CLERK OF COURT
PICKENS COUNTY
SOUTH CAROLINA
2020 MAY 20 P 1:32

STATE OF SOUTH CAROLINA) COUNTY OF PICKENS)) Jerry Buck Inman, #5256) a/k/a Jerry Buck Inmon,)) Applicant,) versus)) State of South Carolina,)) Respondent.)	IN THE COURT OF COMMON PLEAS THIRTEENTH JUDICIAL CIRCUIT CASE NO. 2012-CP-39-00918 (Capital PCR) **ORDER DENYING RULE 59(e) MOTIONS**

After careful consideration of the able arguments of Counsel in their respective RULE (59) MOTIONS: the Applicant's and his Proffer of Proposed Order, dated April 30th, 2020; the Respondent's, dated May 1, 2020; the Applicant's Response in Opposition to the State's Rule 59(e), SCRCP Motion, dated May 8, 2020; and the Respondent's Response to Applicant's Rule 59(E) Motion, dated May 13, 2020, and a review of the record, the Court is unable to discover any material fact or principle of law that either has been overlooked or disregarded, and further finds no error of law or fact that has not been appropriately considered.

Accordingly, the respective **RULE 59(e), SCRCP, MOTIONS** [1] of the Applicant, dated April 30, 20202, the Respondent's, dated May 1, 2020, and the Applicant's Response in Opposition to the State's RULE 59(e), SCRCP Motion, dated May 8, 2020, and Respondent's Response to Applicant's Rule 59(E) Motion, dated May 13, 2020, are **DENIED.**

AND, IT IS SO ORDERED.

ALEXANDER S. MACAULAY, Presiding Judge

Walhalla, South Carolina
May 18, 2020

[1] The Court, in its discretion, has determined these Motions on the filings, without oral argument, pursuant to Rule 59(f), SCRCP.

CLERK OF COURT
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ADDENDUM

Under the rubric that: "The record here shows no evidence of any bias or improper influence," the Respondent, cites: *Inman*, 395 S.C [539] at 570, 720 [S.E.2d 31] at 48 ("A judge is presumed to weigh evidence properly.") (Pleicones, J. concurring). RESPONDENT'S RULE 59(E) MOTION (MAY 1, 2020), ¶ 5 at pp. 9 & 10, to which this court concurs completely; and, therefore, has entered the within **ORDER DENYING RULE 59(e) MOTIONS** of the Applicant and Respondent.

Nevertheless, exception must be taken to the application, in the instant case, of the proposition that:

> "Similar *paternalistic* approaches in legal decisions on constitutional rights have been soundly rejected on appellate review in favor of the individual's right to make his own decisions. *State v. Rivera*, 402 S.C. 225, 243, 741 S.E.2d 694, 703 (2013) "(finding the trial court erred in preventing defendant from testifying, noting 'It is apparent the trial court, like defense counsel, was operating under the *paternalistic* belief that it wanted to protect Appellant from potentially undermining his own defense.'"

RESPONDENT'S RULE 59 (E) MOTION, *supra* (emphasis supplied).

Inasmuch as the writer, here, was "the trial judge" in *Rivera*, I am compelled to set the RECORD, in that case, correct here.

Unfortunately, due to a non-judicial event, the trial judge to whom the capital murder trial, *State v. Rivera*, Indictment No. 2007-GS-04-0649, had been assigned, for some time, and who had conducted all pretrial proceedings and was directly involved in hearing all other matters in the case, could no longer continue as trial judge. Therefore, approximately two weeks before the *Rivera* trial was to commence, the case was assigned to this judge. I was not unfamiliar with the case in that, it was the trial of the "first" murder, with which the Defendant was to be charged, and

to which he had previously, voluntarily confessed during his testimony in the earlier trial of the "second" murder.

During the interim between the Defendant's two trials, it was reported that he had attempted to contact the family of his victim in the first murder that was, then, pending. As reflected by the attached newspaper account, the Solicitor, the late most Honorable Christina Theos Adams, Solicitor of the Tenth Judicial Circuit, "after the death penalty was overturned in 2013," on appeal of *Rivera*, there was more to be considered than the certainty of the sentence upon retrial.

> "'The facts are truly horrific and do call out for the death penalty, and we are sure we would get the death penalty, if we went to trial,' Adams said in 2013. 'He has never shown any remorse. But it is not fair to the families to be victimized again. This plea today will really give them the closure they deserve.'" Anderson **Independent Mail**, December 29, 2016, pages 1-A and 8-A. **ATTACHMENT 1.**

Therefore, perhaps a closer reading of Justice Pleicones' concurring opinion in *Inman, supra,* might reveal something else than a critique of perceived "paternalistic approaches in legal decisions on constitutional rights" of defendants, *supra;* but, rather, the impact and effect upon the victim's family, whose rights are to be "honored and protected by law enforcement agencies, prosecutors and judges in a manner no less vigorous than the protections afforded criminal defendants," § 16-3-1505, S.C. Code (1976), in implementing "the rights guaranteed to victims in the Constitution of this State," Victims' Rights, Art. I, § 24(A)(1)(6)(12), South Carolina Constitution of 1895, "to have all rules governing criminal procedure and the admissibility of evidence to protect victims' rights." *Id.*

Justice (later, Chief Justice) Pleicones, in *Inman*, was actually addressing such "*weighty concerns*" as "the trauma the victims of these particularly heinous crimes would experience" in a trial.

> "As the United States Supreme Court has noted, interests beyond the supervision of prosecutorial behavior are implicated by a decision to grant a new trial. *United*

States v. Hastings, 461 U.S. 499, 506—507, 103 S. Ct. 1974, 76 L. Ed2d 96 (1983). Although the duty to curb prosecutorial misconduct is compelling, other ***weighty concerns*** *are also at stake, including the need* to conserve judicial resources and ***to avoid imposing additional burdens on victims.*** *Id.* at 509, 103 S. Ct. 1974. The *Hastings* Court rebuked the court below for failing to *'consider the trauma the victims of these particularly heinous crimes would experience in a . . . trial, forcing them to relive harrowing experiences now long past, or the practical problems of retrying these sensitive issues more than four years after the events.'* "

State v. Inman, 395 S.C. 539, 568—569, 720 S.E.2d 31, 47 (2011) (emphasis supplied).

