklin v. Maynard*, 356 S.C. 276, 279, 588 S.E.2d 604, 606 (2003), on Blackwell's claim of intellectual disability and exemption from capital punishment under *Atkins v. Virginia*, 536 U.S. 304 (2002). Following the hearing, Judge Couch resolved Blackwell had failed to carry his burden of proof of showing intellectual disability by a preponderance of the evidence. The jury trial proceeded.

The guilt phase began on March 11, 2014. On March 12, 2014, the jury returned a guilty verdict as charged. The penalty phase began in the afternoon of March 13, 2014. At the conclusion

¹ The notice shows as filed on August 11, 2011, yet that filed date was contested in Rule 59 proceedings. *App. 8569, 8705*. The public index shows the filed date as August 11, 2011, and Blackwell has never contested that he was fully aware of the notice of intent to seek death. *App. 8705*.

of the penalty phase deliberations on March 16, 2014, the jury found, by special verdict, that Blackwell had failed in his burden of showing that he was intellectually disabled. *App. 3257* The jury also returned a finding that the State had carried its burden of proof to established these statutory aggravating circumstances: (1) the murder of a child eleven years or under and (2) that the murder was committed while in the commission of the crime of kidnapping. *App. 3257-58*. The jury recommended a sentence of death. *App. 3258*. Judge Couch imposed the death sentence according to the jury's verdict. *App. 3262 -63*.²

Direct Appeal

Blackwell timely served and filed a notice of appeal, and his direct appeal was consolidated with the review of his sentence pursuant to S.C. Code Ann. §16-3-25(F) (2015). This Court affirmed on May 31, 2017. *State v. Blackwell*, 420 S.C. 127, 801 S.E.2d 713 (2017). As is relevant here, appellate counsel raised these issues:

3.

Whether the trial court erred in finding that appellant was not mentally retarded at the pretrial hearing pursuant to *Atkins v. Virginia* and *Franklin v. Maynard*, and therefore sentencing appellant to death violates his rights under the Eighth Amendment?

This Court reviewed Judge Couch's pre-trial determination and upheld his ruling:

Although Blackwell suggests the trial court committed an error of law in reaching its conclusion, he fails to identify any specific error. Instead, he expresses his disagreement with the trial court's credibility determinations and the weight afforded to the experts' opinions and then appears to argue that these decisions equate to errors of law. Because the trial court is the sole judge of the credibility of the witnesses and the weight to be given their

² Judge Couch imposed a thirty-year sentence, concurrent; however, on the sentencing sheet, by notation added March 20, 2014, without objection, he appropriately acknowledged that the sentence is subsumed by the sentence on the murder conviction. *See State v. Perry*, 278 S.C. 490, 495-96, 299 S.E.2d 324, 327 (1983) ("The statute does not mandate a vacation of the kidnapping conviction. It merely provides that either the life imprisonment sentence or the death penalty sentence required in a murder conviction shall be sufficient punishment.").

testimony, we must defer to the court’s determinations. *See State v. Kelly*, 331 S.C. 132, 149, 502 S.E.2d 99, 108 (1998) (recognizing, in reviewing a trial judge’s determination of a defendant’s competency to stand trial, that the judge is the sole judge of the credibility of the witnesses and the weight to be given their testimony and is entitled to evaluate conflicting testimony).

Id., at 140–41, 801 S.E.2d at 720.

After briefing, Blackwell’s appellate counsel supplemented with additional authority, *Hall v. Florida*, 572 U.S. 701 (2014) and *Moore v. Texas*, 581 U.S. 1 (2017). As to IQ, this Court found no departure from *Hall v. Florida*, 572 U.S. 701 (2014). *Id.*, 141, n. 10, 801 S.E.2d at 720 n. 10. As to *Moore*, this Court found that the error there was that the Texas courts had been guided by “*Briseno* factors” rather than accepted clinical standards regarding adaptive functioning, but no such departure from clinical standards was evident in this case. *Id.*, at 127 n. 11. 801 S.E.2d at 721 n. 11 (“any significance assigned to these adaptive strengths was based on the court’s assessment and credibility determination of the expert testimony”).

Blackwell petitioned the Supreme Court of the United States for further review raising, relevant to this appeal, the following question:

1.

In concluding that petitioner, whose IQ was scored at 63 and 68 by both sides’ expert witnesses, is not intellectually disabled and his execution not forbidden by the Eighth Amendment, did the South Carolina Supreme Court’s blatant disregard for expert opinion and methodology violate this Court’s precedents in *Hall v. Florida* and *Moore v. Texas*?

In the State’s brief in opposition responding to the question presented, the question was reframed as:

1.

Where a trial court critically examines the evidence presented by competing expert testimony on the issue of intellectual disability within the recognized clinical framework and assessing credibility based on same, does either *Hall v. Florida* or *Moore v. Texas*

mandate that the capital defendant's expert be credited?

The Court denied the petition on February 20, 2018. *Blackwell v. South Carolina*, 583 U.S. 1124 (2018). Blackwell then turned to post-conviction relief.

Post-Conviction Relief Action: 2018-CP-42-00928

This Court assigned the Honorable Daniel Hall to preside over the action. Judge Hall subsequently appointed E. Charles Grose, Esq., and Lindsey S. Vann Esq., to represent Blackwell.

