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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Spartanburg County

Honorable Daniel D. Hall, Circuit Court Judge

Appellate Case Number: 2025-001377

RICKY LEE BLACKWELL, SR.,

PETITIONER,

v.

STATE OF SOUTH CAROLINA,

RESPONDENT.

REPLY TO RETURN TO PETITION FOR A WRIT OF CERTIORARI

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Petitioner, Rickey Lee Blackwell, submits the following in reply to Respondent's Return to his Petition for Writ of Certiorari.

I. Rickey Blackwell is a person with intellectual disability. The State's refusal to engage with the merits of this claim is telling.

Respondent attempts to distract this Court from the issue at hand by ignoring any actual arguments regarding Blackwell's diagnosis of intellectual disability. This is telling and is unsurprising as there are no persuasive arguments against finding Blackwell intellectually disabled. As set forth more fully in Blackwell's Petition, the record evidence clearly established he is a person with intellectual disability. All three evaluating experts at the PCR hearing assessed the information related to Blackwell and opined that he satisfied the diagnostic criteria. App. 5997–98 6241, 6245–48, 6277–82, 6353–54, 6739–40. No expert testified to the contrary.[1]

Respondent instead argues that this Court should not engage with Blackwell's intellectual disability diagnosis because the PCR court decided the claim is barred by the *Simmons* doctrine. Ret. at 10–13. It is disingenuous to represent this as the PCR Court's decision as the PCR court made no such decision and the only record citation Respondent makes to support this argument arises from the order denying relief, which it drafted. *See* App. 8476. When the issue was argued at the PCR hearing, the Court did not reach a conclusion on whether the claim should be barred under *Simmons v. State*, 264 S.C. 417, 215 S.E.2d 883 (1975). *See* App. 5329–33. The order includes a record citation, App. 8476, however on examination of the record, this is not a decision at the hearing by the PCR court. Instead, the citation refers to the PCR court asking a question while addressing one of Respondent's objections to the presentation of Dr. Olley's testimony at

[1] Even Respondent's expert witness, Dr. Robert Nelson, did not state that he believed Blackwell was not a person with intellectual disability. Nor could he. Nelson stated that he "cannot make a diagnosis" because he did not conduct an evaluation of Blackwell. App. 6880–81, 6887. Reasons that any credibility findings as to Dr. Nelson are suspect and inappropriate are addressed more thoroughly in the Petition. Pet. at 24–25.

the hearing. App. 5911–92. Respondent continued to seek a ruling later in the hearing which similarly did not result in a firm conclusion that the freestanding claim was barred under *Simmons*. *See, e.g.*, App. 6745, 6749–50, 6764. The PCR Court similarly gave no directive that it reached such a conclusion in its summary order requesting Respondent submit a proposed order, instead only issuing an order stating that "Applicant is unable to maintain his burden under Strickland." App. 8455. Despite no firm ruling by the PCR court to this effect, the proposed order denied the claim on the basis of *Simmons*. App. 8476–8477.

The *Simmons* bar does not apply to Blackwell's freestanding *Atkins* claim. The intellectual disability claim, as presented to the PCR court, was unique and different than that as presented at trial. Specifically, Blackwell presented this claim based on the newly discovered evidence supporting his diagnosis, primarily, the *CAMTA-1* genetic abnormality he has that was uncovered as part of the post-conviction investigative efforts. In addition to the genetic evidence, Blackwell presented new information not previously presented at trial that further supported the unanimous opinions of the evaluating PCR experts. Specifically, the PCR investigation uncovered additional information about Blackwell's general adaptive functioning profile, including his school performance, his social interactions with others, his special education courses, his work history, the circumstances under which he obtained his commercial driver's license, his chemotherapy treatment, and the effects of his psychiatric medication. This information came from additional record collection, expert consultations, and eight additional collateral witnesses, five of whom knew and interacted with Blackwell during the developmental period.[2] Accordingly, this was not the same issue as presented to the lower courts and therefore it is not barred by the *Simmons* rule.

