

THE STATE OF SOUTH CAROLINA
In The Supreme Court

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APPEAL FROM SUMTER COUNTY
Court of Common Pleas
William H. Seals, Jr., Circuit Court Judge

S.C. SUPREME COURT

Appellate Case No. 2019-000610

Stephen Corey Bryant,Petitioner-Respondent,

v.

State of South Carolina,Respondent-Petitioner.

Response to State's Petition for Writ of *Certiorari*

E. Charles Grose, Jr.
S.C. Bar Number 66063
The Grose Law Firm, LLC
404 Main Street
Greenwood, SC 29646
(864) 538-4466
(864) 538-4405 (fax)
Email: charles@groselawfirm.com

***Attorney for Petitioner-Respondent
Stephen Corey Bryant***

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**STATE'S
STATEMENT OF THE QUESTION PRESENTED**

Whether the PCR judge erred in denying the State's motion to dismiss the untimely and successive PCR application causing significant and unwarranted delay where a proper application of the established statutory time limitation and bar to successive actions would have prevented such delay and directed the litigation to more appropriate channels?

**STEPHEN CORY BRYANT'S¹
STATEMENT OF THE QUESTION PRESENTED**

Did the PCR court abuse its discretion by allowing Stephen Cory Bryant's successive PCR application to proceed, when Mr. Bryant alleged "extraordinary circumstances" which, if proven, would have made him ineligible for the death penalty, and when, under the unique circumstances of this case, this Court took the unusual step of limiting the prior PCR judge's discretion to continue the evidentiary hearing for "good cause" as provided for by S.C. Code Ann. § 17-27-160(C)?

STATEMENT OF THE CASE

Stephen Cory Bryant's petition for a writ of *certiorari*, filed on December 27, 2019, challenging the post-conviction relief ("PCR") court's denial of three proposed amendments to his PCR application and requesting this Court adopt a procedure requiring PCR judges to draft the final orders in PCR cases, contains a detailed Statement of the Case, at 2-10, which is incorporated into this pleading by reference.

Also on December 27, 2019, the State filed its cross-petition for a writ of *certiorari* ("State's Petition"), alleging the court below should have dismissed the PCR case that is the subject of the appeal currently pending before this Court. This response follows.

¹ Mr. Bryant's middle name is spelled "Corey" in court filings. The correct spelling is "Cory," which will be used in the body of this pleading.

STANDARD OF REVIEW

“On review of a PCR court’s resolution of procedural questions arising under the Post-Conviction Procedure Act or the South Carolina Rules of Civil Procedure, [this Court applies] an abuse of discretion standard.” *Mangal v. State*, 421 S.C. 85, 92, 805 S.E.2d 568, 571 (2017).

ARGUMENT

Did the PCR court abuse its discretion by allowing Stephen Cory Bryant’s successive PCR application to proceed, when Mr. Bryant alleged “extraordinary circumstances” which, if proven, would have made him ineligible for the death penalty, and when, under the unique circumstances of this case, this Court took the unusual step of limiting the prior PCR judge’s discretion to continue the evidentiary hearing for “good cause” as provided for by S.C. Code Ann. § 17-27-160(C)?

At the conclusion of Stephen Cory Bryant’s direct appeal, this Court issued an order, on March 3, 2011, regarding his prior PCR case, requiring, “[A]bsent an extension of time by this Court, a final hearing shall be held and a final order issued in this matter within one year of this order.” A. 1475-76 (emphasis added). Although the State’s Petition, at 11 (fn. 7), acknowledges this limitation on a PCR judge’s discretion is contrary to our state’s ordinary capital PCR procedures, the State was complacent in this procedural irregularity in Mr. Bryant’s case, even though it certainly knew similar orders were not being enforced in at least two other capital cases. The State now seeks to capitalize on this procedural irregularity and asks this Court to adopt a *per se* rule prohibiting a death-sentenced inmate from filing a successive PCR to allege he is ineligible for the death penalty because of an intellectual disability (hereinafter “*Atkins* claim”). See *Moore v. Texas*, ___ U.S. ___, 137 S. Ct. 1039 (2017); *Hall v. Florida*, 134 S. Ct. 1986 (2014); *Atkins v. Virginia*, 536 U.S. 304 (2002); and *Franklin v. Maynard*, 356 S.C. 276, 588 S.E.2d 604 (2003).

