THE STATE OF SOUTH CAROLINA

In The Supreme Court

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S.C. Supreme Court

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

G. Edward Welmaker, Circuit Court Judge

Appellate Case No. 2013-001945

Charles Christopher Williams,

Appellant,

v.

The State of South Carolina, Respondent.

REPLY

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I. CONTRARY TO THE STATE'S POSITION, PETITIONER DOES NOT SUGGEST THAT THE PCR JUDGE MUST ACCEPT TRIAL COUNSEL'S STATEMENTS THAT THEY HAD NO REASON THEY DID NOT CONSIDER FETAL ALCOHOL SYNDROME; PETITIONER CONTENDS THE PCR JUDGE NEVER ADDRESSED THESE STATEMENTS AND THAT THE PCR JUDGE'S FINDING THAT TRIAL COUNSEL MADE A STRATEGIC DECISION NOT TO PRESENT FAS IS COMPLETELY UNSUPPORTED BY THE EVIDENCE.

The State's response to the failure to investigate fetal alcohol syndrome is partially summarized in the following statement from page 80 in the Return:

> In all reasonable probability, the brutal facts of petitioner's offense were simply too compelling to be overcome by a **naked emotional appeal for mercy** premised upon **meager evidence showing petitioner's mother drank a few while pregnant** with petitioner and **his twin sister.**

Petitioner does not have a twin sister. Petitioner's sister was 11 years older than him. App. p. 2329. She had also been diagnosed with mental illness, App. p. 2337, and committed suicide the year before the PCR trial. App. p. 3419. Petitioner's half sister is 15 years older and died in 2008. App. p. 4857.

Evidence of brain damage caused by prenatal ingestion of alcohol is not a "naked emotional appeal to mercy". It is the type of evidence the United States Supreme Court and the ABA has found significant mitigating evidence. *Sears v. Upton*, 130 S.Ct. 3259, 3261 (2010); see also Petition pp. 32-33. One of the reasons the evidence is so compelling is the extensive research it has received as can be seen by the 317 page appendix submitted before trial (Plaintiff's Exhibit 23, App. p. 4531), as well as the 200 page diagnostic manual published in 1996 by the Institute of Medicine[1], as well as the 2004 Center for Disease and Control's guidelines on

1 Institute of Medicine: Fetal Alcohol Syndrome: Diagnosis, Epidemiology, Prevention, and

FAS. [2]

The state also claims that this part of our case was "the new mitigation case of Partial Fetal Alcohol Syndrome Disorder (PFASD) presented in 2005 as FAS ..." Return p. 7. Petitioner is not entirely sure what this means but petitioner is technically diagnosed with PFAS, but experts and the manuals often use the generic terms FAS or FASD to encompass all the definitions. Regardless, the diagnosis is the same now as it would have been in 2005, as can be seen by the IOM manual and the CDC's guidelines. [3] Petitioner actually meets all the criteria described in the CDC publication, except small palpebral features, which is only one of the three facial dysmorphia noted. App. pp. 3638-43, 4573. Furthermore, these dysmorphia are formed in a narrow window of 6-8 weeks during the gestational period and are known to disappear into adulthood. IOM manual, p. 75, App. p. 4903. Finally, as noted in the IOM, the designation of "partial" is in no way meant to mean less severe and sometimes can put an individual at much higher risk for

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Treatment. Stratton K, Howe C, Battaglia F (editors). National Academy Press. (Referred to in the Petition as NAP). The State references the IOM several times (Return at 35, 45, 47, 48, 52.) but does not cite the manual as an exhibit. It was placed in evidence as Plaintiff's Exhibit 31. Furthermore, the relevant pages of the manual were placed into the Appendix following 4899, and an additional copy of the manual was mailed to the Supreme Court for ease of reference. The Manual is a publication authorized and funded by the United States Congress. App. p. 4900.