Apparently, neither the record on appeal and briefs nor the arguments in *Rivera, supra*, reflected any of the basis for Solicitor Adam's concerns. Otherwise, this writer is confident that the South Carolina Supreme Court in *Rivera* would not have ignored an appropriate basis for excluding proposed testimony purporting to impugn the character or reputation of the victims with malicious, unfounded allegations pertaining to sexual conduct if, and as, determined in an *in camera* hearing. §16-3-659.1 (1) and (2), S.C. Code (1976).

Nevertheless, the Supreme Court found:

> It is also clear from the record that the trial judge appeared willing to call Appellant as a courts witness, but ultimately declined to do so because during the *peculiar proffer procedure,* Appellant indicated his intention to testify about the crime. It is apparent the *trial court*, like defense counsel, *was operating under the paternalistic belief* that it wanted to protect Appellant from potentially undermining his own defense.
>
> * * *
>
> "Other than a paternalistic desire to protect Appellant from himself, there was no basis upon which the trial court could have appropriately found Appellant's testimony to be irrelevant and therefore inadmissible. Rather, *we find the logical relevancy of Appellant's testimony is self-evident* [1]*— it pertained to the killing of the victim, which was the precise basis for the prosecution.* Indeed, it is difficult to fathom anything more logically connected to the fundamental issue in this capital

[1] "Appellant's testimony" was what the "*peculiar proffer procedure*" was all about, but the Appellant never provided any proposed testimony, only generalities that "it pertained to the killing of the victim," to which he had already confessed under oath in the first trial—but without details, even in mitigation, unless it had something to do with the victims' "conduct" and/or "reputation." It would have been helpful if the Supreme Court could have identified what the "Appellant's testimony" was or would have been, inasmuch as the Appellant had been asked, repeatedly, to provide such, as can be required of any witness who seeks to testify, to assure that "its probative value is [**not**] substantially outweighed by the danger of unfair prejudice," then, even "*relevant evidence may be excluded.*" Rule 403, SCRE (emphasis supplied).

> murder trial than a defendant's own testimony about the killing." (5th Cir. 1985, cite omitted).
>
> * * *
>
> Further, although the trial judge relied upon Rule 403, SCRE, as an additional *basis for excluding Appellant's testimony*, it is clear that his ruling was erroneously based upon his *concern that Appellant's testimony would be prejudicial to Appellant*. Again, while this concern may have been well founded, it is not a proper basis for disallowing the testimony of the accused. Thus we find it was error to exclude Appellant's testimony pursuant to Rule 403, SCRE.

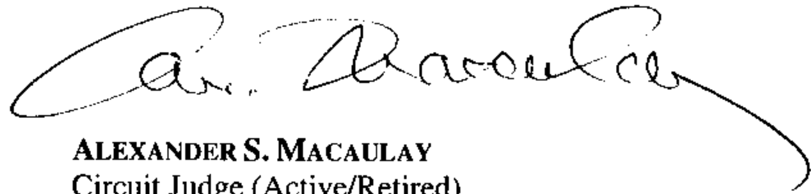
State v. Rivera, 402 S.C. at 243-244, 741 S.E. 2d at 703-704 (emphasis supplied).

Regardless, Rule 402, SCRE, expressly provides that:

> All relevant evidence is admissible, except as otherwise provided by the Constitution of the United States, the *Constitution of the State of South Carolina, statutes,* these rules, or by other rules promulgated by the Supreme Court of South Carolina. See, also, Rule 403, SCRE, fn. 1.

In this regard, there is the above-cited South Carolina Constitution's Article I, Section 24(A)(1)(6)(12), Victims' Bill of Rights, and the Code of Laws of South Carolina (1976) that declares it is the intent of the General Assembly to implement those rights guaranteed to victims "to be 'treated with dignity, respect, courtesy, and sensitivity' . . . protected by ... prosecutors and judges in a manner no less vigorous than the protections afforded criminal defendants," §16-3-1505, to include immediate family members of a homicide victim, §16-3-1110 (8), *supra,* and §16-3-659.1(1), and that "evidence of the victim's sexual conduct is not admissible [except in specific instances] if the judge finds . . . that its inflammatory or prejudicial nature does . . . outweigh its probative value," and, further, that: the "Court shall order an in camera hearing to determine whether the proposed evidence is admissible under subsection (1)." §16-3-659.1 (2). See: ***<u>EX PARTE ORDER</u>*****, REFERRING MOTIONS FOR ATTORNEY FEES, COSTS** and **FUNDS FOR EXPERT SERVICES, <u>In Re: State of South Carolina v. Raymondeze Rivera,</u>** Indictment No. 2007-GS-04-0649, May14, 2013, pages 2-3. **ATTACHMENT 2.**

Respectively submitted,



ALEXANDER S. MACAULAY
Circuit Judge (Active/Retired)

May 18, 2020
Walhalla, South Carolina

ATTACHMENT 1

Independent
THURSDAY, DECEMBER 29, 2016
PART OF THE USA TODAY NETWORK

Solicitor Chrissy Adams remembered as devoted

Adams' biggest cases

MIKE ELLIS
MIKE.ELLIS@INDEPENDENTMAIL.COM

Solicitor Chrissy Adams, the chief prosecutor for Anderson and Oconee counties for 12 years, was proud to handle the biggest cases from her community.

Adams, 49, died Tuesday after fighting cancer for more than a decade.

She recognized in a November 2015 interview with the *Independent Mail* that many of her decisions had been controversial.

"It comes with the territory," she said. "I'm elected to do a job that a solicitor should do and it's not to punt the hard things. I'm not going to back down on making a decision based on facts and law. My job is to preserve the sanctity of the judicial system."