Although Mr. Bryant ultimately failed to meet his burden of proof regarding his *Atkins* claim, the court below did not abuse its discretion by allowing Mr. Bryant to pursue the *Atkins* claim in a successive PCR application. After setting forth additional procedural and factual background, this return will demonstrate why the State's request is contrary to this Court's precedent, explain why the current PCR case did not cause a significant or unwarranted delay, and discuss why the court below was the proper forum to bring the *Atkins* claim.

A. Additional Procedural and Factual Background.

The State's Petition, at 7, references Dr. Donna Schwartz Maddox's² sentencing hearing testimony but completely overlooks the significance of her role in the current PCR litigation. During Stephen Cory Bryant's sentencing hearing, Dr. Maddox testified Mr. Bryant does not have an Intellectual Disability (A. 837) and she had seen "a specific picture" of Mr. Bryant "consistent with . . . expos[ure] to alcohol in utero" (A. 814), suggesting it should be investigated whether Mr. Bryant has Fetal Alcohol Spectrum Disorder ("FASD").³ Mr. Bryant's federal *habeas* counsel provided Dr. Maddox "with information that [she] did not know before either the sentencing hearing or the post-conviction relief hearing." This information included evidence Mr. Bryant's mother

² Dr. Maddox is board certified in general psychiatry and forensic psychiatry. She has been a professor of clinical psychiatry and director of forensic services at the University of South Carolina School of Medicine. A. 806-08. The trial judge qualified her as an expert in psychiatry and forensic psychiatry. A. 808. In the prior PCR proceeding, the State stipulated she is an expert in forensic psychiatry. A. 2049. Dr. Maddox's name appears as Dr. Donna Schwartz-Watts in transcripts of prior proceedings. She has remarried. A. 4061-62.

³ During the evidentiary hearing on October 1, 2018, Dr. Maddox testified Applicant's Exhibit No. 5 is the picture she observed prior to Mr. Bryant's sentencing hearing. A. 814, 4133.

“drank alcohol and smoked marijuana” while she was pregnant. Also, Mr. Bryant was “late meeting most of his developmental milestones,” “had difficulty in school,” “failed the first grade,” obtained “only a fifth grade education [but] was passed on from grade to grade.” Based on the additional information, Dr. Maddox opined in an affidavit that “Mr. Bryant should receive a comprehensive evaluation to determine whether he suffers from Intellectual Disabilities” and “a full assessment to determine whether he meets the criteria for Fetal Alcohol Syndrome.”⁴ A. 3430-31. On May 3, 2016, attaching Dr. Maddox’s affidavit as an exhibit, Mr. Bryant filed a PCR application pursuant to *Atkins* and *Franklin*, alleging his “sentence of death violates the Eighth Amendment of the United States Constitution because he suffers from Intellectual Disabilities.” A. 3423-31.

The State moved to dismiss Mr. Bryant’s *Atkins* claim (A. 3432-45), and Mr. Bryant filed a response (A. 3446-50). At the hearing on its motion to dismiss, the State relied on the statute of limitations contained in S.C. Ann. § 17-27-45(C), *Aice v. State*, 305 S.C. 448, 409 S.E.2d 392 (1991), and *Graham v. State*, 378 S.C. 1, 661 S.E.2d 337 (2008), to argue Mr. Bryant’s claim for relief was “available for the first PCR.” The State pointed out *Atkins* was decided in June 2002 and *Franklin* was decided in

⁴ By written report dated May 8, 2018, Dr. George Woods, a physician specializing in neuropsychiatry opined:

Although Mr. Bryant’s IQ scores are marginally above those required to meet the criteria for intellectual disability, his adaptive functioning scores obtained by Dr. Everington’s testing are consistent with someone suffering from mild intellectual disability. Mr. Bryant has the stigmata of Fetal Alcohol Spectrum Disorder (FASD).