2 The State also cites the Center for Disease and Control's manual, but fails to note it as an exhibit. Return p. 34, 35, 39, 44, 47, 48, 50. The CDC published *Fetal Alcohol Syndrome: Guidelines for Referral and Diagnosis* (CDC) in July of 2004. App. p. 4548. While the CDC did not complete the congressional mandate to define all FASD disorders, it more specifically defined the criteria and symptoms the IOM relied on in its diagnostic criteria for all FASD conditions. For a more complete history of FAS and these and other publications, please see the Petition at page 12.

3 The State also repeatedly states the experts "opine", when in fact they are testifying to known published standards. For example, on page 44 of the Return, the State writes, "Dr. Connor opined that according to the CDC Guidelines, they need to see at least 3 domains that are in deficit." These are the clear standards as set out by the CDC in their manual. App. p. 4551.

adverse life course outcomes due to it not being recognized and the individual's ability to mask his cognitive deficits. App. p. 3707.

There was not "meager evidence" showing petitioner's mother drank a few while pregnant. It was admitted by the state's expert witness at trial and is replete in the record.[4] The medical testimony at PCR was uncontradicted that petitioner suffered from FAS, but most importantly, the PCR judge made no indication he felt the petitioner did not suffer from FAS. App. p. 4203-4208.

In regards to whether trial counsel's investigation was sufficient, the only real question is, "How did the PCR judge come to the conclusion that trial counsel made a strategic decision not to present FAS?" The Attorney General would have this Court believe the PCR judge found the testimony of Jan Vogelsang credible to the exclusion of the trial attorneys. Return p. 69, 70. First, there is no finding that the PCR judge found Jan Vogelsang to be credible and trial counsel not credible. The PCR judge simply made the statement that trial counsel made a strategic decision not to present FAS but that they could not say why. App. p. 4210.

Nor is it the case as the State contends that, "Petitioner complains that the PCR court failed to accept the admissions of counsel that they had no reason why they did not consider fetal alcohol." Return p. 71. Petitioner does not suggest the PCR judge must accept trial counsel's statements; we contend the PCR judge never addressed them. Furthermore, the finding that trial counsel made a strategic decision not to present FAS is completely unsupported by the evidence. While Jan

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4 App. pp. 1877, 1978, 2179, 2180, 2182, 2214, 2236, 2237, 2252, 2262, 2331, 2336. The mother admitted heavy drinking during pregnancy at the PCR. App. p. 3412.

Vogelsang may have said she was not surprised FAS was not submitted, she could not and did not testify as to what trial counsels' strategic decisions were. App. p. 3247. Third, trial counsel never conceded or indicated that they simply "could not recall any specific discussion about FAS". Return p. 71. They adamantly denied it.

For a complete recital of counsels' adamant denials that they ever considered FAS see Petition for Ceriorari, pages 9-11. Typical of their testimony is the following. "Question: Okay. So I think we've beat this horse enough. It was just never, ever brought up, to your knowledge, of FAS?" Nettles: "Right. It wasn't ever brought up. It wasn't discussed. It wasn't ruled in, it wasn't ruled out." App. p. 3274. Mr. Mauldin testified that after being shown PCR evidence and exhibits he was "dumbfounded" as to why a certain course of action did not occur – that a natural course would be to bring in a neurologist and tell him they had evidentiary information to suspect FAS and they needed whatever testing needed to be done to determine whether it existed. App. pp. 3367-8. "And what could possibly have lead me to not conduct some sort of follow-up is just beyond my – I don't have an explanation for it. I just don't know. ... I surely didn't do it intentionally. I will assure you, I did not do that intentionally. I think that would be horrible. App. p. 3381. "And why in the world I didn't, with these memos being provided me, why didn't I further take the course of action that I described to Mr. Zelenka about a neurological evaluation as to that specific issue, I just – I don't know. I can't explain that." App. p. 3382.[5]