Here are a few of the major cases Adams handled as solicitor:

Raymondeze Rivera

Kwana Burns was strangled to death in 2006, with her 2-year-old in the home.

Raymondeze Rivera was convicted of killing her, and another single mother, and received a death penalty for Burns' death.

The death penalty was overturned in 2013 and instead of going through another trial, Adams decided to make a plea deal for a second life sentence for Rivera.

Both of the life sentences, the other for the murder of Asha Wiley, have no chance for appeal or release from prison.

Adams said the life sentence was preferable to the trauma of another trial for family members, including Burns' daughter and son.

Rivera had thrived on attention during his court appearances, mugging for cameras and taunting the family before begging a jury to convict him and give him a death sentence.

"The facts are truly horrific and do call out for the death penalty, and we are sure we would get the death penalty if we went to trial," Adams said in 2013. "He has never shown any remorse. But it is not fair to the families to be victimized again. This plea today will really give them the closure they deserve."

ATTACHMENT 2

STATE OF SOUTH CAROLINA	)	IN THE COURT OF GENERAL SESSIONS
COUNTY OF ANDERSON	)	TENTH JUDICIAL CIRCUIT
In Re:	)	
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
versus	)	Indictment No. 2007-GS-04-0649
	)	
RAYMONDEZE RIVERA,	)	
Defendant.	)	

EX PARTE ORDER
REFERRING MOTIONS FOR ATTORNEY FEES AND COSTS
and FUNDS FOR EXPERT SERVICES

Pursuant to S.C. Code Ann. § 16-3-26(C) and § 17-27-160(B) (2003), separate *ex parte* motions have been made to the Chief Judge for Administrative Purposes, Tenth Judicial Circuit. Upon review of the motions, it appears that the undersigned was the trial judge in the above-referenced death penalty prosecution whose conviction and sentence were reversed and vacated, respectively, by the South Carolina Supreme Court. *State v. Raymondeze Rivera*, Op. No. 27220 (S.C. Sup. Ct. filed February 13, 2013) (Shearouse Adv. Sh. No. 7 at 43).

The Opinion of the Supreme Court was based on the assumption that:

> It is also clear from the record that the trial judge appeared willing to call Appellant as a court's witness, but ultimately declined to do so because during *the peculiar proffer procedure*, Appellant indicated his intention to testify about the crime. *It is apparent the trial court, like the defense counsel, was operating under the paternalistic belief that it wanted to protect Appellant from potentially undermining his own defense.*
>
> * * *
>
> Other than *a paternalistic desire to protect Appellant* from himself, there is *no basis upon which the trial court could have appropriately found* Appellant's testimony to be irrelevant and therefore inadmissible.

Ibib., at pp. 59-60. (Emphasis supplied).

Nevertheless, as reflected in the Defendant's Motions:

> "Just before the trial the Defendant exhibited some bizarre and self-destructive behavior. Specifically, the **Defendant wrote multiple letters to the victim's family**. **The letters** contained bizarre religious references and also **indicated that the Defendant had a relationship with the mother of the victim**. It is clear beyond dispute that the Defendant did not even know the victim or her mother."

***EX PARTE* MOTIONS FOR ATTORNEY FEES AND COSTS** and **FUNDS FOR A PSYCHIATRIST** (dated May 29, 2013, at page 3). (Emphasis supplied).

Apparently neither the Record on Appeal nor the Arguments reflected any of this. Otherwise, this Court is confident that our Supreme Court would not have ignored the fact that there was an appropriate basis — rather than a seemingly personal "paternalistic belief" or "desire to protect Appellant from himself" — "upon which the trial court could have appropriately found Appellant's testimony to be irrelevant and therefore inadmissible."

FIRST, there is the South Carolina Constitution, Article I, Section 24, Victims' Bill of Rights, which provides, *inter alia*, that:

> "(A). To preserve and protect victims' rights to justice . . . , victims of crime have the right to:
>
> (1) be treated with fairness, respect, and dignity, and to be free from *intimidation, harassment, or abuse*, throughout the criminal . . . justice process, . . . ;
>
> * * *
>
> (6) be reasonably protected from the accused or persons acting on his behalf throughout the criminal justice process;
>
> * * *
>
> (12) have all rules governing criminal procedure and *the admissibility of evidence in all criminal proceedings protect victims' rights* . . . .
>
> * * *
>
> (C) For purposes of this section:
>
> * * *
>
> (2) "Victim" means a person who suffers direct or threatened . . . psychological . . . harm as the result of the commission . . . of a crime against him. The term "victim" also includes the person's . . . parent, child . . . of a crime

victim who is deceased . . . or who was a homicide victim . . . ." (Emphasis supplied).

The General Assembly has declared its intent "to implement the rights guaranteed to victims in the Constitution of this State . . . to ensure that all victims . . . of a crime are treated with dignity, respect, courtesy, and sensitivity; that the rights and services extended . . . to victims of . . . a crime are honored and protected by . . . prosecutors, and judges in a manner no less vigorous than the protections afforded criminal defendants . . . ." S.C. Code Ann. § 16-3-1505 (2003). (Emphasis supplied). In furtherance of this end, the General Assembly has provided that: "'Victim' means a person who suffers direct or threatened . . . emotional . . . harm as a result of an act by someone else, which is a crime. The term includes immediate family members of a homicide victim . . . ." S.C. Code Ann. § 16-3-1110 (8) (2003).

To protect the "victims" from defendants who would use their asserted "constitutional rights" for "intimidation, harassment, or abuse, throughout the criminal . . . justice process," our Constitution provides that "all rules governing criminal procedure and the admissibility of evidence in all criminal proceedings protect victims' rights." S.C. Const. Art. I, §24, Victims' Bill of Rights. More importantly, in the instant matter, it is expressly provided that:

> "Evidence of specific instances of the victim's sexual conduct, opinion evidence of the victim's sexual conduct, and reputation evidence of the victim's sexual conduct is not admissible [except in specific instances] if the judge finds such evidence is relevant to a material fact and issue in the case and that its inflammatory or prejudicial nature does not outweigh its probative value."