[2] These additional witnesses were Beverly Daves (school teacher), William Hayes (school teacher), Kenneth Lawter (childhood friend), Emily Shields (school teacher), Randy Shields (childhood friend), Sonya Stott (employer), Ken White (employer), and Glenda Wooten (employer).

Moreover, if the Court is inclined to view a freestanding *Atkins* claim as successive in this case and therefore subject to the successor bar identified in *Simmons*, the extraordinary circumstances surrounding his claim warrant ceding the successor bar in this case. As even Respondent acknowledges, this Court has recognized that there are exceptions to procedural bars that otherwise exist when the circumstances warrant it, including in other cases involving claims that a person is intellectually disabled. *See* Ret. at 11. These exceptions are not limited to *Atkins* claims. For example, in *Robertson v. State*, this Court created an exception to the successor bar when a capital PCR applicant has unqualified PCR counsel, a statutory right afforded to capital PCR applicants. 418 S.C. 505, 521–22, 795 S.E.2d 29, 37–38 (2016). Given that a statutory right alone is sufficient to warrant a justifiable exception to an otherwise existing successor bar, it logically follows that Blackwell's unique circumstances, including both newly discovered evidence supporting an intellectual disability diagnosis and also well-founded claims that trial counsel were ineffective in how they handled the trial court intellectual disability presentations, would similarly warrant such an exception. Moreover, this would not be the first time the Court permitted litigation on an *Atkins* claim that arose, at least partially, in prior proceedings. This Court permitted a successive PCR action in *Woods* given the "extraordinary circumstance" surrounding a non-frivolous allegation of intellectual disability despite the fact that Woods's counsel had previously raised and voluntarily dismissed an *Atkins* claim in his initial PCR proceedings. *Woods v. State*, No. 2019-001713, 2019 WL 6898088, at *1 (S.C. Dec. 18, 2019) (per curiam).

II. The genetic evidence was not overstated; it is a critical component of prong three of Blackwell's intellectual disability claim.

Respondent misconstrues Blackwell's position as asserting that genetic testing "establishes a genetic cause," which in turn "establishes a cause for [an intellectual disability] diagnosis." Ret. at 13–14. But Blackwell does not contend that genetic testing alone establishes a diagnosis of

intellectual disability. Rather, the evidence of the CAMTA1 gene abnormality is material because it corroborates the cognitive and adaptive deficits identified by all three evaluating experts—Dr. Knight, Dr. Brown, and Dr. Corvin—and supports the conclusion that those deficits manifested during the developmental period. *See* App. 5997–98, 6241, 6245–48, 6277–82, 6353–54, 6739–40.

Importantly, evidence of the CAMTA1 gene abnormality directly addresses a deficiency the trial court identified in its order denying *Atkins* relief: insufficient evidence of adaptive deficits during the developmental period. App. 7126. Dr. Cunniff testified that Blackwell inherited the CAMTA1 abnormality from his mother, meaning that it was present from conception which clearly falls within the developmental period. App. 5772–73, 5781. He further explained that "intellectual disability is a very common finding when someone has an abnormality of CAMTA1." App. 5773. Multiple large genetic studies have found that the CAMTA1 abnormalities are very commonly associated with intellectual disability. App. 5773–74. When Dr. Cunniff was asked what he "could say about Rickey Blackwell having this abnormality in the CAMTA1 gene as far as him possibly having intellectual disability," Dr. Cunniff replied: "[w]ell, that it's not only possible, it's highly likely that anyone [that] has a CAMTA1 gene change that's disease causing…Approximately 80 percent of people who have that gene change will have an intellectual disability." App. 5774

Respondent also relies on Dr. Cunniff's acknowledgment that his references to intellectual disability could encompass "general neurodevelopmental disorders" and argues that the genetic testimony derives its significance from another expert first offering an opinion on intellectual disability. Ret. at 14. Both arguments mischaracterize Dr. Cunniff's role and the purpose of this testimony. Dr. Cunniff explained that his role was to investigate whether he could identify a genetic

cause for a developmental disability identified through other testing. App. 5786. Blackwell does not rely on Dr. Cunniff to diagnose intellectual disability. Rather, his testimony establishes that Blackwell had an abnormality strongly associated with intellectual disability that was present from conception. Considered alongside the other experts' testimony concerning Blackwell's cognitive and adaptive deficits, this evidence strengthens the overall showing of intellectual disability and supports the conclusion that those deficits manifested during the developmental period.