5 In contrast, the State reports Mr. Mauldin's testimony as, "that his normal course would be to have retained a neurologist for a MRI on the FAS issue, but could not explain the delay from September

The State repeatedly states that trial experts had the information about the mother drinking during pregnancy.[6] This ignores, just like the PCR court's order, that the neurologist was hired on the eve of trial to do a quick MRI[7], but more importantly, it ignores the affidavit of the neurologist that he never had the information that mother drank during pregnancy, and would have advised counsel to seek an expert in FAS if he had this information; furthermore, the neurologist wanted additional psychological testing done, which had already been done but that was not presented to him, and when he was shown that testing by PCR counsel, he found the petitioner had serious brain damage issues. App. p. 4851 - 4852.[8]

This is in direct contradiction to the State's assertion that "[f]ailure to micro-manage the mental health and medical testing performed by the experts is different in kind from failing to provide those experts with information needed to conduct their evaluations, which would constitute deficient performance." Return p. 11. It was also clear the experts were not communicating with each other. App. p. 3219, L. 8. Counsel is not only responsible to manage the experts and provide them with appropriate information, counsel is specifically advised by the ABA guidelines to investigate FAS (App. p. 4340, 4390), which is something trial counsel testified they

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2003 until January 2005 for the MRI." Return 29.

6 The State repeats this information was provided to the experts, (Return p. 3, 12, 13, 18, 20) but in only one instance (page 12) admits that the neurologist was not provided this information.

7 This is in direct contrast to the State's position that "Nor was the expert team appointed too late to provide meaningful benefit to the case." Return p. 11.

8 The State writes, "When the MRI was done, the report noted some minor neurological, and recommend going to a psychologist, which had been done earlier with Dr. Evans." [sic] As noted in the neurologist's affidavit, the point is not that the testing had been done, it is that the neurologist requested it and was never given it.

never did.

Again, there was no evidence presented that disputed the fact that the petitioner suffers from FAS and there is no indication that the PCR judge did not believe the petitioner suffered from FAS; however, the State repeatedly points out that the mother denied drinking to Jan Vogelsang. Dr. Adler testified the CDC manual reports mothers are often reluctant to admit it and that it is appropriate to have other sources confirm it despite the mother's denials. App. p. 3628-3629. Furthermore, he testified that in 2004 the team had enough evidence from other sources to confirm it and it was absolutely confirmed. App. p. 3629-3630. And even if it is not confirmed, there is an actual diagnosis of FAS without confirmation. IOM manual, p. 76. Plaintiff's 31. App. p. 4904.

The State also repeatedly notes both the 2004 and 2011 MRI reports were normal. Return p. 61. Dr. Adler's testified that Dr. Bookstein's research (who Mr. Zelenka had referenced earlier) showed the vast majority of neuroradiologists will not discern significant thinning of the corpus callosum in an MRI. App. p. 3790.[9] Dr. Adler testified that both MRIs showed thinning of the corpus callosum as well as something wrong with the cinulate gyrus. App. p. 3656-3657. Part of the problem was the 2004 MRI noted "Autism spectrum disorder suspected", which has nothing to do with the corpus callosum.[10] When the 2011 MRI report was requested, it

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9 The CDC manual and other research shows FAS often causes abnormalities in the corpus callosum. App. p. 3648. CDC. That is the largest and most important part of the brain white matter; it connects the left and right sides. App. p. 3651. Mr. Mauldin's psychologist, Dr. Evans, even noted that there were problems with these connections, "as if no corpus callosum". App. p. 3651.

10 The State writes, "[Dr. Adler] further admitted that the 2005 MRI report indicated it was done to

specifically noted FAS, and the radiologist noted "mild thinning of the corpus callosum." So it was not surprising that in 2005 when the radiologist was asked to look for Autism, they did not see thinning of the corpus callosum, but in 2011 when they were asked to look for FAS, they did. App. p. 3791-3792. He also clarified that the average neurologist is looking for profound abnormalities, like tumors or abscesses, and without them they look at it as a normal brain. App. p. 3797.