Though Blackwell filed his first application for post-conviction relief on March 15, 2018, he filed two amendments. Blackwell filed an amended application on February 22, 2019, and his final amended application filed on November 12, 2021. In the final amended application, Blackwell presented the following allegations for relief that are the focus of the petition for writ of certiorari:

10(a) Applicant's death sentence violates the Eighth Amendment to the United States Constitution and the corresponding provisions of the South Carolina Constitution due to the fact that Applicant is a person with intellectual disability. *Moore v. Texas*, 137 S. Ct. 1039 (2017), *Hall v. Florida*, 512 U.S. 701 (2014), *Atkins v. Virginia*, 536 U.S. 306 (2002); *Franklin v. Maynard*, 356 S.C. 276, 588 S.E.2d 604 (2003).

11(a) Supporting Facts: Because Applicant has significantly subaverage intellectual functioning, existing concurrently with deficits in adaptive functioning, both of which manifested during the developmental period, he is ineligible for capital punishment. *Atkins v. Virginia*, 536 U.S. 306 (2002); *Franklin v. Maynard*, 356 S.C. 276, 588 S.E.2d 604 (2003); S.C. Code § 16-3-20(C)(b)(10). Specific facts supporting this claim, include, but are not limited to, the following:

(1) Material facts not previously presented and heard, S.C. Code § 17-27-45(C), that Applicant is a person with intellectual disability that results from a genetic abnormality of his *CAMTAJ* gene, which he inherited from his mother.

10(b) Applicant was denied the right to effective assistance of counsel-guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution and by Article I, §§ 3 and 14 of the South Carolina Constitution, and S.C. Code § 17-3-20-during his pre-trial and sentencing phase *Atkins* (intellectual disability) hearings.

11(b) Supporting Facts: Counsel failed to investigate, develop, and present a constitutionally adequate case that Applicant is a person with intellectual disability

who could not be executed pursuant to the Supreme Court's decision in *Atkins v. Virginia*, 536 U.S. 304 (2002). Counsel's performance was both unreasonable and prejudicial, *see Strickland v. Washington*, 466 U.S. 668 (1984). Counsel's specific unreasonable and prejudicial acts or omissions, include, but are not necessarily limited to, the following:

(1) Counsel failed to investigate and present all relevant evidence on the issue of intellectual disability including evidence of Applicant's significantly subaverage intellectual functioning, deficits in adaptive functioning, and onset before the age of 18, *Atkins v. Virginia*, 536 U.S. 304 (2002); *Wiggins v. Smith*, 583 U.S. 510 (2003);

(2) Counsel failed to object to the trial judge's reliance on stereotype and deviation from clinical consensus and practice in the determination that Applicant was not a person with intellectual disability, *see Moore v. Texas*, 137 S. Ct. 1039 (2017); *Hall v. Florida*, 572 U.S. 701 (2014);

(3) Counsel failed to investigate and present evidence that some of Applicant's purported IQ test scores in the developmental period were not legitimate, individualized measures of general intellectual functioning and thus were not inconsistent with intellectual disability, *see Moore v. Texas*, 137 S. Ct. 1039 (2017); *Hall v. Florida*, 572 U.S. 701 (2014); *Wiggins v. Smith*, 583 U.S. 510 (2003);

(4) Counsel failed to investigate and present the circumstances under which Applicant obtained a commercial driver's license and other certifications to refute the trial judge and jury's reliance on the certifications in finding that Applicant was not a person with intellectual disability, *see Wiggins v. Smith*, 583 U.S. 510 (2003);

(5) Counsel failed to investigate and present evidence to the trial judge and jury that Applicant's depression and cancer treatment (including chemotherapy) had no demonstrable effect on IQ scores establishing significantly subaverage intellectual functioning;

(6) Counsel failed to investigate and present evidence that Applicant is a person with intellectual disability as a result of a genetic abnormality of his *CAMTA 1* gene, which he inherited from his mother;

(7) Counsel failed to adequately inform and educate the trial judge and jury about potentially prejudicial and preconceived misconceptions and stereotypes related to intellectual disability, *see Moore v. Texas*, 137 S. Ct. 1039 (2017);

...

(d) Applicant was denied the right to effective assistance of counsel-guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution and by Article I, §§ 3 and 14 of the South Carolina Constitution, and S.C. Code § 17-3-20-during the penalty phase of the proceedings.

11 (d) **Supporting Facts:** Trial counsel's performance during the sentencing phase was both unreasonable and prejudicial. *See Strickland v. Washington*, 466 U.S. 668 (1984). Counsel's specific unreasonable and prejudicial acts or omissions are

- (1) Counsel failed to adequately investigate and present the full range of mitigating evidence concerning Applicant's social and life history, *see Wiggins v. Smith*, 530 U.S. 510 (2003);
- (2) Counsel failed to adequately investigate and present all available mitigating evidence concerning Applicant's mental health prior to and at the time of the capital offense, *see Wiggins v. Smith*, 530 U.S. 510 (2003);
- (3) Counsel failed to investigate and present mitigating evidence concerning Applicant's lack of future dangerousness, adaptability to confinement, and good character, *see Skipper v. South Carolina*, 476 U.S. 1 (1986);

App. 5026-30.

Judge Hall held an evidentiary hearing on the allegations in three parts beginning on March 27-31, 2023, with another hearing on July 31-August 2, 2023, and concluding on December 15, 2023. Blackwell was present at this hearing and Mr. Grose and Ms. Vann represented him. Senior Assistant Deputy Attorney General Melody J. Brown, Senior Assistant Attorney General Anthony Mabry and Assistant Attorney General Tommy Evans, Jr. represented the State.