Respondent's insistence that the genetic evidence is not independently dispositive thus misses the point. The question is whether the new evidence, considered with the evidence as a whole, "probably would change the result" of the proceedings,[3] not whether any single piece of evidence independently establishes intellectual disability. *See* Pet. at 35. Because the trial court specifically identified insufficient evidence of developmental-period deficits as a deficiency in the prior *Atkins* presentation, Dr. Cunniff's testimony must be evaluated in that context. App. 7126. The genetic evidence directly addresses that deficiency and cannot be dismissed merely because it does not independently establish the diagnosis.

III. Trial counsel failed their obligations when presenting intellectual disability in Blackwell's capital trial proceedings.

Respondent argues that trial counsel cannot be ineffective because they did investigate and raise an *Atkins* claim. Ret. at 16–19. But trial counsel's obligation is not simply limited to investigating information, as Respondent would have this Court believe. Rather, the case law repeatedly acknowledges counsel's obligation is both to "investigat[e] and present[]" readily

[3] The PCR Act authorizes relief where "there exists evidence of material facts, not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice." S.C. Code Ann. § 17-27-20(A)(4). In capital sentencing, new evidence is material if it "probably would change the result" of a resentencing proceeding. *State v. South*, 310 S.C. 504, 508, 427 S.E.2d 666, 671 (1993); *see also McCoy v. State*, 401 S.C. 363, 368 n.1, 370, 737 S.E.2d 623, 625 n.1, 627 (2013) (recognizing this five-factor test as the "standard test governing newly discovered evidence" in the PCR context).

available information. *See Wiggins v. Smith*, 538 U.S. 510, 523–24 (2003); *Rompilla v. Beard*, 545 U.S. 374, 381–93 (2005); *Council v. State*, 380 S.C. 159, 164–79, 670 S.E.2d 356, 358–66 (2008); *Weik v. State*, 409 S.C. 214, 216–39, 761 S.E.2d 757, 758–70 (2014). The presentation is an important aspect, as this Court itself acknowledged in *Weik*. 409 S.C. at 233–37, 761 S.E.2d at 766–69.

This is not a situation where guesswork was required. As discussed at length in the petition, trial counsel had specific notice of identifiable deficiencies[4] in their presentation of Blackwell's intellectual disability from Judge Couch's order from the *Atkins* hearing and chose to make no changes whatsoever to how the information was presented to the jury. Pet. at 25–35. According to Respondent, simply saying the words intellectual disability in a courtroom would amount to effective representation. That simply cannot be sufficient to pass constitutional muster, particularly given the long-standing constitutional directive for trial counsel to follow up on "red flag" signs of mitigating evidence. *See Rompilla*, 545 U.S. at 390–92; *Wiggins*, 539 U.S. at 527.

The crux of Respondent's argument as to both the freestanding *Atkins* claim and the related ineffective assistance of counsel claim turns on Respondent's misrepresentations of Dr. Knight's testimony which are unsupported by the record. Respondent, in briefing here and below, repeatedly represents Dr. Knight as closed off, conducting a "selective and skewed" evaluation, and as unwilling to engage with new evidence. *E.g.*, Ret. at 14–16. These representations are simply false as Dr. Knight's evaluation was comprehensive and thorough and conducted according to clinical

