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MAY 31 2012

S.C. SUPREME COURT

May 29, 2012

The Honorable Daniel E. Shearouse
Clerk
South Carolina Supreme Court
P.O. Box 11330
Columbia, S.C. 29211

Re: *Kevin Mercer v. State of South Carolina*, 2009-CP-32-5465
Capital PCR

Dear Mr. Shearouse:

I have recently received Respondent-Petitioner's Reply to Return to Petition for Writ of Certiorari in the above captioned case. Respondent takes the position that the additional sustaining grounds raised in Mercer's Return have been "abandoned" because they were not raised in Mercer's own Petition for Writ of Certiorari. I am writing to note that Mercer has not abandoned these claims. The PCR court granted Mercer a new sentencing trial on the ground that his trial counsel was ineffective for failing to investigate and present an *Atkins* claim at trial. Mercer's Petition for Writ of Certiorari did not challenge that relief. Rather, Mercer argued that the PCR court should have gone even further and decided his freestanding *Atkins* claim on the merits. Respondent's petition, on the other hand, *does* challenge the PCR court's decision to grant a new sentencing trial. In his Return to that pleading, Mercer raised several additional grounds on which the PCR court should also have granted a new sentencing trial. It is my understanding that these are properly raised "additional sustaining grounds." These claims could not have been raised in Mercer's own Petition for Writ of Certiorari. Moreover, this understanding was confirmed in a telephone conversation that I had with Mr. Shearouse prior to filing Mercer's Petition for Writ of Certiorari. I would like to ensure that the record is clear on this point.

Sincerely yours,

Emily C. Paavola

cc: Alphonso Simon, Esq.