

The Supreme Court of South Carolina

Louis Michael Winkler, Jr., Respondent/Petitioner,

v.

State of South Carolina, Petitioner/Respondent.

Appellate Case No. 2014-000904

Lower Court Case No. 2011-CP-26-03907

ORDER

This matter is before the Court on cross petitions for a writ of certiorari. Respondent-petitioner's petition for a writ of certiorari is denied. The State's petition for a writ of certiorari is granted as to Arguments 1, 2, and 4, but denied as to Argument 3.¹

¹ We refer to, and have numbered, the State's Arguments as presented on page ii of the State's petition. We grant certiorari on the following questions:

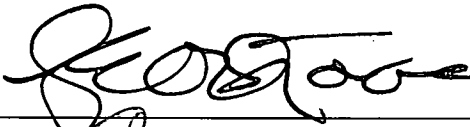
Did the PCR judge err in finding trial counsel were ineffective in failing to object when the trial judge declined to answer the jury's questions regarding the consequences of a failure to reach a unanimous verdict in a capital murder sentencing proceeding in light of the trial judge's instruction to the jury that a recommendation of either death or life imprisonment must be unanimous?

In granting relief, did the PCR judge err in failing to remand for a new sentencing proceeding?


We deny certiorari as to the following question:

Were trial counsel ineffective in failing to object to the *Allen* charges given during respondent-petitioner's sentencing proceeding?

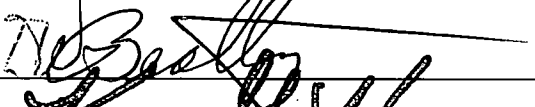
Additionally, the Court grants the issues raised as additional sustaining grounds for relief in respondent-petitioner's return to the State's petition.² The parties shall proceed to serve and file the appendix and briefs as provided by Rule 243(j), SCACR.



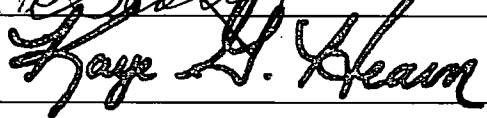
C.J.



J.



J.



J.

(Kittredge, J. not participating).

Columbia, South Carolina

July 23, 2015

cc:
Emily C. Paavola, Esquire
Alphonso Simon, Jr., Esquire
Alan McCrory Wilson, Esquire
John R. Mills, Esquire

² We have construed the issues raised by respondent-petitioner as additional sustaining grounds for relief from his death sentence in the following manner:

Did the PCR judge abuse his discretion in denying respondent-petitioner's motion to alter the PCR scheduling order and therefore err in finding respondent-petitioner failed to carry his burden of proving trial counsel were ineffective in failing to investigate mitigating evidence of brain damage?