[4] , These deficiencies included not providing information that short form testing was inappropriate for the assessment of intellectual functioning; failing to develop additional evidence about both the adaptive functioning prong and the developmental onset prong; failing to provide information and context about the how Blackwell obtained his commercial driver's license; and failing to investigate and present information that Blackwell's chemotherapy treatment and depression medication did not lower his intellectual functioning after the end of the developmental period. Pet. at 26–33.

standards for evaluating intellectual disability. Pet. at 7–18.[5] Respondent's main complaint is with her conclusion. Respondent offers no actual reason for why her analysis was clinically wrong or why they think allegedly omitted information[6] would have been important or shifted the needle in an intellectual disability analysis. Dr. Knight's evaluation cannot objectively be understood as lacking, selective, or otherwise not comprehensive. The evaluation consisted of reviewing over 86 sources, which included ten collateral witness interviews, four additional affidavits from collateral witnesses, several evaluative interviews with Blackwell himself, neuropsychological testing, and additional expert consultations. Respondent desiring agreement from Dr. Knight is not the same as her not engaging with the information or abrogating her professional responsibilities.

IV. Respondent's arguments do not overcome the evidence that trial counsel failed to adequately develop and present available mitigation.

As discussed above, counsel must reasonably investigate, develop, and *present* available mitigation to permit an individualized sentencing determination. Respondent argues that counsel acted reasonably by retaining a social worker and forensic psychologist who reviewed records,

[5] For example, Respondent attempted to get Dr. Knight to concede that Blackwell's marijuana use in adulthood may have caused his low cognitive functioning. App. 6127–29. Instead of rejecting or not considering drug use, Dr. Knight acknowledged that there has been recent research demonstrating cognitive decline effects "because the potency of marijuana has greatly increased over the last decade or so . . . after 2010 or so." App. 6128. However, "Mr. Blackwell was not using such a high potency of cannabis" as the recent studies focused on, so "we can't rely on that [recent] research." App. 6129. Dr. Knight further explained that "[m]arijuana has historically not been a type of drug that would reduce somebody's cognitive functioning." App. 6130. When asked about Blackwell's "experimental drug use" with other substances like huffing "paint or gasoline," Dr. Knight responded that the use would need to be "over many years," instead of isolated experimental use. App. 6130–31. Thus, although Dr. Knight did carefully consider Blackwell's drug use in conjunction with his cognitive functioning, she "didn't give it great weight because of the nature and kind of substance use. So [she] noted that it was assessed, but it didn't go to [her] findings." App. 6131.

[6] Respondent complains that Dr. Knight did not speak to several witnesses who testified at trial but makes no assertions about what information those witnesses would have provided that was relevant to her evaluation. Moreover, Dr. Knight did review the entire trial transcript as part of her evaluation, including the testimony of all these same witnesses. App. 6051, 6161–62. Respondent also complains that Dr. Knight was not given defense team interview memos from two of Blackwell's former employers who viewed Blackwell as a capable employee. Respondent provided this information to Dr. Knight during cross-examination, and she thoughtfully explained why, having then been made aware of the reports from those two witnesses, her diagnostic opinion remained the same. App. 6072, 6102–04, 6162–63. 6165–66. Finally, these witnesses were all individuals who knew Blackwell only as an adult, so it is hard to fathom what information about his developmental period functioning they could have had.

interviewed Blackwell and his family, and presented testimony about his background and mental health. Ret. at 20. But the existence of an investigation and the presentation of some mitigating evidence does not preclude all distinct claims of ineffective assistance of counsel relevant to the penalty-phase presentation. *See Sears v. Upton*, 561 U.S. 945, 954 (2010) (explaining that the presentation of some mitigating evidence does not foreclose a finding of prejudice, as the Supreme Court has "never limited the prejudice inquiry under *Strickland* to cases in which there was only 'little or no mitigation evidence' presented" and has found prejudice where counsel presented a "superficially reasonable mitigation theory").