A. 3589-99. Based on Dr. Woods’ report, Mr. Bryant moved to amend his PCR application to allege his FASD should bar the death penalty or, in the alternative, is mitigation evidence not previously considered that would mitigate the sentence. A.3579-99.

November 2003 and argued “anything related to an [Intellectual Disability] claim, of course, would have been available not just for the prior PCR, but also for the plea and the sentencing proceedings.” A. 3724-25. The State acknowledged *Atkins* recognized “an absolute bar” and “an exemption” to capital punishment for someone with an Intellectual Disability but argued the procedural bars should still apply. A. 3728-32.

Counsel for Mr. Bryant pointed out federal *habeas* counsel “first discovered” the possibility of his Intellectual Disability and FASD. A. 3732; *see also* A. 3738 (“the discovery rule has also been applied to PCR actions”). Counsel pointed out *Aice* left “open the door for successive PCRs,” pointed to *Elmore v. State*, Case No. 2005-24-CP-01205, which allowed a successive PCR to adjudicate an *Atkins* claim despite “a statute of limitations problem,” noted an *Atkins* hearing requires “a lot of preparation” for the lawyers and expert witnesses, and explained an *Atkins* investigation “would necessarily take into account some factual development that might include” investigating FASD. A. 3737-40.

By written order dated July 13, 2016, the court below denied the State’s motion to dismiss. A. 3347-53.

B. The PCR court’s order denying the State’s motion to dismiss is consistent with the Uniform Post-Conviction Procedures Act and the precedent of this Court, when Mr. Bryant alleged “extraordinary circumstances” which, if proven, would have made him ineligible for the death penalty.

This Court initially addressed our state’s implementation of *Atkins* in *Franklin*, recognizing, “A death row inmate who claims he is mentally retarded⁵ and, as a result, not subject to the death penalty, may institute post-conviction relief (PCR) proceedings

⁵ *See State v. Blackwell*, 420 S.C. 127, 135, fn. 2, 801 S.E.2d 713, 717, fn. 2 (2017) (recognizing the term “intellectual disability” has replaced the term “mental retardation” since the decisions in *Atkins* and *Franklin*).

because his sentence is in violation of the Constitution and exceeds the maximum authorized by law.” 356 S.C. at 280, 588 S.E.2d at 606 (footnoted added). Since *Atkins*, the Supreme Court of the United States provided additional guidance regarding the implementation of *Atkins* in *Hall* and *Moore*. This Court provided additional guidance regarding implementation of *Atkins* and *Franklin* in *State v. Blackwell*, 420 S.C. 127, 801 S.E.2d 713 (2017). Given *Atkins*’ significance in capital litigation, it is not surprising the bench and bar have benefited from additional guidance from the supreme courts of the United States and South Carolina.⁶

The State’s petition, at 10-11, argues for an extremely restrictive application of *Franklin* which would disallow a successive PCR application in cases where the death penalty was imposed after *Atkins*. This Court recently addressed an identical issue in *Anthony Woods v. State*,⁷ rejected the State’s restrictive interpretation of *Franklin*, and held:

Because there is a possibility the Constitution categorically bars Petitioner’s execution, we hold the successive PCR application in this case is permissible because of extraordinary circumstances. *See, e.g., Robertson v. State*, 418 S.C. 505, 516, 795 S.E.2d 29, 35 (2016)⁸

⁶ The State’s Petition, at 9, invites this Court to consider this issue because it “is capable of repetition,” noting successive capital PCR cases involving *Atkins* claims are pending in *Aleksey v. State*, *Stone v. State*, and *Woods v. State*. That the bench and bar required some time to learn how to implement *Atkins* and *Franklin* was probably inevitable and reflected in decisions such as *Moore*, *Hall* and *Blackwell*. Because of the guidance provided by these cases, *Atkins* claims are being addressed and resolved pre-trial. *See, e.g., State v. Bennie Brown*, Case No. 2011-GS-30-1523-29, 1692.