The State continues and writes that Dr. Adler, "went to MUSC to try to get the 2011 report changed concerning the thinning of the corpus callosum, but they refused to change the report which declared it to be a normal MRI." Return p. 61-62. Dr. Adler's more complete testimony was that he had examined the petitioner the day before and decided because he was there, he would go to MUSC because a reasonable physician asks to see the study with the radiologist. App. p. 3774. That his neuroradiologist in Seattle opined there was moderate thinning of the corpus callosum. App. p. 3659. That when he went to MUSC he reviewed the study with a Dr. Harrington who offered to measure the corpus callosum, and Dr. Harrington agreed it was more than mild thinning. App. p. 3774. It was thinned more than fifty percent. App. p. 3659. They tried to contact the original reviewer to clarify whether it was mild or moderate thinning. App. p. 3788. That Doctor never got in contact with Dr. Adler. App. p. 3795. Mr. Zelenka's follow up was, "[Y]ou went down to MUSC and sought to get the 2011 report changed with respect to the thinning issue on the corpus callosum. And the – as far as you know, they've been unable or

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evaluate for congenital anomaly versus focal injury. App.p. 5036." Page 5036 is the actual MRI report, which clearly indicates, "Autism. Evaluate for congenital anomaly versus focal injury." And, "Autism spectrum disorder suspected." See App. p. 3791 for the actual testimony.

unwilling to change the report; correct?" App. p. 3799.

The PCR order also ignores the ABA guidelines which clearly warn attorneys to investigate FAS. This Court has cited the ABA guidelines before, but more importantly it is another aspect the PCR court never addressed. If the PCR judge did in fact find Jan Vogelsang credible and at the same time felt trial counsel was perjuring themselves or had faulty memories, he made absolutely no indication that was his finding. [11]

While the State would like to posit that FAS is a double edged sword, the United States Supreme Court and multiple jurisdictions are in direct contradiction to this opinion. Petition p. 32-33. But more importantly, the PCR court never indicated that this was in any way why he felt the petitioner was not prejudiced. He relied on *Jones v. State*, 332 S.C. 329, 504 S.E.2d 822 (1998) and *Simpson v. Moore*, 367 S.C. 587, 627 S.E.2d 701 (2006) for the proposition that FAS was a fancier mitigation package which is discussed on page 37 of the petition. Furthermore the State is inaccurate in citing Dr. Brown's testimony as evidence that an FAS diagnosis would reinforce the risk of future dangerousness. Return p. 78-79. Dr. Brown clearly testified that people with FAS in a structured environment such as prison have relatively stable behavior, and in fact they are more likely to be victims. App. p. 3852. More importantly, any potential mitigation evidence can be harmful in some ways and if this argument is accepted the failure to present mitigation would never be prejudicial.

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11 It is interesting that in all of Ms. Vogelsang's notes and memos and in Mr. Mauldin's entire case file, there is no mention of FAS. App. p. 3347. And he testified if there had been a notation of it in his file he would have hired a neurologist to specifically rule out FAS. App. p. 3367.

The State also takes issue with Dr. Brown's opinion that the petitioner was easily suggestible and changed his story under the skilled questioning of Dr. Pam Crawford. Dr. Brown's testimony about Williams' suggestibility was based on the Gudjonsson test that is known and used by forensic psychologists; Gudjonsson was a former police officer from Iceland that became a psychologist and spent his life's research on suggestibility in the criminal context. App. p. 3893. The test showed Williams was highly susceptible to suggestion and the results explain why he dramatically changed his statements given to officers and the negotiator, that he was not planning on killing the victim or that he was not sure he was going to kill the victim beforehand, App. p. 3895, to Crawford saying, "So last night you decided to kill her?" and Williams responding, "Yeah." Another example of this manipulation is Crawford wanting Williams to make sure he was intent on killing her because that will be helpful to the negotiators to let them know they did not say the wrong thing to set him off. App. p. 2913. Regardless, the PCR judge did not find this testimony lacked credibility. There was no evidence to suggest the Gudjohnson test is not the standard in the industry.