Blackwell does not contend that a PCR social worker could simply have presented his life story more effectively but, rather, that trial counsel failed to develop and present his social history through appropriate expert testimony. *See* Ret. at 20–21. At trial, counsel's mitigation presentation was confined to Dr. Maddox briefly discussing Blackwell's history of depression and two psychiatric hospitalizations; Dr. Calloway testifying about her intellectual disability evaluation; and lay witnesses testifying that Blackwell was a good person and a hardworking father. App. 2757–71, 2975–87, 2989–3111, 2985, 5665. But this limited presentation did not provide the jury with any meaningful understanding of Blackwell's life history or how his impairments affected him. Counsel failed, without justification, to present expert testimony addressing Blackwell's mental state at the time of the offense or his ability to adapt to prison, despite obtaining funds and retaining experts in both areas. App. 5377–78, 5389–90, 5531, 5536, 5538, 5540–41, 6470–71, 6527–28, 6560, 7171–77. Nor did counsel present willing and available witnesses who could testify about Blackwell's remorse despite acknowledging that Blackwell showed (and continued to show) profound remorse following the crime. App. 5390–5391, 5544, 5550, 6549–50, 6595–96. Respondent's reference to the mitigating information included in Dr. Calloway's and Dr. Maddox's

testimony does not cure the specific deficiencies addressed in Blackwell's petition[7] because, as *Weik v. State* illustrates, presenting some psychological testimony does not foreclose a finding of ineffective assistance where counsel's mitigation presentation remains deficient. 409 S.C. 214, 235, 761 S.E.2d 757, 768 (2014).

Further, Respondent's characterization of Dr. Calloway as a "trained social worker" is incorrect. Dr. Calloway was a psychologist who was retained specifically to evaluate intellectual disability, and she only discussed aspects of Blackwell's background that were relevant to her assessment. See App. 2985. This is not equivalent to investigating, synthesizing, and explaining the experiences and circumstances that shaped his life as mitigating evidence for the penalty phase.

Respondent likewise mischaracterizes the mental health evidence. Dr. Maddox treated Blackwell and prescribed his medication but expressly disclaimed an opinion concerning his "psychiatric state at the time of this incident." Pet. at 38 (citing App. 2973, 2985). Her testimony about depression therefore did not explain Blackwell's mental state at the time of the offense. Counsel's mitigation investigator recommended that counsel retain Dr. Corvin to evaluate that very issue, yet the jury received no expert testimony addressing it. Pet. at 39–40 (citing App. 2985–86, 5531, 5536, 6527–28). Dr. Maddox's treatment and testimony about Blackwell's history served a different purpose from Dr. Corvin's proposed evaluation. Blackwell thus does not argue that Dr. Corvin would have been a better choice, but rather that trial counsel failed to present expert evidence on a distinct and material aspect of mitigation.

Nor does the record support Respondent's claim that counsel made a strategic decision not to present Dr. Corvin's testimony. Despite obtaining funding for Dr. Corvin to review records and conduct a clinical interview, counsel did not present his testimony and could not explain why. App.

[7] *See* Pet. at 38–42.

2985–86, 5531, 5536, 6527–28. Respondent acknowledges that "[t]here was no particularly [sic] testimony on strategy," yet relies on the PCR court's finding that counsel acted reasonably. Ret. at 21. But the court's adoption of a finding proposed by the State cannot serve as the strategic rationale when there is no evidence of that in the record. Where the State argues that counsel made a strategic decision, counsel must articulate a valid one. *Freiburger v. State*, 413 S.C. 243, 247, 775 S.E.2d 391, 393 (Ct. App. 2015); *Ingle v. State*, 348 S.C. 467, 470, 560 S.E.2d 401, 402 (2002). The unexplained failure to complete the evaluation and present expert testimony left a significant gap in the mitigation case.