After the hearing, both parties submitted copious briefing on the issues. On January 28, 2025, Judge Hall advised the parties that he would deny relief. The State submitted a proposed order as directed on March 21, 2025. Judge Hall accepted the proposed order, signed and filed the order with the Spartanburg County Clerk of Court on April 7, 2025. ***App. 8463-559.*** Blackwell filed a timely motion to alter or amend, which Judge Hall denied on June 10, 2025. ***App. 8714.*** Blackwell now seeks review by this Court by petition filed on May 5, 2026.

FACTS OF THE CRIME

This Court has summarized the facts of this murder of eight-year-old Heather Brooke Center – a crime contrived to harm both an ex-spouse and her new boyfriend, Bobby Center by making the small child the victim:

...on July 8, 2009, Blackwell came to [ex-wife Angela's] parents' house to discuss insurance matters. While there, Blackwell chastised her about not visiting their grandsons and urged her to go see them that day. Angela testified she was going to take Brooke swimming at [boyfriend's] house that day and intended to pick up her grandsons to take them along. When she arrived at her daughter's home, she did not see her daughter's car. Assuming that her daughter was not home, Angela began to drive away. As she was leaving, Blackwell flagged her down and informed her that their daughter went to the store but that their son-in-law had the children. Angela testified she got out of the car to secure a dog in order that it would not bite Brooke. When Angela turned around, she saw that Blackwell had grabbed Brooke and was holding a gun to the child. Blackwell ignored Angela's pleas for him to release Brooke. Instead, Blackwell stated that Angela had "pushed this too far," that she "did this," and that she could let him know "what Bobby thinks of this." Blackwell then fatally shot Brooke.

State v. Blackwell, 420 S.C. 127, 135, 801 S.E.2d 713, 717 (2017).

Pathologist David Wren testified about his autopsy findings. The doctor opined, from tracking the injuries to the child's body, that there were four gunshots: "One to the head, one to the back, one to the leg and a grazing" wound to the cheek and neck which went into her arm. *App. 2540-41*. He further opined "the immediately fatal wound was the one to the head." *App. 2541*.

STANDARD OF REVIEW

The standard of review for post-conviction relief matters "depends on the specific issue" before the appellate court. *Smalls v. State*, 422 S.C. 174, 180, 810 S.E.2d 836, 839 (2018). When reviewing factual findings, the appellate courts defer to the post-conviction relief court's factual findings "and will uphold them if there is evidence in the record to support them." *Smalls*, 422 S.C. at 180, 810 S.E.2d at 839 (citing *Sellner v. State*, 416 S.C. 606, 610, 787 S.E.2d 525, 527

(2016)). However, pure questions of law will be reviewed de novo without deference to the lower court. *Smalls*, 422 S.C. at 180-81, 810 S.E.2d at 839-40.

“‘[A] trial judge’s ruling regarding an *Atkins* determination will be upheld on appeal if supported by the evidence and not against its preponderance.’” *Aleksey v. State*, 448 S.C. 62, 74, 930 S.E.2d 304, 310 (2026) (quoting *Blackwell*, 420 S.C. at 140, 801 S.E.2d at 720). Further, “[i]n criminal cases, this Court sits to review errors of law only and is bound by factual findings of the trial court unless an abuse of discretion is shown.” *Id.* at 136, 801 S.E.2d at 718 (quoting *State v. Laney*, 367 S.C. 639, 643, 627 S.E.2d 726, 729 (2006)). “An abuse of discretion occurs when the court’s decision is unsupported by the evidence or controlled by an error of law.” *Id.*

DISCUSSION

The record in this matter fully and fairly supports the PCR judge’s decision to deny relief. Blackwell has not shown any reason for further review, and his petition should be denied.

I. Having litigated a claim of intellectual disability twice at trial, and throughout the direct appeal, the PCR judge correctly applied the statutory bar in S.C. Code Ann. 17-27-20(B) as recognized in the Simmons Doctrine to find Blackwell’s freestanding claim of intellectual disability barred from yet another round of review in PCR. Because Blackwell has failed to appeal the procedural ruling, the application of the bar is dispositive of his freestanding claim.

Intellectual disability is a rare condition occurring only in estimated 1% of the general population. American Psychiatric Association, DSM-5-TR, p. 43 (5th ed. 2022). Though recognized by the medical community as infrequent and unusual in occurrence, this Court has seen the allegation on multiple occasions from this State’s small death row population.³

³ As *Atkins* itself recognizes, “[n]ot all people who claim to be mentally retarded will be so impaired as to fall within the range of mentally retarded offenders *about whom there is a national consensus*.” *Atkins*, 536 U.S. at 317 (emphasis added). Notably, there have been significant questions on the lack of guidance to ensure reliable and objective determinations as to this condition that forms an exemption to capital punishment. See *Hamm v. Smith*, 608 U.S. 278, 335-38 (2026) (Alito, J., dissenting as to dismissal as improvidently granted, joined in Part IV by Justice

The Court has even created an exception to the statutory successive applications bar to permit additional litigation. *See Bryant v. Stirling*, 126 F.4th 991, 998 (4th Cir.), *cert. denied sub nom. Bryant v. Anderson*, 146 S. Ct. 308, 223 L. Ed. 2d 128 (2025) (acknowledging reference to “several decisions (including the one in this case) where South Carolina courts have permitted successive claims that an applicant’s intellectual disability prohibits their execution from going forward” regardless of limitations on successive applications); *see also Aleksey v. State*, 448 S.C. 62, 81, 930 S.E.2d 304, 314 (2026) (“declin[ing] to address the State’s alternate sustaining ground that Aleksey’s PCR action was untimely and successive”). The thread that runs through those exception cases; however, is that the claim was not presented and adjudicated as an exception to capital punishment. Here, there is a great difference.

