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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Clarendon County
The Honorable Benjamin H. Culbertson, Circuit Court Judge
Appellate Case No. 2019-001713

ANTHONY WOODS, #06023,

Petitioner,

v.

THE STATE,

Respondent.

PETITION FOR REHEARING

Before Respondent, the State, had filed its Return to Petition for Writ of Certiorari mandated by Rule 243(g), SCACR, this Court filed an unpublished opinion granting the petition for a writ of certiorari, dispensing with further briefing, reversing the decision of the post-conviction relief (PCR) judge, and remanding for an evidentiary hearing on Woods' claim that he is intellectually disabled. *Woods v. State*, 2019-MO-044 (S.C. S.Ct., Dec. 18, 2019) (Justices Few and James not participating) (Shear. Adv. Sheets vol. 49). Pursuant to Rule 221(a), SCACR, Respondent respectfully petitions for rehearing because, by depriving Respondent of any litigant's most fundamental right in any judicial proceeding – "an opportunity to be heard in a meaningful way" before judgment is entered[1] – and accepting Petitioner's one-sided presentation

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[1] *Kurschner v. City of Camden Planning Comm'n*, 376 S.C. 165, 171, 656 S.E.2d 346, 350 (2008) "The fundamental requirements of due process include notice, an opportunity to be heard in a meaningful way, and judicial review." *Id.*

of the issues in this case, the Court may have misapprehended or overlooked the following facts and points of law:

1. For instance, the Court may have overlooked that it has failed to address the PCR judge's finding that Woods' 2018 Application is barred by the PCR statute of limitations, § 17-27-45(A) (2019). *See **2019 App. 105-08***. The Court may have further overlooked that the PCR judge's findings in his Order Granting Motion to Dismiss are supported by the record:

> This PCR action was filed on September 19, 2018, more than one year after the Supreme Court issued the remittitur following the applicant's appeal of his criminal trial and sentencing. The United States Supreme Court's decision in [*Atkins v. Virginia*, 534 U.S. 304 (2002)] (holding that the execution of an intellectually disabled person is constitutionally prohibited "cruel and unusual punishment") was the law at the time of the applicant's criminal trial and 2009 PCR. The applicant withdrew his allegation of intellectual disability as grounds for relief in his 2009 PCR, thus indicating that the applicant knew of his intellectual disability and could have ascertained facts supporting the allegation during his 2009 PCR. No appellate decision exists which holds intellectual disability to be an exception to the one-year statute of limitations or bar against successive PCR actions. Therefore, this PCR action is barred by §17-27-45 and §17-27-90.

2019 App. 107-08.

2. This Court may have likewise overlooked that its failure to hold the 2018 Application is barred by §17-27-45 is contrary to the Court's earlier, published decision in *Franklin v. Maynard*, 356 S.C. 276, 588 S.E.2d 604 (2003), where this Court recognized that intellectual disability claims are subject to the PCR statute of limitations. See *Id.* at 280 & n. 7, 588 S.E.2d at 606 & n. 7 (citing to S.C. Code Ann. § 17–27–45(B) (2003), the Court found that "[a]n applicant is not barred from raising the mental retardation issue in a second PCR application," filed within one year of the *Atkins* decision, since the new Constitutional rule announced in *Atkins* – that the Eighth Amendment bars the execution of a mentally retarded defendant - created a "substantive

standard not previously recognized or right not in existence at time of state court trial, and ... [this new rule was] intended to be applied retroactively").

However, Woods' claim was filed more than one year "after the date of actual discovery of the facts [supporting a claim of intellectual disability] by the applicant or after the date when the facts could have been ascertained by the exercise of reasonable diligence." *See* § 17–27–45(C). Accordingly, the Court may have overlooked that the PCR judge correctly found Woods' claim of intellectual disability is barred by the statute of limitations. *Id. See also In re Wood*, 648 F. App'x 388, 391 (5th Cir. 2016) ("to obtain authorization for a successive habeas petition, Wood must ... make a prima facie showing that his *Atkins* claim was previously unavailable, that he is intellectual disabled, and that his claim is not barred by the statute of limitations"); *Woods v. Buss*, 234 F. App'x 409, 411 (7th Cir. 2007) (holding petitioner's *Atkins* claim was barred by statute of limitations). *Cf. Boulb v. United States*, 818 F.3d 334, 341 (7th Cir. 2016) (holding conclusory allegations of an intellectual disability by a *pro se* petitioner do not justify an evidentiary hearing on equitable tolling).