The State also claims that Dr. Brown admitted that the intent to kill did not occur as an irresistible impulse and cites App. p. 3914. Return 67, 73-74. That is not the question the State asked. The State asked Dr. Brown, "And that intent to kill her did not occur as a result of an irresistible impulse that happened at ten o'clock on that day; did it?" The murder happened at almost noon. Dr. Brown's testimony was that because of the petitioner's deficits, and also because of the struggle, that

Petitioner could not control his actions. Petitioner's counsel specifically asked, "At that moment could he control himself?" App. p. 3901. Dr. Brown admitted the petitioner had controlled himself at other times in his life. Just because petitioner did not randomly run red lights or run naked down the street, does not mean he was always in control. Whether he could control himself at other times or at 10:00 AM is not the appropriate question.[12] More importantly, the testimony that Williams was unable to conform his actions because of FAS was not contradicted; at best the testimony of the trial forensic expert, Dr. Halleck, was that Williams was having a terrible time conforming his actions. App. p. 2318. And despite the State's assertion, without reference to the transcript, that Dr. Adler and Dr. Connor noted, "the determination of the existence of fetal alcohol syndrome is a medical determination and the psychiatrist would be appropriate in making that determination" Return, p. 71, the PCR testimony was that a medical doctor has to make the actual diagnosis, but that the process involved a multi-disciplined team working in connection with knowledge of FAS. App. p. 3447. There is no testimony that Dr. Halleck or anyone else on the team had any expertise in FAS.

12 The State also takes issue with Dr. Brown's testimony that people with FAS are poor planners. Dr. Brown testified they make plans, they are just bad plans and they do not follow through with them. For example normal people do not have to make a note, "Get cigarettes" as part of a kidnapping plan. She also notes there was never a plan to get away with the murder. App. p. 3880-3883. On page 65 of the return, in a footnote, the State disagrees with Dr. Brown's testimony that petitioner's hiding in the closet was illogical and instead determines, "if the desire was only to kill the victim and torture her by delaying committing the act, but to survive, the best action would be to drop the weapon and hide knowing that SWAT was there." The PCR judge certainly made no finding in this regard. But it is clear from the testimony, that Dr. Brown was saying it made no sense to hide in the store. That if Williams plan was to not get caught, he certainly had never created a sophisticated plan to get away with the murder. Despite what the State says, if Mr. Williams was trying to survive at that point in time, with hundreds of SWAT officers surrounding the building, the best thing for him to do would be put his hands up in the air and stay in plain view. It would certainly not be part of anyone's sophisticated plan to think, "I'll kill her and then go hide in the closet."

Finally, while the State notes the PCR judge has to reweigh evidence in aggravation against the totality of evidence in mitigation, Return p. 10, the PCR judge never specifically made a finding or ruling that was what he did. Instead, despite all the evidence to the contrary, he found trial counsel made a strategic decision not to present FAS, without ever addressing counsels' denials to that effect or their testimony that they would have wanted this testimony in front of the jury. He then found the PCR case would have simply resulted in a fancier mitigation case without ever acknowledging or discussing the fact that FAS and organic brain damage are uniquely mitigating evidence, or more importantly, that the new experts gave an uncontradicted opinion that petitioner had severe cognitive deficits, impulse control problems, the mentality of a nine year old child, and could not conform his actions to the law. [13]

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13 Petitioner would also note the following from the Return: The State failed to include the expert's use of the phrase, "per se" at the end of the following statement: The neuropsychological assessment was not designed to measure damage to the brain. Return p. 49. The State notes that Dr. Adler did not see the records on a 2003 hospital visit caused by petitioner's attempt at suicide, a 2011 MRI report, and the petitioner's birth records. Petitioner's counsel provided the 2003 records to Dr. Adler on re-direct and Dr. Adler reviewed those records at that time and did not change his opinion. He reviewed the report and discussed it. App. p. 3786. He verified that no birth records could be found despite assiduous efforts . App. p. 3737.