Blackwell’s case was the first to have the allegation of intellectual disability evaluated *by the trial judge and again by the jury*. As Judge Hall found, Blackwell’s case “shows the adherence to the *Franklin* process and our Supreme court’s review of same on direct appeal.” *App. 8477-78 n.7*. Both factfinders rejected Blackwell’s allegation. This Court affirmed on direct appeal. Consequently, Blackwell was not entitled to raise the free-standing claim in post-conviction relief. *See, e.g., Simmons v. State*, 264 S.C. 417, 423, 215 S.E.2d 883, 885 (1975) (“Errors in a petitioner’s trial which could have been reviewed on appeal may not be asserted for the first time, or reasserted,

Thomas, Chief Justice Roberts, and Justice Gorsuch). Of note, the course-changing *Atkins* decision was not unanimous. The dissent, authored by Justice Scalia and joined by Chief Justice Rehnquist and Justice Thomas, criticized the majority’s opinion lack of consensus by “objective factors” such as legislative enactments. 536 U.S., at 341-344 (Scalia, J., dissenting). As to attempts to comply, the dissent noted correctly that the forced reliance on soft science would increase litigation and inmates would “claim[] for the first time, after multiple habeas petitions, that they are retarded.” *Id.*, at 353-354. In a later case – one that made two trips to the Court for consideration on the intellectual disability claim – the Chief Justice expressed concern on the lack of clear direction for determining the exemption. *Moore v. Texas*, 586 U.S. 133, 143 (2019) (Roberts, C.J., concurring). In that same case, Justice Alito, joined by Justice Thomas and Justice Gorsuch, dissented, similarly noting the lack of guidance to the States. *Id.*, at 143-144.

in post-conviction proceedings.”); *see also Drayton v. Evatt*, 312 S.C. 4, 8, 430 S.E.2d 517, 520 (1993) (“The Simmons rule gives effect to the Legislature’s clear intent that the post-conviction relief procedure is not a substitute for appeal or a place for asserting errors for the first time which could have been reviewed on direct appeal.”); *Fortune v. State*, 837 S.E.2d 37, 44 (S.C. 2019) (acknowledging any exception will be rare: “In most circumstances, therefore, to be properly presented in a PCR action, a claim must be based on ineffective assistance of counsel.”); S.C. Code Ann. § 17-27-20 (B). *See also Johnson v. Lee*, 578 U.S. 605, 609 (2016) (noting the wide support both in federal and state courts for similar rules disallowing a defendant “to litigate claims which were or could have been raised at trial or on direct appeal” in the collateral setting).⁴ The application of the procedural bar breaks no new ground; rather it follows a well-worn and reliable path.⁵

Thus, the procedural bar was properly applied, and the PCR judge did not allow litigation of the freestanding claim. *App.* 8476-77. Blackwell has not appealed that ruling. ⁶ Thus, “the

⁴ Again, Blackwell, unlike other capital defendants, was given ample opportunity to present his case (twice) in trial after *Atkins* was decided; Blackwell simply failed to carry his burden of proof. Finality concerns are certainly implicated in this Blackwell’s *sixth* attempt to have some factfinder accept his new attempt to show a static, pre-developmental period condition. Blackwell has also raised an ineffective assistance of counsel claim based on the *Atkins* presentation. That claim, too, was dismissed, and is addressed in Argument III that follows.

⁵ Further, the PCR judge found, in the alternative, bars under collateral estoppel, res judicate, law-of-the-case, similarly prevent serial litigation of a claim, “each underscoring the necessary principle that litigants simply cannot continue to litigate a claim that has been presented and ruled upon, particularly when the ruling was on the merits.” *App.* 8478. Blackwell cannot credibly argue that he did not litigate his *Atkins* claim at trial and on direct appeal – the record shows that he did litigate. The cited doctrines are also rails to prevent redundant litigation, and, as the PCR judge found, equally applicable here.

⁶ Alternatively, based on the foregoing, Blackwell would not be able to establish an abuse of discretion in the PCR judge dismissing this claim under S.C. Code Ann. § 17-27-20(B) and the Simmons Doctrine. *See Mangal v. State*, 421 S.C. 85, 92, 805 S.E.2d 568, 571 (2017) (“On review of a PCR court’s resolution of procedural questions arising under the Post-Conviction Procedure

ruling is the law of the case and there is no basis for reversal.” *State v. Woods*, 382 S.C. 153, 161, 676 S.E.2d 128, 132 (2009). Consequently, certiorari review is not warranted.

II. The PCR court fairly determined, based on the case presented in post-conviction relief and at trial, that the genetics opinion evidence failed to support a credible showing “[t]hat there exists evidence of material facts, not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice” as S.C. Code Ann. § 17-27-20 (A)(4) demands.

In an attempt to show the existence of “new evidence” going to his claim of intellectual disability, Blackwell offered genetic testing and also that the original trial expert who opined Blackwell failed to meet the diagnostic criteria for intellectual disability changed his mind based a post-trial opinion by Dr. Knight. (Pet. at 19-20, 35-38).⁷ The PCR judge reasonably found that Blackwell failed to meet the requirement of presenting facts that require the sentence be set aside “in the interest of justice.” § 17-27-20(A)(4). Blackwell asserts his “genetic testing” “establishes a genetic cause,” (Pet. 36), and that, in turn, “establishes a cause” for diagnosis, (Pet. 37). Blackwell indulges in the type of error that he *alleges* the PCR court made, but the PCR court did not require a dispositive genetic basis for the diagnosis, and did not apply the incorrect standard in review the “new evidence.”