⁷ The State’s Petition, at 9 (fn. 5), acknowledged *Woods* was pending before this Court on the State’s petition for rehearing when it filed its petition for a writ of *certiorari* in Mr. Bryant’s appeal. The State’s petition for rehearing in *Woods* presented to this Court arguments identical to the arguments contained in the State’s Petition in this appeal. This Court denied the State’s petition for rehearing in *Woods* on February 12, 2020.

(allowing a successive PCR application where PCR counsel was not statutorily qualified to represent the applicant); *Washington v. State*, 324 S.C. 232, 236, 478 S.E.2d 833, 835 (1996) (permitting a successive PCR application where multiple procedural irregularities, including the denial of a direct appeal, denied applicant the benefit of due process); *Gamble v. State*, 298 S.C. 176, 178, 379 S.E.2d 118, 119 (1989) (allowing a successive PCR application where the applicant unknowingly withdrew his first PCR application with prejudice); *Carter v. State*, 293 S.C. 528, 530, 362 S.E.2d 20, 21-22 (1987) (authorizing a successive PCR application where the applicant did not have PCR counsel that differed from his trial counsel); *Case v. State*, 277 S.C. 474, 475, 289 S.E.2d 413, 414 (1982) (allowing a successive PCR application where the applicant's first PCR application was dismissed without the assistance of legal counsel and without a hearing). Accordingly, we reverse the order of the PCR court and remand this matter for a hearing on Petitioner's PCR application dated June 3, 2019.

S.C.S.Ct. Op. No. 2019-MO-044 (filed Dec. 18, 2019) at *1 (footnote added). Although *Woods* is an unpublished opinion, lacking precedential value pursuant to Rule 268,

⁸ The State's Petition, at 11-12, offers an overly narrow interpretation of *Robertson*. Although *Robertson* addressed a specific issue—the procedure to be followed when initial PCR counsel in a capital case does not meet the statutory qualifications—*Robertson* was the latest in a line of cases (summarized in *Woods*) allowing a successive PCR application in exceptional circumstances.

The State's Petition, at 12, also criticizes the PCR judge's order for not considering the existence of "some proof" of the allegation and resulting prejudice. As a threshold matter, the State raises this argument for the first time on appeal, not having called this alleged error to the attention of the PCR court. *State v. Field*, No. 2018-001042, 2020 WL 1163967 (S.C. Mar. 11, 2020) (held State did not preserve, for purposes of appeal, its claim that sentencing court did not have the authority to give defendant credit for the entire 15 months that defendant served on house arrest). The PCR judge's order, however, recognized Mr. Bryant's PCR application, which was based on the affidavit of Dr. Maddox which opined, "Mr. Bryant should receive a comprehensive evaluation to determine whether he suffers from Intellectual Disabilities." A. 3430-31. This Court has long recognized, "Where an applicant alleges facts that would establish an exception to either the statute of limitations or the prohibition against successive PCR applications and those facts are not conclusively refuted by the record before the PCR court, a question of fact is raised which can only be resolved by a hearing." *Robertson*, 418 S.C. at 519, 795 S.E.2d at 36 (quoting *McCoy v. State*, 401 S.C. 363, 369, 737 S.E.2d 623, 626 (2013)). *Franklin* (and *Woods*) recognized the inherent prejudice resulting from a person with an intellectual disability being subjected to capital punishment.

SCACR, the opinion cites longstanding precedent from this Court authorizing successive PCR applications under these circumstances. *Woods* is also consistent with the discovery rule, which this Court recognizes applies in PCR cases. *See, e.g., McCoy v. State*, 401 S.C. 363, 737 S.E.2d 623 (2013).⁹ The Court below, accordingly, did not abuse its discretion by allowing Stephen Cory Bryant to investigate and pursue his *Atkins* claim.

C. Stephen Cory Bryant’s current PCR application did not cause significant and unwarranted delay, particularly under the unique circumstances of this case where this Court took the unusual step of limiting the prior PCR judge’s discretion to continue the evidentiary hearing for “good cause” as provided for by S.C. Code Ann. § 17-27-160(C).