II. THE PCR JUDGE FAILED TO CONSIDER LARGE PORTIONS OF THE SOLICITOR'S CLOSING ARGUMENT THAT WERE IMPROPER.

Respondent states that "Williams characterizes the following alleged deficiencies" and then proceeds to list four points. Return p. 87. Petitioner would instead aver that their main complaint is that the PCR judge failed to quote or address huge portions of the Solicitor's argument, and even redacted some of the statements from the quotations he used. Furthermore, the PCR judge twice quoted the dissent in *Vasquez* which was specifically rejected by the majority for using a "harmless error" type analysis, which is also clearly in conflict with *Burkhart* and *Northcutt*.[14] Furthermore the PCR court proceeded to conduct a harmless error analysis, and then relied on the Supreme Court's proportionality review that "the death sentence was not the result of passion, prejudice, or any other factor" as an additional reason the argument was proper. App. p. 4191.

The PCR judge failed to include large portions of the argument complained about in the PCR, including, "You're not killing anyone." App. p. 2367. "The Solicitor says there is a reason for [the death penalty] and that it's something you should consider in shaping the punishment to fit the extent of the crime." App. p. 2374.[15] "[T]his is obviously a difficult decision, that this is not an easy decision. It's not easy for me to ask you to even make it." The PCR judge quoted, but failed to

14 *State v. Burkhart*, 371 S.C. 482, 640 S.E.2d 450 (2007); *State v. Northcutt*, 372 S.C. 207, 641 S.E.2d 873 (2007).

15 The Respondent asks this Court to ignore the record and consider this a clerical error. Return p. 93. If the Respondent felt this was an error, he had ample opportunity to present the actual recordings or question Mr. Arial on this statement. His opinion that it was likely "legislature" instead of "solicitor" is entirely inappropriate. Furthermore, the PCR Court never addressed this statement and certainly never found that it was somehow in error.

address that the Solicitor then noted the law placed the decision on our shoulders and we'll do it. App. p. 2368. The PCR judge failed to cite or discuss the Solicitor's statements that it was not enjoyable for him to ask for the death penalty, but it was his responsibility to come before the jury and present these cases we deem appropriate for the death penalty. App. 2369.

The PCR judge quoted the language, "They have said earlier the solicitor is not satisfied with a life sentence. And I agree, I am not. They told you he's going to want the death penalty, and I do." App. p. 4184. However, the PCR judge never addressed the fact the Solicitor was not being accurate and that defense counsel did not say these things,[16] and instead the PCR judge quoted the language from *Sigmon v. State*, 403 S.C. 120, 742 S.E.2d 394 (2013), "Although the solicitor mentioned his own considerations, he did not go so far as to compare his undertaking in requesting the death penalty to the jury's decision to ultimately impose a death sentence." App. p. 4186. Immediately after that the PCR judge quoted portions of the Solicitor's argument and redacted the portions where the Solicitor compares their decisions and fails to discuss the Solicitor's statements that the law places it on our shoulders and we'll do it.[17]

The PCR judge failed to address the false assertions of the Solicitor that he is extremely limited in what murder cases he can notice for death. While the PCR

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16 The Respondent suggests this might be a response to defense counsel's statement, "the question is, as the prosecution would have you believe, that death is the only answer." This comment by trial counsel in no way opens the door to the Solicitor injecting his personal opinion by specifically telling them he wants the death penalty and that he is not satisfied with a life sentence. Furthermore, this is almost the identical statement Solicitor Arial used in the Freddie Owens case. See Petition p. 52.