As to the genetic evidence, the PCR judge found that Blackwell overstated the impact or importance of the evidence, and that he failed to “demonstrate a causation element *that would shift the evidence* one way or the other.” *App. 8481* (emphasis added). Earlier in his petition, Blackwell concedes the genetic testing is in no way dispositive of the condition; rather he attempts to bolster the offered PCR diagnosis of intellectual disability with a result that may be “associated with

Act” appellate courts “apply an abuse of discretion standard.”). Again, certiorari review would not be warranted.

⁷ Blackwell has reordered his argument from the presentation of the questions presented. (Compare Pet. 1-2 with 25-38). Respondent follows the question presented order which is more in line with the Order of Dismissal.

intellectual disability.” (Pet. 18). The PCR judge was correct; Blackwell overstates the importance of this evidence.

Dr. Cunniff testified that he did not diagnosis intellectual disability in his practice and only would test to determine if a “cause” could be identified. *App. 5786*. Dr. Cunniff testified that his reference to “intellectual disability” in the testimony was not limited to the actual diagnosis but may also refer to the general neurodevelopmental disorders generally. *App. 5787*. Dr. Cunniff testified that the gene abnormality is not a causation for the condition, but if the condition is found, the etiological diagnosis may be linked to the abnormality. *App. 5788-78*. The doctor agreed with the controlling medical literature (specifically, the DSM-5), that “[a] diagnosis of intellectual disability should not be assumed because of a particular genetic or medical condition,” noting also that diagnosis “requires functional deficits, and that’s different from an etiologic or a causal diagnosis.” *App. 5789*. These are facts, well-supported by the record, that the PCR judge relied upon in his analysis of the claim. *App. 8484-86*.

Blackwell attributes a narrowness of the PCR judge’s ruling that is not fairly shown in the order or in the doctor’s testimony. For instance, the PCR genetics testimony takes whatever strength it may have from the fact that *someone else* must first offer an opinion on intellectually disability. The problem for Blackwell is that the new PCR opinions were not credible (mostly from Dr. Knight whose opinion also unfairly colored Dr. Brown’s reconsideration). *See App. 8497-98, listing specific examples.* ⁸ Moreover, the PCR judge found credible and persuasive

⁸ Likely one of the most egregious examples is that the doctor testified that the much contested commercial driver’s license could not be shown to be Blackwell’s work though she reviewed at the hearing several records regarding same. *App. 6105-11*. That is pure speculation, as the PCR court found. *App. 8497-8498*. Dr. Knight also displayed a troubling tendency to embrace stereotypes *supportive* of general characteristic of the intellectual disable, even when more mundane explanations fit far better. For instance, as the PCR judge noted, she found important that Blackwell was frightened of jumping in a deep lack, but as the PCR judge

testimony from Dr. Nelson, a specialist in school special education, and Ms. Judy Shields, a former teacher, both of whom offered more neutral and informed information regarding special education classes that had otherwise been overstated in Blackwell’s PCR presentation.⁹ *See App. 8498-99*. At bottom, no factfinder— not the trial judge, not the jury,¹⁰ and not the PCR judge— has found the case for intellectual disability persuasive or credible enough to allow Blackwell to carry his burden of proof.

Not surprisingly, Blackwell falls back to challenge credibility, (Pet. 18, 20); however, credibility determinations are matters specifically in the PCR judge’s realm. *See Goss v. State*, 425 S.C. 101, 107, 820 S.E.2d 373, 376 (2018) (“The PCR court’s evaluation of witness credibility is to be afforded great deference.”) (citing *Simuel v. State*, 390 S.C. 267, 270, 701 S.E.2d 738, 739 (2010)). A disagreement with the factfinding fails to show an abuse of discretion in the factfinding.

reasonably found, that observation is more in line with “prudent self-care” rather than disability. *App. 8497*. Critically, the court did not engage in mere “strength v. weakness” analysis; rather, “to illustrate the credibility issues with some of the information relied on by [Blackwell’s] expert[] in determining the existence of a particular deficit in the first place.” *Commonwealth v. Flor*, 259 A.3d 891, 924 (Pa. 2021). *See also United States v. Candelario-Santana*, 916 F. Supp. 2d 191, 211 (D.P.R. 2013) (“When assessing adaptive behaviors, therefore, courts must make their own independent determinations of the clinicians’ judgment and credibility.”).

⁹ Again, this goes back to Dr. Knight’s credibility, or, as the PCR judge found, a lack of credibility for this purpose. *See, e.g., Tess M. S. Neal, Thomas Grisso, The Cognitive Underpinnings of Bias in Forensic Mental Health Evaluations*, 20 Psychol. Pub. Pol’y & L. 200 (2014) (noting studies that “suggest that adversarially retained experts tend to interpret data and score certain psychological assessment instruments in ways that are more likely to support the retaining party’s position.”).

¹⁰ This Court has not been called upon to reconsider the jury’s determination, but the jury’s factual determination is most assuredly present and should not be overlooked. *See State v. Herndon*, 430 S.C. 367, 373 n.6, 845 S.E.2d 499, 502 n.6 (2020) (“As an appellate court, we must be careful not to weigh the evidence.... Fundamental to a jury’s role as fact-finder is making credibility determinations, which lie in the sole province of the jury.”). Because this fact finding was made, relitigating also comes dangerously close, if not flatly prohibited, by a second statutory provision: “this section shall not be construed to permit collateral attack on the ground that the evidence was insufficient to support a conviction.” S.C. Code Ann. § 17-27-20 (A)(6).