The State’s Petition, at 9, argues, “The delay was unwarranted under a plain reading of the statute.” Yet, the State’s Petition, at 11 (fn. 7), acknowledges that, ordinarily, “a capital PCR action is structured to provide intensive review by counsel with heightened qualifications, *assisted by multiple experts, in a virtually limitless time period for case develop[ment]*” (emphasis added). Stephen Cory Bryant’s cross-petition for a writ of *certiorari*, at 17-21, discusses South Carolina’s ordinary post-conviction procedures, including this Court’s admonition, “[T]he interests of justice require PCR courts to be flexible with procedural requirements *before* PCR applicants suffer

⁹ The State’s Petition, at 15, acknowledges S.C. Code Ann. § 17-27-45(C), allowing consideration of “evidence of material facts not previously presented and heard that requires vacation of the conviction or sentence,” but argues for the application of the one year limitation period “after the date of actual discovery or after the date when the facts could have been ascertained by exercise of reasonable diligence.” As seen, Mr. Bryant brought the underlying PCR action within one year of his federal *habeas* counsel discovering evidence supporting a potential *Atkins* claim. Had this Court’s order dated March 3, 2011 (A. 1475-76) not unreasonably limited the time available to prior PCR counsel, then prior counsel would have been able to discover and present the claim through an amended PCR application. *Love v. State*, 428 S.C. 231, 834 S.E.2d 196 (2019) (denial of motion to amend application for postconviction relief was abuse of discretion); *Mangal* 421 S.C. at 99-100, 805 S.E.2d at 576 (“We encourage trial courts in PCR cases to use the discretion we grant them on procedural matters to find reasonable ways—within the flexibility of our Rules—to reach the merits of substantial issues.”).

procedural default on substantial claims. Such flexibility is consistent with the purpose and spirit of our Rules of Civil Procedure.” *Mangal*, 421 S.C. at 99, 805 S.E.2d at 575 (emphasis original) (citing *Martinez v. Ryan*, 566 U.S. 1 (2012) and *Simmons v. State*, 416 S.C. 584, 788 S.E.2d 220 (2016)).

Mr. Bryant, however, did not receive these procedural safeguards during his prior PCR case because this Court departed from the ordinary procedures, on March 3, 2011, when it ordered, “[A]bsent an extension of time by this Court, a final hearing shall be held and a final order issued in this matter within one year of this order.” A. 1475-76 (emphasis added). As pointed out in his cross-petition for a writ of *certiorari*, at 19, Mr. Bryant identified only two other cases where this Court issued orders requiring capital PCR cases to be resolved within one year—*Starnes v. State*, Case No. 2011-CP-32-00830 and *Torres v. State*, Case No. 2011-CP-42-01851. A. 3648-70. Both *Starnes* and *Torres* remain pending in the Circuit Courts. As discussed in more detail in Mr. Bryant’s cross-petition for a writ of *certiorari*, see, e.g., at 18-20, this Court’s order of March 3, 2011 played a role in expediting Mr. Bryant’s initial PCR case and preventing prior PCR counsel from having the time to investigate, develop, and present Mr. Bryant’s *Atkins* and FASD claims.¹⁰

¹⁰ This Court consistently recognizes the assistance of counsel is necessary to develop PCR claims, particularly in capital cases where the issues are more complicated or require expert testimony. See, e.g., *Robertson*, 418 S.C. at 517, 795 S.E.2d at 35 (“We believe it is unreasonable to think that an indigent PCR applicant, who relies on the State to appoint qualified counsel, would have the knowledge to question counsel’s qualifications at the onset of the proceeding.”); *Council v. Catoe*, 359 S.C. 120, 128, 597 S.E.2d 782, 786 (2004) (mentally incompetent defendant’s assistance in providing “evidence of social history and mental competency at the PCR hearing” was not necessary because “this form of testimony generally comes from family and social history records, from mental health records, and from experts qualified to opine that respondent is mentally ill.”).