3. Moreover, the Court rejected the PCR judge's finding that the 2018 Application was impermissibly successive under S.C. Code Ann. §17-27-90 (2019) and *Aice v. State*, 305 S.C. 448, 409 S.E.2d 392 (1991). Instead, the Court found that Woods' successive PCR application "is permissible because of extraordinary circumstances" since "there is a possibility the Constitution categorically bars Petitioner's execution." In doing so, the Court may have overlooked that its conclusion is inconsistent with both the clear legislative intent behind and the express language of §17-27-90.

In part, section 17-27-90 provides that:

> Any ground finally adjudicated ... or knowingly, voluntarily and intelligently waived in the proceeding that resulted in the conviction or sentence or in any

other proceeding the applicant has taken to secure relief, may not be the basis for a subsequent application, unless the court finds a ground for relief asserted which for sufficient reason was not asserted or was inadequately raised in the original, supplemental or amended application.

Because Woods did not include any portion of the record of the trial and original PCR proceedings in his Appendix,[2] the Court may have overlooked that initial PCR counsel made a knowing and intelligent waiver of a claim that trial counsel were ineffective for not presenting evidence Woods is intellectually disabled. Specifically, the Court may have overlooked that the record of the trial and first PCR reflects that:

- Woods' intellectual functioning was presented through separate experts retained by trial counsel and PCR counsel, and their experts opined he had borderline intellectual functioning;

- Trial counsel's failure to present evidence of Woods' intellectual disability or, as it was termed at the time of trial, mental retardation was objectively reasonable under *Strickland v. Washington*, 466 U.S. 668 (1984).

- When the defense social worker, Ms. Furtick, was asked at trial about any behavioral testing on Woods, she testified that he scored borderline on "social skills and skill abilities." On one I.Q, test, he scored a 73. He also had a girlfriend with whom he lived in New York, and he worked minimum wage jobs there. ***2015 App. 2603-04***. *See also* ***2015 App. 4816-27***; Applicant's Ex. 7 (DDSN records).

- Defense psychiatrist Dr. Harold Morgan testified that Woods was borderline mentally retarded "according to the IQ tests, but I don't think that he's mentally retarded." ***2015 App. 2629, lines 8-10***.

- Psychological testing by the psychologist at DMH, administered as part of the court-ordered evaluation of him, reflected that he was borderline mentally retarded. He had a full scale IQ of 73. "Performance IQ was found to be 81 and Verbal IQ was found to be 69." ***2015 App. 3948-51***.

4. The Court likewise may be unaware that Petitioner's suggestion initial PCR counsel dropped the claims of intellectual disability without investigating it fails to explain to this Court

[2] These proceedings are contained in the Appendix filed in *Anthony Woods v. State*, Appellate Case No. 2015-001198. Respondent would ask the Court to take judicial notice of that Appendix, which is cited herein as "***2015 App.***" For the Court's information, that case is not available in C-Track.

the manner in which initial PCR counsel raised and thereafter abandoned the claim related to intellectual disability:

- Ground C of Woods' Amended Application, dated May 1, 2012 (***2015 App. 4184-87***), asserted "Ineffective assistance of counsel ...[because] Counsel failed to conduct a reasonable investigation into Appellant's cognitive and adaptive functioning and history resulting in their failure to raise the issue of Appellant's mental retardation. In fact, it appears Counsel never even considered the possibility that Appellant could be or was mentally retarded."

- On December 31, 2013, Woods' counsel notified the PCR judge and Respondent via email that Woods was amending his allegations. Specifically, counsel said that the claim of mental retardation was withdrawn. This email further indicated that counsel would subsequently file another Amended Application.

- The PCR hearing was held on January 7-10, and 14-15, 2014.

- At the PCR hearing counsel confirmed that they were abandoning this claim after receiving the report from the South Carolina Department of Disabilities and Special Needs finding that Woods was not intellectually disabled. ***2015 App. 4816-27***) and counsel did not present this claim in the February 27, 2014 second Amended Application.

- Because Respondent and Justice James, as the PCR judge, had to accept that counsel was acting in good faith and in accordance with SCACR Rule 407, Rules 3.3(a)(1), 3.3(a)(3) and Rule 8.4(d), counsel's decision could not be challenged by either the court or Respondent.

- Also, initial PCR counsel's decision to abandon their ineffectiveness claim was hardly surprising, in light of a finding by DDSN that he was not intellectually disabled; the evidence of prior testing; the evidence of his intellectual functioning offered at trial; and the testimony of Dr. David Price, a neuropsychologist retained by collateral counsel, that Woods had borderline intellectual functioning. ***2015 App. 4735-37; 4740; 4742***.