Finally, Respondent selectively characterizes the chaplains' testimony at the PCR hearing concerning remorse. Ret. at 22. Although Reverend Moon could not recall Blackwell expressly saying he was sorry, she testified that he "was struggling with the guilt" of his actions and agreed that she perceived him to be struggling with what he had done before arriving at the hospital. App. 6548–49. Her testimony supported an inference of remorse regardless of whether Blackwell offered an express apology. Respondent similarly asserts that, when Blackwell asked Reverend Hess to pray for the family, he did not identify whose family he wanted her to pray for. Ret. at 22. But Reverend Hess explained that she understood Blackwell's request to pray for "them" to mean "the family of the person that he hurt." App. 6594–95. She also expressly testified: "He was tearful and sad, and I observed remorse." App. 6595. The absence of an express apology or the victim's name does not negate this testimony. The question is whether the evidence conveyed Blackwell's emotional response to the harm he caused, not whether he used particular words.

Respondent's reliance on the fact that trial counsel did present some mitigating evidence does not resolve Blackwell's post-conviction claims. Counsel left significant aspects of Blackwell's social history undeveloped, presented no expert testimony addressing his mental state

at the time of the offense, and failed to offer the testimony of witnesses who were willing and available to testify about Blackwell's remorse, despite Respondent trying to minimize the significance of their testimony in its response. The record does not establish that these omissions resulted from reasonable strategic choices. This Court should grant review.

V. *Fishburne* should not apply to capital post-conviction cases, but even if it does, the *Fishburne* requirements were not satisfied in Blackwell's case.

For the reasons set forth in the Petition, *Fishburne* should not apply to capital post-conviction cases. Pet. at 47–53. Respondent refuses to engage with those issues, instead resting on a refrain that "[t]he order is the PCR court's order." Ret. at 24. But even if this Court finds that *Fishburne* should apply to some capital PCR cases, the order at issue *in this case* should not be treated as "the PCR court's order" because the process set out in *Fishburne* was not followed.[8] Respondent makes several misleading representations about what happened below, that warrant reply.

A close examination of what happened illuminates some of these misrepresentations and underscores the problems with the *Fishburne* process in Blackwell's case. Blackwell expressed concerns about the Court drafting its own order throughout the case below, including a specific request for the Court to draft its own order in his post-hearing briefing. App. 8450–51. Despite this, the Court simply issued a summary order denying the PCR application, containing a blanket statement that *Strickland* had not been satisfied and requesting Respondent draft and submit a proposed order. App. 8455–8457. Blackwell then filed a Rule 59(e) motion to alter or amend the order. App. 8455–57, 8458–8462. Specifically, Blackwell requested further guidance from the

[8] Respondent attempts to tell this Court that the process was followed as it was "memorialized in the order itself." Ret. at 23. Respondent themselves placed that language in the order before any opportunity for an objection process could have happened. This is precisely the kind of unfair litigation advantage identified and discussed more thoroughly in the Petition. *See* Pet. at 50–52.

PCR court before any proposed order was drafted as the summary order was limited to a blanket statement that *Strickland* had not been satisfied. This summary order contained no reference to which prong of *Strickland* failed as to each and every ineffective assistance of counsel claim; no assessment of the credibility of any of the evidence before the Court; and no rulings on any of the claims that were not raised as ineffective assistance of counsel claims, which Blackwell highlighted in his motion. App. 8458–8462. The PCR Court ultimately renewed its request for a proposed order from Respondent after scheduling and then abruptly cancelling a status conference on this issue. App. 8604–8614.

Respondent emailed a copy of the 97-page proposed order to the PCR Court and Blackwell simultaneously on March 21, 2025. The PCR Court requested a hard copy be mailed to chambers without any changes to the document only thirty-one minutes after the email was sent. App. 8601. While it is true that Blackwell did not submit written objections to the proposed order at this juncture, that was merely in response to the Court's specific request that a hard copy be sent within thirty minutes of receiving the order. This directive was communicated to the parties before Blackwell had sufficient time to even review the order, let alone articulate objections to it. It would have been fruitless at that point to object when the Court clearly indicated its intent to adopt the order verbatim (a process to which Blackwell had already objected) in less time than would have permitted thoughtful consideration of the 97-page document.