S. C. Code Ann. §16-3-659.1 (1) (2003).

It is further provided that: "The Court shall order an in camera hearing to determine whether the proposed evidence is admissible under subsection (1)." §16-3-659.1 (2) (2003).

As assumed by our Supreme Court, "the trial judged appeared willing to call appellant as a court's witness, but ultimately declined to do so because during the *peculiar proffer procedure*, the Appellant indicated his intention to testify about the crime,"— but not what that testimony would be — after repeated requests to do so. Inasmuch as the Defendant had "exhibited some bizarre and self-destructive behavior," specifically "multiple letters to the victim's family" that, *inter alia*, "indicated that the Defendant had a relationship with the mother of the victim"— when it was "clear beyond any dispute" that this was not true — the trial court could not abrogate its own Constitutional duty to have the "rules governing criminal procedure and the admissibility of evidence in all criminal proceedings protect victims' rights," to include the family of a crime victim who is deceased, a homicide victim, "to be free from intimidation, harassment, or abuse." S.C. Art. I, § 24, Victims' Bill of Rights.

Therefore, in order to avoid any question of impartiality, I am compelled to disqualify myself in this matter, Rule 501, SCACR, Cannon 3, E (1), and refer all *ex parte* and other matters to the Presiding Trial Judge for disposition in accordance with the law made and provided in such cases.

AND, IT IS SO ORDERED.

ALEXANDER S. MACAULAY
Chief Judge for Administrative Purposes
The Tenth Judicial Circuit

This 30th day of May 2013.
Walhalla, South Carolina

The Grose Law Firm, LLC
404 Main Street, Greenwood, South Carolina 29646

E. Charles Grose, Jr.
Phone: 864-538-4466 Fax: 864-538-4405
E-mail: charles@groselawfirm.com
Web: GroseLawFirm.com

CLERK OF COURT
PICKENS COUNTY
SOUTH CAROLINA
2020 MAY 20 P 1:32

May 18, 2020

The Honorable Harold P. Welborn
Clerk of Court, Pickens County
PO Box 215
Pickens, SC 29671-0215

Re: *Jerry Inmon v. State of South Carolina*
Case Number: 2012-CP-39-00918

Dear Mr. Welborn:

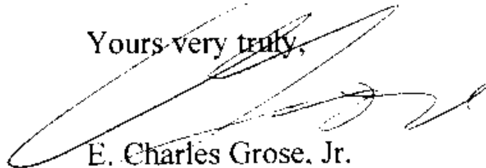
Enclosed for filing, please find Mr. Inmon's Reply to State's Response to Mr. Inmon's Rule 59(e), SCRCP Motion, along with a certificate of service.

By copy of this letter to Judge Macaulay and Ms. Brown, I am providing the Court and counsel with copies.

Thank you for your attention to this matter. Please let me know if you have any questions or require additional information.

With kindest regards, I am

Yours very truly,



E. Charles Grose, Jr.

cc: The Honorable Alexander S. Macaulay (via email and US Mail)
Diana Holt, Esquire (via email)
Melody Brown, Esquire (via email and US Mail)

CLERK OF COURT
PICKENS COUNTY
SOUTH CAROLINA

2020 MAY 20 P 1:32

State of South Carolina
Tenth Judicial Circuit Court

Oconee County
Courthouse

ALEXANDER S. MACAULAY
Circuit Judge (Active/Retired)

Post Office Drawer 428
Walhalla, SC 29691-0428

Telephone: (864) 718-1041
Facsimile: (864) 638-4267
amacaulayj@sccourts.org

May 18, 2020

Honorable Harold P. Welborn
Pickens County Clerk of Court
Post Office Box 215
Pickens, South Carolina 29671-0215

Re: Jerry Buck Inman, etc. v. State of South Carolina
Case No. 2012-CP-39-00918 (Capital PCR)

Dear Mr. Welborn:

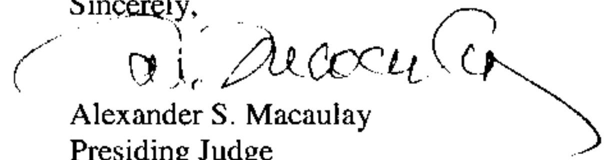
Enclosed please find the following in the above-referenced Capital PCR:

ORDER DENYING RULE 59(e) MOTIONS, with
ADDENDUM and ATTACHMENTS 1 & 2; and
FORM 4.

Please filed these with the Records of your Office and serve copies on the attorneys. Necessarily, should there be any questions, please do not hesitate to call upon me.

Thanking you for your attention to and consideration in this matter and with warmest personal regards, I remain,

Sincerely,



Alexander S. Macaulay
Presiding Judge

Enclosures

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF PICKENS
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2012 CP-39-00918 (Capital PCR)

CLERK OF COURT
PICKENS COUNTY
SOUTH CAROLINA
2020 MAY 20 P 1:32

Jerry Buck Inman, #5256, a/k/a Jerry Buck Inmon

PLAINTIFF(S)

State of South Carolina

DEFENDANT(S)

Submitted by: The Court Court	Attorney for : ☐ Plaintiff ☐ Defendant or ☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.

☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other

☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other

☐ **STAYED DUE TO BANKRUPTCY**

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (*CHECK APPLICABLE BOX*): ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☒ See attached order (formal order to follow) ☐ Statement of Judgment by the Court:

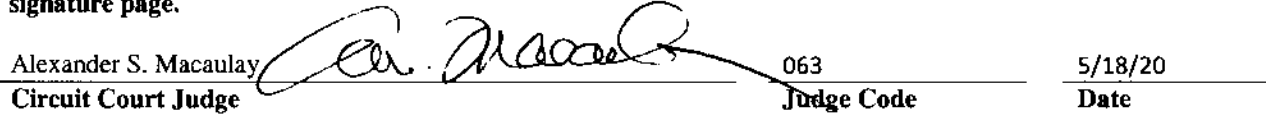
ORDER INFORMATION

This order ☐ ends ☒ does not end the case.
Additional Information for the Clerk :

INFORMATION FOR THE JUDGMENT INDEX Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.		
Judgment in Favor of (List name(s) below)	**Judgment Against (List name(s) below)**	**Judgment Amount To be Enrolled (List amount(s) below)**
		$
		$

		$
If applicable, describe the property, including tax map information and address, referenced in the order:		

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**
E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.