- The Court may have overlooked that it was reasonable under *Strickland* for both PCR counsel and trial counsel to rely upon the opinions of their experts' opinions that Woods is not intellectually disabled. *Walton v. Angelone*, 321 F.3d 442, 466 (4th Cir. 2003); *Poyner v. Murray*, 964 F.2d 1404, 1419 (4th Cir. 1992); *Smith*, 311 F.3d at 676; *Walls v. Bowersox*, 151 F.3d 827, 835 (8th Cir. 1998).

- Woods "had no constitutional right to insist on the appointment of any particular expert, *Ake v. Oklahoma*, 470 U.S. 68, 83, 105 S.Ct. 1087, 1096 (1985), and the Constitution did not require trial counsel to shop around for yet another mental health expert simply because the experts that they had retained, and who

evaluated Woods, rendered what his present counsel have asserted is an unfavorable or less than desirable opinion. *Walton v. Angelone*, 321 F.3d 442, 466 (4th Cir. 2003); *Poyner v. Murray*, 964 F.2d 1404, 1419 (4th Cir. 1992); *Walls v. Bowersox*, 151 F.3d 827, 835 (8th Cir. 1998).

5. In light of the above-cited record of prior proceedings, the Court may have also overlooked that Woods' claim of intellectual disability is barred by principles of res judicata because it was raised but he knowingly and voluntarily abandoned in the original PCR action, through counsel. *See Plum Creek Dev. Co. v. City of Conway*, 334 S.C. 30, 34, 512 S.E.2d 106, 109 (1999); *Hilton Head Ctr. of S.C., Inc. v. Pub. Serv. Comm'n of S.C.*, 294 S.C. 9, 11, 362 S.E.2d 176, 177 (1987) ("A litigant is barred from raising any issues which were adjudicated in the former suit and any issues which might have been raised in the former suit") (citing *Wold v. Funderburg*, 250 S.C. 205, 157 S.E.2d 180 (1967)); *State v. Gilbert*, 277 S.C. 53, 58, 283 S.E.2d 179, 181 (1981) ("Appellants' allegations that their confessions should have been suppressed have been considered by this Court and resolved adversely to the appellants. These matters are therefore res judicata").[3]

6. The Court may have also overlooked that Woods' allegation that the experts relied upon by trial counsel and/or PCR counsel were incorrect, the experts failed to find additional facts, or that they failed to perform any testing correctly, his claim is one alleging ineffective assistance provided by the expert. This is not a cognizable Sixth Amendment claim, in the absence of proof of ineffective assistance of counsel. *E.g.*, *Wilson v. Greene,* 155 F.3d 396, 401 (4th Cir. 1998).

7. Additionally, the Court may have overlooked that its reliance upon *Robertson v. State*, 418 S.C. 505, 516, 795 S.E.2d 29, 35 (2016), is misplaced. In *Robertson*, this Court carved out a

[3] While the PCR judge rejected this argument (***2019 App. 108***), this Court may affirm based on any ground appearing in the record, Rule 220(c), SCACR. Respondent preserved the argument for this Court's review (***2019 App. 87-96***), and Respondent would have raised it as an additional sustaining ground under Rule 208(b)(2), SCACR, if it had been given the opportunity to do so.

narrow exception to the bar of claims asserting ineffective assistance of PCR counsel to harmonize different sections within the PCR Act. *Id.* at 34-36, 418 S.E.2d at 516-19. Further, the Court in *Robertson* held that some proof must be made to show both a lack of proper qualification *and* prejudice from the lack of qualification. *Id.* at 37-38, 418 S.E.2d at 520-22. The Court limited relief to "afford[ing] a hearing *on this limited issue*") *Id.* at 38, 418 S.E.2d at 522 (emphasis added).

The Court may have overlooked that, in contrast to the reasoned decision in *Robertson*, the current opinion has abandoned the statutory structure of the PCR Act and recognizes no limitation on timing or proof. This leads to precisely the type of abuse that statutes of limitations and successiveness bars work to prevent. *Cf. McIntyre v. Securities Comm'r of South Carolina*, 425 S.C. 439, 451, 823 S.E.2d 193, 199 (Ct. App. 2018), *reh'g denied* (Feb. 19, 2019), *cert. denied* (June 28, 2019) ("Without rules, especially as to evidence, there were no assurances as to the reliability of the evidence considered by the Hearing Officer, aggravating the risk Appellants would be wrongfully deprived of their property").