See Mangal v. State, 421 S.C. 85, 91, 805 S.E.2d 568, 571 (2017) (“We defer to a PCR court’s findings of fact and will uphold them if there is any evidence in the record to support them.”). For Blackwell to rely on his narrative is akin to a horse with blinders; he fails to address the very reason his argument fails under the standard of review which is the failure to acknowledge the world of information that his experts either omitted or were not provided.¹¹

Lastly, Blackwell’s reliance on several opinions that he actually is intellectually disabled places emphasis on numbers in support, but not quality of information in support of the conclusions. When the information relied upon is infirm, so is the opinion. Even so, regardless of dispute, “there still remains the question of ... inherent probability and the credibility of the witness or his interest in the result.” *Green v. Greenville Cnty.*, 176 S.C. 433, 180 S.E. 471, 473 (1935) (citation omitted). Here, the opinion was contested, but the more critical point – and the one that prevents relief under application of the standard of review – is that Blackwell shows no abuse of discretion in the PCR court’s findings. Certiorari review is not warranted.

III. Blackwell has failed to show either an error of law or lack of factual support to warrant review of the PCR court’s assessment of trial counsel’s performance in presenting his *Atkins* claim when counsel made reasonable investigation into the exemption and was guided by, and presented experts in support of, the defense’s presentation both to the trial judge pre-trial, and the jury in sentencing.

The Supreme Court has instructed that trial counsel has the “obligation to conduct a thorough investigation of the defendant’s background,” *Williams v. Taylor*, 529 U.S. 362, 396

¹¹ That type of selective and skewed review is a recognized reason why the original for-trial diagnosis was rejected by the judge (and likely why the jury did, as well). *App.* 8478-79. For examples of the omitted, or never provided information: Dr. Knight never spoke to witness Wofford, Uber, Hamrick or Youmans, all witnesses during the penalty phase of his trial. *App.* 6072. Dr. Knight was never given the interview memo from the interview of Mr. Rick Bagwell, who had worked with Blackwell, and opined, “Ricky was plenty smart enough to function” and “wasn’t ... much different from any other truckers.” *App.* 6102. Dr. Knight was not given the interview memo of Neal Walters, who had also worked with Blackwell, In this memo Mr. Walters stated, “he did not see Ricky as slow” and had “always done a good job.” *App.* 6104.

(2000), in the exercise of “reasonable” effort, *Wiggins v. Smith*, 539 U.S. 510, 524 (2003). The Sixth Amendment does not task counsel with discovery “everything” possible – that is even possible to define the universe of such criteria. *Id.*, at 533 (“*Strickland* does not require counsel to investigate every conceivable line of mitigating evidence”). Thus, “the issue turns on *how* ‘thorough’ the mitigation investigation must be” and the Supreme “Court’s cases indicate that the investigation need only be *reasonably* thorough.” *Owens v. Stirling*, 967 F.3d 396, 413–14 (4th Cir. 2020) (citing *Strickland v. Washington*, 466 U.S. 668, 690–91 (1984) (equating capital sentencing counsel’s duty of “thorough investigation” to “a duty to make reasonable investigations” and noting that “[i]n any ineffectiveness case, a particular decision not to investigate must be directly assessed for reasonableness in all the circumstances”).

Blackwell failed to convince the PCR judge that his trial counsel were deficient in their investigation and in presenting the case for intellectual disability. Unlike the majority of capital convictions reviewed under post-conviction relief, Blackwell pursued a theory of intellectual disability and received two *determinations that he had failed to show he was intellectually disabled*. The potential of this claim was recognized early in the representation and counsel investigated and presented a claim twice. Those claims were based on the fruits of more than adequate investigation.

Counsel acquired the services of forensic psychologist Dr. Ginger Calloway to assist in supporting Applicant’s intellectual disability claim. *App.* 3827-29. Dr. Calloway had testified in numerous other *Atkins* hearings prior to Blackwell’s trial. *App.* 3966. During his PCR testimony Dr. George Corvin stated that Dr. Calloway was the “best” in the United States for intellectual assessment. *App.* 6274.

Counsel competently relied on their conclusions in formulating and presenting the case for intellectual disability. *Smith v. Cockrell*, 311 F.3d 661, 676–77 (5th Cir. 2002), *overruled on other grounds by Tennard v. Dretke*, 542 U.S. 274 (2004) (“Counsel should be permitted to rely upon the objectively reasonable evaluations and opinions of expert witnesses without worrying that a reviewing court will substitute its own judgment, with the inevitable hindsight that a bad outcome creates, and rule that his performance was substandard for doing so.”).

Blackwell’s trial counsel William McGuire, Esq., testified that he was prepared to go forward, but opined, considering the matter “in retrospect,” that perhaps he might have been “overconfident,” *App.* 5510. However, being overconfident cannot be considered ineffective. Moreover, the proper evaluation of counsel’s conduct is from the perspective at the time trial, not in hindsight. *See Rompilla v. Beard*, 545 U.S. 374, 381 (2005) (“[I]n applying *Strickland*, hindsight is discounted by pegging adequacy to counsel’s perspective at the time investigative decisions are made and by giving a heavy measure of deference to counsel’s judgments.” (citation omitted) (quoting *Strickland*, 466 U.S. at 689) (internal quotation marks omitted)); *see also Strickland*, at 689 (“it is all too easy for a court, examining counsel’s defense after it has proved unsuccessful, to conclude that a particular act or omission of counsel was unreasonable”). This guidance is most crucial given the rejection of the intellectual disability claim at trial that clearly clouded the discussion of this claim at the PCR hearing.