Alexander S. Macaulay	063	5/18/20
Circuit Court Judge	**Judge Code**	**Date**

For Clerk of Court Office Use Only

This judgment was entered on the day of , 20 and a copy mailed first class or placed in the appropriate attorney's box on this day of , 20 to attorneys of record or to parties (when appearing pro se) as follows:

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter:

E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

****

FORM 4C INSTRUCTIONS—JUDGMENT IN A CIVIL CASE

(Instructions for Information Only-Not to be filed with Form 4C)

1. Form 4C-Judgment in a Civil Case has been modified to add order information and enrollment instructions for the clerk of court. The purpose of Form 4 has not changed with the exception that judgment information is provided when applicable.

2. Please note that the Form 4C must be attached to all orders that include information to enroll in the judgment index. The clerk will not be responsible for reading the order to determine enrollment information.

   The attorney or prevailing party will prepare and attach the Form 4C when submitting the proposed order that includes judgment enrollment information for the judgment index. The judge will review and sign Form 4C when he or she signs an order that includes judgment enrollment information for the judgment index.

3. Form 4C is not required to be submitted to the Court with orders that do not include information to enroll in the judgment index. If the clerk receives such an order without Form 4C attached, the clerk should enter and process the order pursuant to Rule 58 and Rule 77(d), SC Rules of Civil Procedure (i.e., the clerk should serve notice of entry of the judgment by mail or provide the attorneys with copies of the signed order by other means).

4. The "Information for the Judgment Index" section should be completed when the judgment affects title to real or personal property or if any amount should be enrolled. In the "Judgment in Favor of" column, enter the name of the party to whom the judgment is awarded. In the "Judgment Against" column, enter the name of the person to whom the judgment is against. The judgment amount to be enrolled should be noted in the "Judgment Amount" column. As necessary, describe any property referenced in the order if it is to be enrolled in the judgment index. If there is no judgment information to enroll, indicate "N/A" in one of the boxes in this section of the form.

5. To enter information to accommodate multiple parties, additional Form 4Cs may be used as necessary. Additional space may be inserted on the form as necessary.

6. The section "For the Clerk of Court Office Use Only" should be completed by the clerk as it has been with the previous version of Form 4.

7. If the matter is on appeal to the Circuit Court, then the parties on the form should be changed from Plaintiff and Defendant to Appellant and Respondent.

8. If an arbitrator prepares an order after arbitration, the arbitrator should strike through "Circuit Court Judge" and indicate "Arbitrator" in the signature block.

9. If a Special Circuit Court Judge, Master in Equity, or Special Referee prepares an order after hearing a Circuit Court matter, then he or she should strike through the title "Circuit Court Judge" below the signature line and indicate the appropriate title.

10. When an Order of Foreclosure is filed, neither the parties or debt owed should be listed in the Information for the Judgment Index Section, unless the foreclosure order specifically requires entry of the full judgment amount before the foreclosure sale, pursuant to Section 29-3-650 of the SC Code.

11. If the deficiency judgment is waived in a Foreclosure action, indicate N/A in the "Judgment Amount To Be Enrolled" box.

12. Foreclosure actions should be ended by the Clerk of Court upon receipt of the Order of Foreclosure. Subsequent information, including deficiency judgments, can be added to the action after the case is ended. The Master in Equity should end the action in the MIE system upon the receipt of the Order of Foreclosure.

13. When judgment enrollment information is included in the Information for the Judgment Index Section (for example, when there is a deficiency judgment), only the parties who the judgment is for and against should be included in the Section. Subordinate parties and lienholders should not be included in the box if there is not a judgment amount specifically for or against them.

14. Form 4C is not required to be attached to Transcripts of Judgment and Confession of Judgment.

STATE OF SOUTH CAROLINA)
)
COUNTY OF PICKENS)

IN THE COURT OF COMMON PLEAS

Jerry Buck Inman, #5256,
a/k/a Jerry Buck Inmon,[1]

Applicant,

vs.

State of South Carolina,

Respondent.

C/A No.: 2012-CP-39-918
(Capital PCR Action)

2020 APR 21 P 12:40
CLERK OF COURT
PICKENS COUNTY
SOUTH CAROLINA

ORDER GRANTING POST-CONVICTION RELIEF

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ATTACHMENT: 2-C, **THE STATE**—Columbia, S.C., Friday, Jan. 25, 1980

[1] Applicant has submitted documents to this Court with his last name spelled "Inmon." Because he was referred to in all previous proceedings as "Jerry Buck Inman," and was committed to the Department of Corrections under that name, the Court will refer to Applicant by the last name "Inman."

INTRODUCTION TO ORDER

This matter comes before the Court on the Application of Jerry Buck Inman for Post-Conviction Relief (PCR), filed June 21, 2012, as last amended on August 20, 2018. An evidentiary hearing was held August 20-23, 2018 in Pickens County, South Carolina. Applicant declined to attend but gave sworn responses to the Court via telephone. His appointed PCR counsel, Diana L. Holt, Esquire, and E. Charles Grose, Jr., Esquire, represented the Applicant, Mr. Inman. Senior Assistant Deputy Attorney General Melody J. Brown, with Assistant Attorneys General, Sherrie Butterbaugh and DeShawn H. Mitchell, represented Respondent.