Although *Robertson* addressed a different issue—the procedure to be followed when initial PCR counsel in a capital case does not meet the statutory qualifications—*Robertson* is an example of this Court recognizing and correcting the role it played in creating the underlying issue. In dismissing *Robertson*’s successive PCR application, “the PCR judge referenced a memorandum issued by” this Court (and published on its website) regarding the qualifications of PCR counsel in capital cases. 418 S.C. at 512, fn. 10, 795 S.E.2d 32, fn. 10. In *Robertson*, this Court recognized the reasoning contained in this memorandum to be incorrect and endorsed a procedure to remedy any prejudice potentially resulting from appointment of counsel not meeting the statutory qualifications.¹¹

Additionally, the State was complicit in the selective enforcement of this Court’s order expediting Mr. Bryant’s prior PCR case because the Attorney General’s Office was certainly aware that the PCR judges were not following the similar orders of this Court in *Starnes* and *Torres*. See, e.g., *Dickerson v. State*, transcript of proceedings, A. 3657-61 (Attorney General acknowledging the PCR judge in *Torres* “called the Supreme Court and said this [one] year [limitation] is not realistic.”). That the State would allow Mr. Bryant’s prior PCR case to be expediated when it was aware of the contrary procedures followed in *Starnes* and *Torres* seems inconsistent with its “specific obligations to see the defendant is accorded procedural justice.” *State v. Jones*, 343 S.C. 562, 578, 541 S.E.2d 813, 822 (2001).

¹¹ This Court has acknowledged the role it played in providing inaccurate information to the bench and bar in other contexts. E.g. *State v. Beaty*, 423 S.C. 26, 34, fn. 2, 813 S.E.2d 502, 506, fn. 2 (2018) (“We acknowledge the general sessions benchbook this Court previously supplied to all circuit judges contained language virtually identical to the disputed language employed by the trial judge.”).

This Court, therefore, should reject the notion Mr. Bryant's current PCR application caused "unwarranted" delay.

D. The Circuit Court is the proper forum for Stephen Cory Bryant to develop evidence supporting PCR claims, particularly under the unique circumstances of this case where this Court took the unusual step of limiting the prior PCR judge's discretion to continue the evidentiary hearing for "good cause" as provided for by S.C. Code Ann. § 17-27-160(C).

The State's issue statement contends Mr. Bryant's *Atkins* and FASD claims should be directed "to more appropriate channels." State's Petition at 2. The State does not argue this point, other than making cursory statements that, if the court below had dismissed the current action, then "the matter would have returned to federal court in July of 2016." *Id.*, at 9; *see also, id.*, at 14 (fn. 8) (Mr. "Bryant still has his federal habeas remedies.").¹² The Circuit Court was the appropriate forum to litigate Mr. Bryant's *Atkins* claim and, as set forth in Mr. Bryant's cross-petition for a writ of *certiorari*, remains the appropriate forum to investigate, develop and present his FASD claim, particularly in light of the unique circumstances of this case. *See, e.g., O'Sullivan v. Boerckel*, 526 U.S. 838, 844 (1999) ("Comity thus dictates that when a prisoner alleges that his continued confinement for a state court conviction violates federal law, the state courts should have the first opportunity to review this claim and provide any necessary relief."). As discussed in Subsection C and in Mr. Bryant's cross-petition for a writ of *certiorari*, this Court's order of March 3, 2011 played a role in expediting Mr. Bryant's

¹² The State's Petition, at 14 (fn. 8), also suggests that a state *habeas corpus* petition, brought in the original jurisdiction of this Court, might be the appropriate forum; however, that suggestion overlooks this Court's consistent holdings that a PCR application is the appropriate forum to raise an *Atkins* claim. *See Franklin and Woods, supra.*

initial PCR case and preventing prior PCR counsel from having the time to investigate, develop, and present his *Atkins* and FASD claims.

Although the South Carolina Circuit Court has now adjudicated Mr. Bryant's *Atkins* claim, it has not had the first opportunity to adjudicate his FASD claim. As seen above, Mr. Bryant's federal *habeas* counsel provided Dr. Maddox "with information that [she] did not know before either the sentencing hearing or the post-conviction relief hearing." Based on the additional information, Dr. Maddox opined in an affidavit that "Mr. Bryant should receive a comprehensive evaluation to determine whether he suffers from Intellectual Disabilities" and "a full assessment to determine whether he meets the criteria for Fetal Alcohol Syndrome." A. 3430-31. Mr. Bryant's subsequent investigation ultimately led Dr. George Woods, Jr.,¹³ a physician specializing in neuropsychiatry,¹⁴ to opine:

Although Mr. Bryant's IQ scores are marginally above those required to meet the criteria for intellectual disability, his adaptive functioning scores obtained by Dr. Everington's testing are consistent with someone suffering from mild intellectual disability. Mr. Bryant has the stigmata of Fetal Alcohol Spectrum Disorder (FASD).