The record supported then (and now) that trial counsel engaged in a hefty trial investigation and retained, prepared and presented a well-respected intellectual disability expert. The defense’s case bears earmarks of not simply adequate counsel but responsible counsel properly guided by qualified experts. *See generally Wilson v. Greene*, 155 F.3d 396, 403 (4th Cir. 1998) (“counsel was not required to second guess” expert); *Rubio v. Lumpkin*, 729 F.Supp.3d 616, 668 (S.D. Tex

2024) (“The fact that other experts can review the record in hindsight and identify additional areas of inquiry does not in itself reflect that trial counsel’s representation fell before an objective standard of reasonableness.”).

Of note, Blackwell alleged counsel was ineffective in several more specific ways, all of which were insufficient upon close review of the record: he challenged the investigation in test scores but showed counsel presented the different between general testing and IQ testing, but that was inconsistent with the record, *App. 8511-15*; he challenged their misunderstanding/overlooking of the circumstances of Blackwell’s commercial driver’s license being obtained, again, not supported by the record as showing something overlooked or missed to Blackwell’s detriment, *App. 8515-16*; the effects of mental health, medical treatment and of drug and alcohol on intelligence, rejected on the record also noting expert testimony at the PCR that supported the testimony at trial, *App. 8517-23*; and failure to investigate and explain reliance on stereotypes, again, contrary to the record, *App. 823-28*. In sum, Blackwell failed to show deficient investigation. The PCR judge was presented a record that showed a methodical and supported *theory* developed by trial counsel— which the PCR judge carefully details in his order, *see App. 8492-93*. True the defense was rejected by the factfinder, *twice*. This is more the absence of the condition rather than error in representation.

At any rate, Blackwell has failed to show either an error of law or unsupported findings of fact. Consequently, he has failed to show that certiorari review is warranted.

IV. Blackwell has failed to show cause to grant review of the PCR court’s assessment of trial counsel’s investigation when the record shows vast support for a reasonable investigation into mitigating evidence.

Blackwell asserts his mitigation presentation at trial “consisted largely of disconnected and superficial facts.” (Pet. 38). Blackwell argues that counsel was deficient for not presenting Dr. Corvin and a social worker to tie the mitigation together. (Pet. 41). As to legal error, Blackwell

asserts the PCR judge found essentially that because some mitigation was present, there could be no error. (Pet. 42-43). Blackwell egregiously misreads the record and the order.

First, Blackwell's insistence that another *presentation form* would have made a difference does not show either deficiency or prejudice. Counsel retained experts to aid in the investigation: a trained social worker and forensic psychologist, who conducted interviews with family members, past employers, grade school teachers, and acquaintances. *App. 3779; 3780-3781; 3816*. In addition, they collected school, employment, and social security records. *App. 2831-37*. They also collected and reviewed Blackwell's health and psychiatric records, and various school and health records for his immediate family. *App. 2835-38*. Of noted, during the penalty phase, Dr. Calloway detailed Blackwell's life history from adolescence up until the murder, including a detailed recounting of educational and occupational history. *App. 2848-68; 2873-77*. She also referenced other family members who suffered from various levels of lower intellectual functioning and psychiatric disorders. *App. 2838-41*. She recounted Blackwell's mental health, including his several diagnoses for depressive disorder, previous suicidal gestures and resulting psychiatric commitments. *App. 2843-44*. Dr. Donna Schwartz-Watts (now Maddox) provided additional testimony on Blackwell's depression and prior suicidal gestures. *App. 2976-77*. She detailed how Applicant fired a gun through the roof of his trailer and was subsequently committed to a psychiatric facility. *App. 2976-79*. And, she detailed the difficulties he experienced with his physical health, including his battle with cancer, and back and blood pressure issues. *App. 2982-84*. In regard to his mental health at the time the murder, Dr. Maddox testified as to his major depression. *App. 2985*.

The record, thus, supports a reasonable investigation. Even so, Blackwell insists Dr. George Corvin would have been a better choice. However, Dr. Corvin was consulted for trial, but

not used. The PCR court found Dr. Corvin's notes show detrimental information regarding extensive drug use; participation in paying the household bills; and what essentially amounted to stalking of his ex-wife and her boyfriend and driving by the child victim's home the day of the murder. *See App. 6295-6307*. In other words, things damaging to the defense. There was no particular testimony on strategy, but the PCR judge reasonably found that not calling Dr. Corvin would be a reasonable strategy, especially where Dr. Maddox and Dr. Calloway testified. *App. 8535-37*.