At the conclusion of the hearing, the Court requested proposed orders from each party in lieu of post-hearing briefing, with the opportunity for each party to respond to the other party's proposed language. After carefully considering the pleadings, transcripts, testimony and other evidence before the Court, and having also considered the able argument of counsel and each of their thorough proposed orders, this Court finds the Applicant's post-conviction relief application must be granted and remands this case to the Pickens County Court of General Sessions for a new trial before a duly summoned, examined, qualified, selected and empaneled death penalty trial jury pursuant to S.C. Code Ann. (1976), **§16-3-20(A)(B)(C)(D)(E). Punishment for Murder; separate sentencing proceeding when death penalty sought;** and **§16-3-21(A)(B)(C). Jury instruction as to verdict.**

Applicant argues §16-3-20(B) is unconstitutional based upon the decision in *Hurst v. Florida*, 577 U.S. ___, 136 S .Ct. 616, 193 L.Ed2d 504 (2016), in which the United States Supreme Court held:

> "The Sixth Amendment requires a jury, not a judge, to find each fact necessary to impose a sentence of death." 136 S. Ct. at 619.

> "The Sixth Amendment protects a defendant's right to an impartial jury.[2] This right required Florida to base Timothy Hurst's death sentence on a jury's verdict, not a judge's fact finding. Florida's sentencing scheme, which required the judge alone to find the existence of an aggravating circumstance, is therefore unconstitutional." 136 S. Ct. at 624.

In *Hurst*, as it did in *State v. Inman*, 395 S.C. 539, 556, 720 S.E.2d 31, 40 (2011):

> "The State next argues that *stare decisis* compels us to uphold Florida's capital sentencing scheme. As the Florida Supreme Court observed, this Court 'repeatedly has reviewed and upheld Florida's capital sentencing statute over the past quarter of a century.' *Bottoson v. Moore,* 833 So. 693, 695 (2002) (*per curiam*) (citing *Hildwin*, 490 U.S. 638, 109 S.Ct. 2055, 104 L.Ed/2d 728; *Spaziano*, 468 U.S. 447, 104 S.Ct. 3154, 82 L.Ed.2d 340). 'In a comparable situation,' the Florida court reasoned, 'the United States Supreme Court held:
>
>> 'If a precedent of this Court has direct application in a case, yet appears to rest on reasons rejected in some other line of decisions, the [other courts] should follow the case which directly controls, leaving to this Court the prerogative of overruling its own decisions.' *Bottoson*, 833 So.2d, at 695 (quoting *Rodriguez de Quijas v. Shearson/American Express, Inc.*, 490); see also 147 So.3d, at 446-447 U.S. 477, 484, 109 S.Ct. 1917, 104 L.Ed2d 526 (1989)); see also 147 So.3d, at 446—447 (case below).
>
> We now expressly overruled *Spaziano* and *Hildwin* in relevant part.
>
> *Spaziano* and *Hildwin* summarized earlier precedent to conclude that 'the Sixth Amendment does not require that the specific findings authorizing the imposition of the sentence of death be made by the jury.' *Hildwin,* 490 U.S., at 640-641, 109 S.Ct. 2055. Their conclusion was wrong, and irreconcilable with *Apprendi* [v. *New Jersey,* 530 U.S. 466, 120 S.Ct. 2348, 147 L.Ed.2d 435 (2000)].'" *Hurst*, 136 at 623.

Applicant's **REMAINING PCR CLAIMS:** Ineffective assistance of Trial Counsel, Ground 10 and 11(b) and Appellant Counsel, Ground 10 and 11(c), Challenges to Capital Sentencing Statute, Ground 10 and 11(e), Cumulative Effect of Errors, Ground 10 and 11(f), Denial of Fair Trial Due to Prosecutorial Misconduct, Ground 10(g), and Ground 10(h) Denial of

[2] **IMPARTIAL JURY.** Within constitutional provision is one which is of impartial frame of mind at beginning of trial, is influenced only by legal and competent evidence produced during trial, and bases its verdict upon evidence connecting defendant with the commission of the crime charged. Const. U.S. Amend. 6, *Durham v. State,* 182 Tenn. 577, 188 S.W.2d 555 (1945), 160 A.L.R. 746. Black's Law Dictionary (Rev. 4th Ed. 1968) at p.886.

Fair Trial based on Rush to Forgone Conclusion that the Sentence Would be Death, as well as the constitutionality of the capital sentencing scheme in South Carolina as it relates to the imposition and review of capital punishment, are not addressed as the further proceedings upon remand shall be consistent with the proper conduct of the trial had pursuant to this judgment of the Court. Moreover, the record of the proceedings, and the testimony received at the PCR hearing support and confirm that trial counsel diligently prepared, assiduously and aggressively represented Inman throughout the representation. Further, both trial and appellate counsel made reasoned and careful decisions to raise and present the particular issues involved at the time. Applicant's remaining freestanding claims are bared by jurisdictional limitations set out in S.C. Code § 17-27-20, accordingly, the Court denies that relief.

The Court now makes the following findings of facts and conclusions of law as required under S. C. Code (Ann.) §§ 17-27-80 and by Rules 52(a) and 71.1(a) SCRCP. *Fishburne v. State*, 427 S.C. 505, 832 S.E.2d 584 (2019).

II. PROCEDURAL HISTORY

Applicant Inman is presently a safe-keeper under a sentence of death for murder, and a term of year's sentence for other charges, pursuant to orders from the Clerk of Court for Pickens County. His charges all stem from the May 26, 2006, murder of Tiffany Souers, a Clemson University student. Ms. Souers was attacked and murdered in her apartment. She had no ties to Inman prior to his admitted crimes against her.

Inman was indicted, at a November 2006 term of Pickens County General Sessions Court, on the charges of murder (2006-GS-39-2225), kidnapping (2006-GS-39-2224), criminal sexual conduct in the first degree (2006-GS-39-2223), amended in August 2008, and burglary in the first degree (2006-GS-39-2222). [R. at 1037-1044]. The State, by and through its Solicitor of the

Thirteenth Judicial Circuit, Robert M. Ariail, Esquire, timely noticed Inman of the State's Intent to Seek the Death Penalty, on August 22, 2006, pursuant to S.C. Code § 16-3-26. By order of March 13, 2007, the Supreme Court of South Carolina assigned jurisdiction over the matter to the Honorable Edward W. Miller, Circuit Court Judge.