A. 3589-99.

¹³ Dr. Woods graduated from Westminster College in Salt Lake City, Utah in 1969 and the University of Utah Medical Center in 1977. He completed a medical internship at Alameda County General Hospital in Oakland, California, a psychiatric residence at Pacific Medical Center in San Francisco, California, and a fellowship with the National Institute of Mental Health and the American Psychiatric Association in geriatric psychopharmacology. He has been in private practice since 1983, specializing in developmental disorders and geriatric psychiatry. The PCR judge qualified Dr. Woods as "an expert in clinical and forensic neuropsychiatry with a specialty in developmental disorders." A. 3866-71; *see also* Applicant's Exhibit No. 1, A. 4090-4111.

¹⁴ "Neuropsychiatry is the study of the brain and how it impacts behavior. It is really more focused toward the medical and neurological aspects of brain behavior rather than the psychological aspects." A. 3867.

Based on Dr. Woods' report, Mr. Bryant moved to amend his PCR application to allege his FASD should bar the death penalty or, in the alternative, is mitigation evidence not previously considered that would mitigate the sentence. A. 3579-99. As discussed in more detail in Mr. Bryant's cross-petition for a writ of *certiorari*, allowing these proposed amendments is consistent with the Rules of Civil Procedure, the Uniform Post-Conviction Relief Act, and this Court's prior precedent. It is also consistent with the discovery rule. *McCoy* (discovery rule applies to PCR actions).

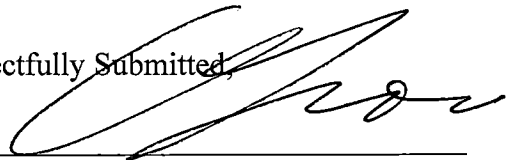
For the reasons set forth in this pleading, the Circuit Court was the appropriate forum for Mr. Bryant to litigate his *Atkins* claim. For the reasons set forth in this pleading and Mr. Bryant's cross-petition for a writ of *certiorari*, the Circuit Court is the appropriate forum for Mr. Bryant to litigate his FASD claim, which was discovered during the proceedings below. *McCoy, supra*.

CONCLUSION

For the foregoing reasons, this Court should deny the State's cross-petition for a writ of *certiorari*.

Respectfully Submitted,

By



E. Charles Grose, Jr.
S.C. Bar Number 66063
The Grose Law Firm, LLC
404 Main Street
Greenwood, SC 29646
(864) 538-4466
(864) 538-4405 (fax)
Email: charles@groselawfirm.com

Attorney for Stephen Cory Bryant

March 27, 2020
Greenwood, South Carolina

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM SUMTER COUNTY
Court of Common Pleas
William H. Seals, Jr., Circuit Court Judge

Appellate Case No. 2019-000610

Stephen Corey Bryant,Petitioner-Respondent,

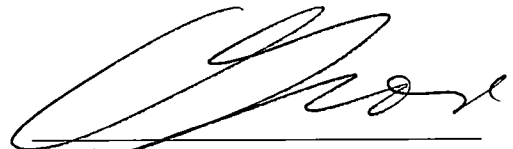
v.

State of South Carolina,Respondent-Petitioner.

Certificate of Service

I certify that I have served this pleading on the State of South Carolina by placing a copy in the United States Mail, postage prepaid, on the date reflected below, addressed to:

Melody J. Brown, Esquire
S.C. Attorney General's Office
PO Box 11549
Columbia, SC 29211-1549



E. Charles Grose, Jr.
The Grose Law Firm, LLC
404 Main Street
Greenwood, SC 29646
(864) 538-4466
E-mail: charles@groselawfirm.com

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