8. The Court may have likewise overlooked that it is uniformly accepted that an applicant seeking to file a successive action must bear some burden. *See, e.g.*, Rule 71.1(e), SCRCP; 39A C.J.S. *Habeas Corpus* § 471 ("The burden rests with the government to plead abuse of the writ of habeas corpus, and once the government properly pleads abuse of the writ, the burden shifts to the defendant to disprove the abuse."). And, the *Atkins* Court recognized that "[n]ot all people who claim to be [intellectually disabled] will be so impaired as to fall within the range of [intellectually disabled] offenders about whom there is a national consensus." *Atkins*, 536 U.S. at 317. Wholesale abandonment of the established procedural bars removes all incentive to

timely bring the claim. In fact, the this abandonment encourages a late of a bare bones claim that would then allow further and unwarranted delay.

In this regard, the Court may have overlooked that if it had required an intermediate step – such as an affidavit from a qualified examiner to the effect that upon initial review the applicant is likely to be able to meet the three prongs set out by our statute, *see Franklin*, 356 S.C. at 278-79, 588 S.E.2d at 605 (recognizing definition set out in S.C. Code Ann. § 16-3-20(C)(b)(10)) – that would have at the very least harmonized with the § 17-27-90 requirement of showing cause to excuse the procedural bars, and the limited exception of *Robertson*, which similarly imposed a specific burden of proof regarding counsel qualification. *See State v. Williams*, 831 So.2d 835, 858 n. 33 (La. 2002) ("[T]he granting of an evidentiary hearing on the issue of mental retardation is not a perfunctory matter or a ministerial duty of the trial court, and is not guaranteed to every [defendant] in every [capital] case. There is no automatic right to a hearing on the issue of mental retardation, whether the hearing is sought pre-trial, while the case is on appeal, or as post-conviction relief") (internal citation and quotation omitted); *Bowling v. Com.*, 377 S.W.3d 529, 537 (Ky. 2012) ("We hold that to be entitled to an evidentiary hearing on a claim of entitlement to the mental retardation exemption provided by KRS 532.140(1), a defendant must produce some evidence creating a doubt as to whether he is mentally retarded"); *In re Campbell*, 82 Fed.Appx. 349 (5th Cir. 2003) (denying applicant's motion for authorization to file successive federal habeas petition based on failure to make prima facie case of intellectual disability); *In re Holladay*, 331 F.3d 1169, 1173 (11th Cir. 2003) (holding that a petitioner claiming he is intellectually disabled "also must demonstrate that there is a reasonable likelihood that he is in fact [intellectually disabled]" and emphasizing that "[w]ere it otherwise, then literally any prisoner under a death sentence could bring an *Atkins* claim in a second or

successive petition regardless of his or her intelligence. No rational argument can possibly be made that this result is appropriate under [28 U.S.C. § 2244(b)]"). "Further investigation" is an open invitation to the very abuse curtailed by *Aice*.

9. The Court further overlooked that Woods has not provided this Court with an expert opinion that supports allowing his successive Application because he has not offered an opinion contradicting the experts of trial counsel, initial PCR counsel, and DDSN, and showing he is in fact, intellectually disabled, but has merely offered a series of unsworn "declarations" from various experts to support his claim:

- Each declaration states that it is states that the declarations are "affirm[ed] under penalty of perjury," but **none of the declarations are notarized and none indicate that someone authorized to administer an oath or affirmation– such as a notary public - has done so.** *Contra State v. Brandon*, 186 S.C. 448, ___, 197 S.E. 113, 114 (1938) (deputy clerk, who was merely a de facto clerk because legal requirements for her reappointment had not been complied with, was without legal authority to administer an oath upon which statutory offense of false swearing could be based); *State v. Hayward*, 10 S.C.L. 546, 549 (S.C. Const. App. 1819) (perjury may not be predicated of a criminal complaint made upon oath before a magistrate who was not authorized to administer the oath, because he had taken the oath of qualification before a person not authorized to administer it).

- The declaration of clinical psychologist Dr. Susan Knight indicates in ¶¶ 13 & 14 that "a reliable and accurate assessment of whether or not Mr. Woods meets all three criteria for a diagnosis of intellectual disability requires further investigation and evaluation, which I have not undertaken" and I recommend that Mr. Woods' attorneys conduct a complete investigation, with the assistance of appropriate experts with expertise in intellectual disability, to determine whether or not he satisfies all three criteria for a diagnosis of intellectual disability." ***2019 App. 220, ¶¶ 13 & 14.*** (Emphasis added).