Mode of Trial Challenge

Motion to Determine Mode of Trial.

On August 17, 2007, pursuant to the Sixth, Eighth, and Fourteenth Amendments to the United States Constitution, Mr. Inman, by his trial counsel, James W. Bannister, Esquire, moved the trial court to determine the mode of trial to allow Inman to enter a guilty plea before the trial jury, in the guilt phase and, then, the court conduct the separate sentencing proceeding before the trial jury, under the bifurcated provisions of the South Carolina capital sentencing scheme, S.C. Code Ann. § **16-3-20. Punishment for Murder; separate sentencing proceeding when death penalty sought**, which provides, [in pertinent part,] that:

> (A) ***A person who*** is convicted of or ***pleads guilty to murder*** must be punished by death, or by a mandatory minimum term of imprisonment for thirty years to life. ***If the State seeks the death penalty*** *and a statutory aggravating circumstance is found beyond a reasonable doubt* pursuant to subsections (B) and (C), *and* ***a recommendation of death is not made, the trial judge must impose a sentence of life imprisonment.*** For purposes of this section, "life" or "life imprisonment" means until death of the offender without the possibility of parole, and, when requested by the State or the defendant, ***the judge must charge the jury*** in his instructions that life imprisonment means the death of the defendant without the possibility of parole.
>
> (B) ***When the State seeks the death penalty, upon*** conviction or ***adjudication of guilt of a defendant of murder, the court shall conduct a separate sentencing proceeding.*** In the proceeding, *if a statutory aggravating circumstance is found, the defendant must be sentenced to either death or life imprisonment. If no statutory aggravating circumstance is found, the defendant must be sentenced to either life imprisonment or a mandatory minimum term of imprisonment for thirty years to*

life. ***The proceeding must be conducted by the trial judge before the trial jury*** as soon as practicable after the lapse of twenty-four hours unless waived by the defendant. **[If trial by jury has been waived by the defendant and the State, or if the defendant pleaded guilty, the sentencing proceeding must be conducted before the judge.]** ***In the sentencing proceeding, the jury*** or *judge* ***shall hear additional evidence in extenuation, mitigation, or aggravation of the punishment.*** Only such evidence in aggravation as the State has informed the defendant in writing before the trial is admissible. This section must not be construed to authorize the introduction of any evidence secured in violation of the Constitution of the United States or the State of South Carolina or the applicable laws of either. (Emphasis supplied.)

Mr. Inman's motion and supporting memorandum of law relied on *Apprendi v. New Jersey,* 530 U.S. 466 (2000), *Ring v. Arizona,* 536 U.S. 584 (2002), and *Blakely v. Washington,* 542 U.S. 296, 307, 124 S. Ct. 2531, 159 L.Ed.2d 403 (2004).

Mr. Inman, *who did "not wish to contest his guilt," had informed his "counsel of his strong desire to acknowledge his guilt,"* ***did "not want to put the victim's family through the spectacle of a courtroom proceeding regarding his guilt," and sought "to alleviate the cruel impact the attendant media attention would have on everyone involved."*** R. 1202-3. *See,* S.C. Const., Art. I, § 24(A), Victims' Bill of Rights, [3] and S.C. Code Ann. (1976), §§ 16-3-1505 & 16-3-1510.[4]

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[3] South Carolina Constitution of 1895, Article I, Section 24(A). "To preserve and protect victims' rights to justice and due process...victims of crime have the right to:

***

(12) have all rules governing criminal procedure and the admissibility of evidence in all criminal proceedings protect victims' rights and have these rules subject to amendment or repeal by the legislature to ensure protection of these rights.

[4] § 16-3-1505. Legislative intent.

"[T]o implement the **rights guaranteed to victims in the Constitution of this State,** the General Assembly declares its intent, in this article, **to ensure that all victims of ... a crime are treated with dignity, respect, courtesy, and sensitivity**; that the rights ... extended in this article to victims of ... a crime **are honored and protected by** law enforcement agencies, **prosecutors, and judges** in a manner no less vigorous than the protections afforded criminal defendants; . . . " (Emphasis supplied).

§ 16-3-1510. Definitions.

On September 17, 2007, Judge Miller convened a hearing on Mr. Inman's motion to determine the mode of trial. Mr. Bannister, the Defense Counsel, explained:

> "***Mr. Inman wants to plead guilty***. He has a strong desire to acknowledge his guilt in both the formal legal sense and in the moral sense. He wants to accept responsibility for what he has done, regardless of what the ultimate sentence will or will not be. The only way he can adequately show the remorse he feels and acknowledge the moral guilt that he is dealing with now is ***to stand at the bar and admit to the elements of the indictment, and to have Your Honor accept that guilty plea and formally acknowledge that. He also,*** *as a subset of that,* ***wants to alleviate what he sees would be the cruel impact that the media attention in this case has already had, that impact that it would have on the both the Souers family and his own family.*** He also wants to avoid what he would consider to be the spectacle and charade of a guilt-phase proceeding. In other words, he wants to plead guilty." (Emphasis supplied.) R. 800-01.