Fishburne was violated because the PCR court did not "carefully review" the proposed order before signing it verbatim, and Blackwell's counsel did not receive sufficient time to "review the proposed order and alert preparing counsel and the PCR court as to any deficiencies." 427 S.C. at 516, 832 S.E.2d at 589. After the proposed order was signed, Blackwell included specific and

detailed objections in his amended Rule 59(e) motion.[9] App. 8560–8702. This motion was not, as Respondent represents, complaints of "some limited misspellings and drafting errors." Ret. at 23–24. Rather, Blackwell lodged concerns to the overall proposed order drafting process, detailed extensively the ways in which the order contained errors and factual misrepresentations of the PCR record, highlighted how the order adopted an incorrect standard of the law with regards to newly discovered evidence, documented how the credibility findings were contrary to the record, and highlighted how the order misapplied the legal standards for ineffective assistance of counsel claims raised pursuant to *Wiggins v. Smith*, 539 U.S. 510 (2003). App. 8560–8702. The PCR court denied this motion with a one sentence order, failing to engage whatsoever with the many concerns raised by Blackwell. App. 8714.

Issues stemming from party-drafted orders have been raised in at least eleven capital PCR cases.[10] Given that capital PCR applicants are both a small class of cases and the PCR court's order is the last time the majority of capital defendants have *de novo* review of any claim for post-conviction relief in their ordinary course of appeals, this Court should require judges to draft their own orders in capital PCR cases.[11]

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[9] This process itself was recognized by the *Fishburne* Court as an appropriate mechanism to inform the PCR court of issues with a proposed order. *Fishburne v. State*, 427 S.C. 505, 516, 832 S.E.2d 584, 590 (2019) (recognizing issues with a proposed order can be appropriately brought to the attention of a PCR court through a timely 59(e) motion).

[10] Eight cases raised this issue in one way or another to this Court: *Alkebulanyahh v. State*, Appellate Case No. 2009-143286; *Robertson v. State*, Appellate Case No. 2023-000505; *Stanko v. State*, Appellate Case No. 2017-000211; *Lindsey v. State*, Appellate Case No. 2019-001271; *Bryant v. State*, Appellate Case No. 2019-000610; *Terry v. State*, Appellate Case No. 2025-001760; *Bennett v. State*, Appellate Case No. 2006-CP-32-3221; *Stokes v. State*, Appellate Case No. 2013-000635. Three additional cases raised concerns about party-drafted orders in their 59(e) motions for reconsideration: *Aleksey v. State*, Case No. 2015-CP-38-764 (Orangeburg County); *Dickerson v. State*, Case No. 2012-CP-10-3216 (Charleston County); *Stanko v. State*, Case No. 2014-CP-26-035 (Horry County).

[11] Moreover, PCR judges are capable and have drafted their own orders in capital PCR cases. This happened in at least ten cases that counsel is aware of: *Stone v. State*, Case No. 08-CP-43-905 (Sumter County); *Finklea v. State*, Case No. 2010-CP-32-5076 (Lexington County); *Inman v. State*, Case No. 2012-CP-39-918 (Pickens County); *Woods v. State*, Case No. 2009-CP-14-00654 (Clarendon County); *Bryant v. State*, Case No. 2007-CP-26-5062 (Horry County); *Torres v. State*, Case No. 2011-CP-20-1851 (Spartanburg County); *Binney v. State*, Case No. 2006-CP-11-223 (Cherokee County); *Owens v. State*, 2009-CP-23-00741 (Greenville County); *Hughey v. State*, Case No. 2000-CP-10-212

CONCLUSION

For the reasons stated above and in Petitioner's Petition for a Writ of Certiorari, the PCR court's conclusions and order denying relief are governed by errors of law and are unsupported by the record evidence. Therefore, this Court should grant certiorari to correct those errors.

Respectfully submitted,

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(Abbeville County); and *Winkler v. State*, 2011-CP-26-3907 (Horry County) (original Aug. 15, 2012 order denying relief).