- A declaration from Janet Vogelsang, a clinical social worker who testified on Woods' behalf in the original PCR proceeding, was proffered as Applicant's Exhibit 5 at the February 7th hearing in the proceedings below. ***2019 App. 258-59.*** She states that she "recognized several indicators of intellectual disability in Mr. Woods," that she relayed this information to Woods' original PCR attorneys, and that she urged original PCR "counsel to pursue this issue and provided them with a list of evidence I believed demonstrated deficits in adaptive behavior."

Counsel did not act on her "expert" opinion after receiving the report from DDSN. ***2019 App. 258, ¶¶ 2-7.***

- However, there are serious credibility problems with her unsworn declaration. First, Ms. Vogelsang testified at the PCR hearing that "clinical social worker is a mental health professional. They are trained, licensed and if they chose board certified to diagnose and treat mental, emotional and behavioral disorders." ***2015 App. 4538-39***. Although her testimony was lengthy, she never testified to the matters in her unsworn declaration. ***2015 App. 4536-4675***. She likewise admitted on cross-examination that she had only met once with Woods "for about 3 or 4 hours." ***2015 App. 4638, lines 7-11***. Importantly, she testified that she had shared all of her findings with Dr. Price (***2015 App. 4641, lines 3-20***), PCR counsel's neuropsychologist who found that Woods was not intellectually disabled. Further, at the end of cross-examination she admitted that "I did not respond correctly" to a series of questions asked of her earlier. ***2015 App. 4669, lines 12-19***. *See also Davis v. State*, 9 So.3d 539, 559 (Ala. Crim. App. 2008) (in the course of affirming the circuit court's denial of the claim trial counsel were ineffective for failing to request the services of a social worker, the Court of Appeals quoted, with approval, the following findings by the circuit judge: "'Vogelsang is a professional witness, in the sense that she goes out and interviews many different people, decides what is relevant or not, and then comes into Court and places that information before the fact-finder while insulating the actual witnesses from cross-examination. Even though this is permitted, such a process must necessarily result in a lessened weight [being] given at times to such testimony'").

10. Moreover, the Court may have overlooked that even if this Court affirms summary dismissal of the 2018 Application, Woods still has the opportunity to raise this claim in federal court provided that he can meet his burden under *Martinez v. Ryan*, 566 U.S. 1 (2012), and if he can still pursue a free-standing claim of intellectual disability in a state habeas corpus proceeding brought in this Court's original jurisdiction after he has exhausted all other remedies in state and federal court. See *Butler v. State,* 302 S.C. 466, 467, 397 S.E.2d 87, 87 (1990), *cert. denied,* 498 U.S. 972 (1990) (writ of habeas corpus issued under circumstances where there was a violation, which, in the setting, constituted a denial of fundamental fairness shocking to the universal sense of justice). *See also Tucker v. Catoe*, 346 S.C. 483, 485, 552 S.E.2d 712, 713 (2001) (granting

relief); *Drayton v. Evatt*, 312 S.C. 4, 9 n. 2, 430 S.E.2d 517, 520 n. 2 (1993). *See **2019 App. 95-96.***

11. Additionally, the Court may have overlooked that Woods' attempt to litigate his successive and time-barred Application is contrary to the recognized need for finality of litigation because he seeks to litigate issues that could have been litigated at trial and was raised butt knowingly and intelligently abandoned in his original PCR proceedings.[4] Both this Court and the United States Supreme Court have emphasized the necessity for finality of litigation in criminal cases.

"[T]he principle of finality ... is essential to the operation of our criminal justice system. Without finality, the criminal law is deprived of much of its deterrent effect." *Teague v. Lane*, 489 U.S. 288, 309 (1989). See also *Mackey v. United States*, 401 U.S. 667, 691 (1971) (Harlan, J., concurring in judgments in part and dissenting in part). Seven years after *Mackey*, this Court quoted Justice Harlan's Opinion with approval in *Anderson v. Leeke*, 271 S.C. 435, 441, 248 S.E.2d 120, 123 (1978).