Strickland requires that "a court must indulge a strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance; that is, ***the defendant must overcome*** the presumption that, under the circumstances, the challenged action "might be considered sound trial strategy." *Strickland*, 466 U.S., at 689 (emphasis added). The Supreme Court has cautioned reviewing courts to refrain from "'post hoc rationalization'" when it "contradicts the available evidence of counsel's actions," but there is no command to have "counsel confirm every aspect of the strategic basis for his or her actions." *Harrington v. Richter*, 562 U.S. 86, 109 (2011) (quoting *Wiggins v. Smith*, 539 U.S. 510, 526-527 (2003)). Rather, "[t]here is a 'strong presumption' that counsel's attention to certain issues to the exclusion of others reflects trial tactics rather than 'sheer neglect.'" *Id.*, (quoting *Yarborough v. Gentry*, 540 U.S. 1, 8 (2003) (*per curiam*)). *But see Lindsey v. State*, 447 S.C. 93, 133, 924 S.E.2d 104, 126 (2025), *cert. denied sub nom. Lindsey v. South Carolina*, No. 25-1176, 2026 WL 2976420 (U.S.S.C. Oct. 5, 2026) ("We have held that neither the PCR court nor the appellate court can conclude trial counsel exercised a valid trial strategy unless evidence is presented as to what the strategy actually was."). Regardless, though, there family history and the mental health testimony was before the jury. The PCR court reasonably found Blackwell failed to show sufficient prejudice. *App. 8535*.

Blackwell also complains that his new (for PCR) social worker could have more effectively presented his life story. (Pet. 46). That is Blackwell's assumption, but that does not show *per se* deficient performance, and certainly not deficiency in investigation. The PCR court reasonably found the presentation was "merely recasting the background information" that "counsel, with their trial experts had already investigated and consider" in preparing the defense. *App. 8537*.

Blackwell further complains counsel should have presented Reverend Moon and Reverend Hess to testify as to Blackwell's remorse. (Pet. 46). First, Dr. Maddox, Blackwell's daughter, and Blackwell's minister all testified as to remorse. *App. 2987, 3020, 3084*. Second, when the proffered witnesses testified at the PCR hearing, their testimony was less than firmly supportive. Rev. Moon recalled Blackwell "struggling with guilt" per her notes, but could not recall every expressing that "he was sorry for what he's done." *App. 6552*. While Blackwell focuses on the testimony that Blackwell "was in anguish... visibly in pain and upset," he neglects to disclose that the testimony was in response to how he presented "physically" and she noted that Blackwell "was in physical pain." *App. 6548*. In proper context, the physical description do not support that he was showing remorse by this description. Similarly, Reverend Hess testified she prayed with him for "the family," but he never stated whether whose family, and he did not express sorrow over the victim, or even mention her name. *App. 6597-98*. Notably, this Court found in the direct appeal that exclusion of the chaplains' notes reflecting the same somewhat vague references was, if error at all, merely harmlessly excluded based on the other evidence or remorse from the three witnesses listed above. *Blackwell*, 420 S.C. at 160, 801 S.E.2d at 730. In like fashion, the testimony may be reasonably considered to be insufficient to support *Strickland* prejudice.

Lastly, Blackwell complains that counsel should have a present a corrections expert to testify as to adaptability to prison. (Pet. 43). Blackwell argues the PCR court simply found

evidence of “good character” to be sufficient. (Pet. 43). Blackwell misapprehends the order. The PCR judge actually found the “basic facts” came in, “clearly on character, and on ability to [adapt] to a prison environment[.]” *App. 8539*. Several witnesses testified to Blackwell’s gentle nature, but, notably, Blackwell’s pastor testified that he generally was not confrontational and was generally “very cooperative.” *App. 3072*. This is supportive of adaptability. Further, counsel was prepared and cross-examined a detention center officer concerning Blackwell’s hoarding detergent and medication expressly to minimize any negativity as to his ability to adapt to prison. *App. 2650-52*. Again, Blackwell fails to show any error of law to correct, or any abuse of discretion based on the facts of record. Consequently, he fails to show that certiorari review is warranted

V. Blackwell has shown no reason why this Court should revisit its holding in *Lindsey v. State*, 447 S.C. 93, 924 S.E.2d 104 (2025), which expressly approved the use of a proposed order process in capital cases where (1) all parties are advised of the request and have opportunity to respond and (2) the judge makes reviews before adopting the proposed order as the court’s, which the record shows was accomplished here.

Judge Hall carefully considered the arguments of counsel and testimony presented over multiple weeks of evidentiary portions and also considered detailed post-hearing briefing. Judge Hall asked for a proposed order *after* deciding that he would deny relief. The proposed order, which had been provided to opposing counsel at the same time it was provided to the court, was adopted. The order is Judge Hall’s order and Blackwell’s argument deserves no further review.

This Court recently settled that proposed orders could be accepted in capital PCR actions provided the process is open, and the judge makes the careful review required before adoption of the order or any part thereof. *Lindsey*, 447 S.C. at 124, 924 S.E.2d at 121. That process was followed here. It is even memorialized in the order itself. *App. 8464*. Blackwell argues that the judge only had some thirty minutes to review the nearly one hundred page order. (Pet. 48). Again, Blackwell has misapprehended the record. The request for a hard copy of the order was made in approximately thirty minutes. The order submitted on March 21, 2025, and was not adopted and

signed until April 7, 2025. *App. 8601, 8559*. Blackwell complained of some limited misspellings and drafting errors, *App. 8569-70*, but only in the Rule 59 motion submitted on April 17, 2025, *App. 8592*. The facts demonstrate not a lack of opportunity to engage in the process, but a decision not to engage in the process. That he may do, but the intentional failure to engage should constitute waiver of the right to complain. *See App. 8703 n. 1*. More to the point here, though, the record shows the judge had ample time to review and adopt the proposed order as he saw fit. The order is the PCR court's order. *Lindsey, supra*. Further, Blackwell has wholly failed to demonstrate cause to re-review this Court's holding in *Lindsey*.

CONCLUSION

Based on the foregoing, the petition should be denied.

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