17 Compare PCR judge's order at 20, App. p. 4186, to Petition at 42, App. p. 2367.

judge found that all of the complained about statements were only a small part of the Solicitor's closing, he ignored the fact that there were very few pages in the Solicitor's argument where he did not stray outside the evidentiary record or inject his personal feelings into the process.

Respondent fails to address the fact that the PCR judge, ignored the vast amount of language the petitioner complained about and that the PCR judge redacted portions of it from his quotations. Respondent also determines that, "Petitioner complains that the solicitor's comments were improper, in part because they were made in connection with statements acknowledging he represented the state." Petitioner can not find this alleged complaint and would instead complain that the Solicitor inserted his personal opinion into the argument, misrepresented the law, misrepresented statements by the defense, compared his difficult decision to seek the death penalty to the jury's difficult decision to give the death penalty, told the jury he was extremely limited in the cases in which he can seek the death penalty, that he deemed this case appropriate for the death penalty, and most importantly that the trial judge failed to address the majority of these statements.

III. APPELLATE COUNSEL ADMITTED HE FAILED TO RAISE PROPORTIONALITY BECAUSE HE HAD NEVER WON IT BEFORE, AND CONSIDERING NEW EVIDENCE PRESENTED AT PCR, THE DEATH PENALTY IS INAPPROPRIATE IN THIS CASE.

If the proportionality review is "[a]n additional check against the random imposition of the death penalty",[18] it would clearly seem to be a critical stage of the proceeding. Petitioner clearly claimed in his second amended application that either trial counsel and/or appellate counsel was ineffective in not arguing the death penalty was not appropriate in this case. App. p. 3037. The PCR judge addressed the claim as one of ineffective assistance. App.p. 4178. Appellate counsel's acknowledgement that he did not raise proportionality because he had never won it, is a clear failure to test the State's case at an adversarial proceeding and would necessarily demand reversal. App. p. 3388-3389.

Furthermore, there was no evidence presented at PCR to contradict the petitioner's medical evidence that petitioner suffers brain damage so severe that his cognitive deficits give him the mental faculties of a nine year old child. This evidence is clearly relevant for a proportionality review, and trial counsel and appellate counsels' failure to present this and any other arguments for review is ineffective assistance of counsel and this Court should conduct an appropriate proportionality review as required under S.C. Code Ann. § 16-3-25(C). Finally, the United States Supreme Court has determined there is no penological purpose in executing people with the type of deficits petitioner has; furthermore, there is no penological purpose in executing those that cannot control their actions. *Hall v.*

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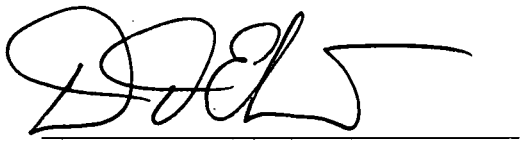
18 *State v. Shaw*, 273 S.C. 194, 211, 255 S.E.2d 799, 807 (1979).

Florida, ____ U.S. _____, No. 12-10882 (May 27, 2014); *Atkins v. Virginia*, 536 U.S. 304 (2002). The PCR judge failed to address this issue.

CONCLUSION

Williams relies on his original Petition for Writ of Certiorari for the remaining arguments in the Return. Furthermore, for all the reasons stated above as well as the reasons stated in the Petitioner for Writ of Certiorari, Williams is entitled to post conviction relief and the Writ should be granted.

Respectfully submitted,



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PROOF OF SERVICE

I certify that I have served the Reply and a Motion to Exceed Page Limit in the above case on the State of South Carolina, by depositing a copy of it in the United States Mail, delivery prepaid, to the Attorney General's Office, Attn: Donald J. Zelenka, P.O. Box 11549, Columbia, South Carolina, 29211 on this day.

March 31, 2015

Derek J. Enderlin
Attorney for Petitioner