The Court in *Aice* eloquently explained that:

> Finality must be realized at some point in order to achieve a semblance of effectiveness in dispensing justice. At some juncture judicial review must stop, with only the very rarest of exceptions, when the system has simply failed a defendant and where to continue the defendant's imprisonment without review would amount to a gross miscarriage of justice. *See Butler v. State*, 397 S.E.2d 87 (S.C.1990). **We can envision successive PCR applications filed for the purpose of delaying a just execution in a capital case, as well as other abuses of the reviewing system Aice urges that we establish**. For these reasons, we hold the contention that prior PCR counsel was ineffective is not *per se* a "sufficient reason" allowing for a successive PCR application under § 17-27-90.

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[4] As discussed, Woods' intellectual functioning was presented through experts retained by trial counsel and PCR counsel, and both of their experts opined he had borderline intellectual functioning, as did the court's independent examiner from DDSN. Woods' current attorneys have now found experts willing to potentially opine that he is intellectually disabled, provided that they receive more money and additional time to investigate.

> This Court has implied such a holding in the past. *See Land v. State*, 274 S.C. 243, 262 S.E.2d 735 (1980) (applicant pointed to his attorney's "inadequate" performance; held not a "sufficient reason" warranting a successive application).

Aice, 305 S.C. at 451, 409 S.E.2d at 394. (Bold emphasis added). *See also Rhines v. Weber*, 544 U.S. 269, 277-78 (2005) ("[T]hough, generally, a prisoner's "principal interest ... is in obtaining speedy federal relief on his claims,' ... not all petitioners have an incentive to obtain federal relief as quickly as possible. In particular, capital petitioners might deliberately engage in dilatory tactics to prolong their incarceration and avoid execution of the sentence of death").

The Court may have also overlooked that Woods' current attorneys originally filed what he styled as a "Placeholder" Petition for Writ of Habeas Corpus in the United States District Court for the District of South Carolina, through counsel, on April 12, 2018, *Woods v. Stirling, et al.*, No. 5:18-cv-00144-DCN-KDW, ***ECF #29***, which was ninety days after the original stay of execution was granted. ***ECF #10***. They thereafter successfully fought Respondents efforts to respond to that Petition and move this case forward. On May 10, 2018, the Honorable David C. Norton, United States District Judge, granted a stay of execution, over the State's objection, until Woods files a habeas Petition with more specific claims. ***ECF #42***. On August 1, 2018, Judge Norton filed an Order directing Woods to file his amended petition on or before Friday, September 21, 2018. ***ECF #48***. The amended Petitioner was filed only two days before that deadline.

There is simply no valid reason to reward a dilatory filing in this case that is designed to delay the proper course of the appeals process. To permit the filing of a successive application under the circumstances of this case would create an exception that would swallow the rule against successive applications, since it would mandate a second PCR hearing in every case in

which the applicant did not prevail in his first hearing. This type of needless delay is contrary to *Aice*'s recognition of the need for finality of litigation. *Aice*, 305 S.C. at 451, 409 S.E.2d at 394.

12. Both the United States Supreme Court and this Court have long recognized that, much like a criminal defendant or an inmate in post-conviction proceedings, the State is entitled to due process. *E.g.*, *Stein v. New York*, 346 U.S. 156, 197 (1953) ("The people of the State are also entitled to due process of law"); *State v. Stewart*, 283 S.C. 104, 110, 320 S.E.2d 447, 451 (1984) ("It would do well for defense counsel to remember that the people of the State as well as the defendant are entitled to a fair trial"). This is all that Respondent is seeking: an "opportunity to be heard in a meaningful way" before judgment is entered. *See Kurschner*, 376 S.C. at, 171, 656 S.E.2d at 350.

WHEREFORE, based on the foregoing reasons, the State respectfully requests that this Court grant this petition for rehearing, reconsider and rehear this matter with the benefit of Respondent's participation in the process, and issue an order affirming the PCR judge's judgment.

Respectfully submitted,

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December 27, 2019.

STATE OF SOUTH CAROLINA
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The Honorable Benjamin H. Culbertson, Circuit Court Judge
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ANTHONY WOODS, #06023,

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PROOF OF SERVICE

I, William Edgar Salter, III, counsel for the Respondent, certify that I have served the within Petition for Rehearing on the Petitioner by depositing two (2) copies of the same via U.S. mail, first class, postage prepaid to his attorneys of record, Emily C. Paavola, Esq., Justice 360, Death Penalty Resource & Defense Center, 900 Elmwood Avenue, Suite 200, Columbia, South Carolina 29201, and to Lindsey Vann, Esq., Justice 360, Death Penalty Resource & Defense Center, 900 Elmwood Avenue, Suite 200, Columbia, South Carolina 29201.

I further certify that all parties required by Rule to be served have been served.

This 27th day of December, 2019.

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