Trial counsel argued, Mr. Inman has *a constitutional right to be sentenced by an impartial jury* while acknowledging *S.C. Code Ann. § 16-3-20(B)* statutorily mandates: "If trial by jury has been waived by the defendant and the State, or **if the defendant pleaded guilty, the sentencing procedure must be conducted before the judge,**" (emphasis supplied). The consequence of which is that, "[w]hen the State seeks the death penalty," *id.*, and the State accepts the Defendant's guilty plea, under the South Carolina statutory capital sentencing scheme, expressly provided by S.C. Code Ann. "**§ 16-3-20(B). Punishment for Murder; separate sentencing proceeding when death penalty sought,"** the State, by its own statutory mandate, thereby, preemptively precludes any participation in the bifurcated phases of that capital sentencing scheme — and more particularly, the sentencing phase — by a duly summoned, examined, qualified, selected and empaneled impartial trial jury, expressly provided by § 16-3-20(D)(E), and constitutionally

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(a) "Victim" means any individual who suffers direct or threatened physical, psychological, or financial harm as the result of the commission or attempted commission of a criminal offense, ..."Victim" also includes any individual's spouse, parent, child, or the lawful representative of a victim who is:

(b) Deceased;" . . . (emphasis supplied).

required by the Sixth Amendment to the CONSTITUTION OF THE UNITED STATES, as it has been ultimately decided in *Hurst v. Florida, supra.*, to wit:

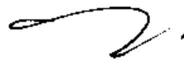
> The Sixth Amendment provides: "In all criminal prosecutions, the accused shall enjoy the right to a speedy and public *trial, by an impartial jury....*" This right, in conjunction with the Due Process Clause, requires that each element of a crime be proved to a jury beyond a reasonable doubt. *Alleyne v. United States,* 570 U.S. —, ___, 133 S. Ct. 2151, 2156, 186 L.Ed.2d 314 (2013). *Apprendi v. New Jersey,* 530 U.S. 466, 494, 120 S. Ct. 2348, 147 L.Ed.2d 435 (2000).
>
> 136 S. Ct. 616, at 621 (2016) (emphasis supplied).

Moreover, the SOUTH CAROLINA CONSTITUTION, Article 1, Section 14, explicitly provides that:

> **"The *right of trial by jury shall be preserved inviolate*. Any person charged with an offense shall enjoy the right to a speedy *and* public trial *by an impartial jury*;"** (Emphasis supplied.)
>
> "**Inviolate** means 'free from substantial impairment.' **Black's Law Dictionary** (6th Ed. 1990) at 826. It has been held that the right "*cannot be invaded or violated by either legislative act or judicial order or decree.*" *Sorrell v. Thevenir,* 69 Ohio St.3d 415, 422 (1994) (emphasis supplied).

The South Carolina statutory capital punishment scheme was enacted by the General Assembly, as Act No. 177, Section 1, 1977 Acts, "**Section 16-3-20. Punishment for Murder; Separate sentencing procedure when death penalty sought.**" Sections (A) through (E), S.C. CODE ANN. (1976). The 1977 South Carolina "Act No. 177 was patterned after the death penalty statutes of our sister state of Georgia," the constitutionality of which "was considered by the United States Supreme Court in *Gregg vs. Georgia,* 428 U.S. 153, 96 S. Ct. 2909, 49 L.Ed.2d 859 (1976)," and the Court in *Gregg* approved Georgia's death penalty statutes." *State v. Shaw,* 273 S.C. 194, 199, 202 S.E.2d 799, 802 (1979).

> "Mr. Justice Stewart, speaking for the Court in Gregg, summarized **the procedural conditions necessary to impose the death penalty:**



> In summary, *the concerns expressed in Furman* [*v. Georgia,* 408 U.S. 238, 92 S. Ct. 2726, 33 L.Ed.2d 346 (1972)] *that the penalty of death not be imposed in an arbitrary or capricious manner can be met by a carefully drafted statute that ensures that the sentencing authority is given adequate information and guidance.* As a general proposition, **these concerns are best met by a system that provides a bifurcated proceeding** *at which the* **sentencing authority is apprised of the information relevant to the imposition of sentence and provided with standards to guide its use of the information.** [*Gregg*] 428 U.S. at 195, 96 S. Ct. at 2935, 49 L.Ed.2d at 887."
>
> *State v. Shaw*, 273 S.C. at 202, 202 S.Ed.2d at 803.

In addressing "whether this State's statutory death penalty procedure is sufficiently similar to Georgia's procedure to pass constitutional scrutiny," the South Carolina Supreme Court noted that:

> "A capital **defendant's guilt** is determined in the traditional manner, by either a **judge or jury, in the first stage of a bifurcated trial.**
>
> **Upon conviction or adjudication of guilt** of a capital defendant of murder, **a separate sentence proceeding is conducted** to determine whether the capital defendant shall be sentenced to death or life imprisonment. The **sentencing proceeding is conducted before the trial jury, or if the capital defendant pled guilty** or the trial jury is waived by both the capital defendant and the State, **the sentencing proceeding is conducted before the court**. Section 16-3-20(B), Cum. Supp. 1978." *State v. Shaw*, 273 S.C. at 200.

Nevertheless, when the United States Supreme Court had compared the constitutionality of Georgia's death penalty procedure to its sister state Florida's, it found that:

> "The basic *difference between the Florida system and the* ***Georgia system*** *is that in Florida* ***the sentenced is determined*** *by the trial judge rather than* ***by the jury.*** This court has pointed out that jury sentencing in a capital case can perform an important societal function, *Witherspoon v. Illinois,* 391 U.S. 510, 519, n. 15, 88 S. Ct. 1770, 1775, 20 L. Ed.2d 776 (1968), *but it has never suggested that jury sentencing is constitutionally required.* And it would appear that judicial sentencing should lead, if anything, to even greater consistency in the imposition at the trial court level of capital punishment, since a trial judge is more experienced in sentencing than a jury, and therefore is better able to impose sentences in analogous cases. *Proffitt v. State of Florida,* (emphasis supplied), 428 U.S. 242, 252, 96 S. Ct. 2960, 2966, 49 L.Ed2d 913 (1976).

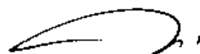
After the United States Supreme Court announced "the judgment of the court" in the "opinion...delivered by Mister Justice POWELL," in *Proffitt v. State of Florida, supra,* and noted that: *"but it has never suggested that jury sentencing is constitutionally required," id.,* the United States Supreme Court in *Hurst v. Florida,* 136 S.Ct. 616 (2016), ultimately, in fact, did hold, in cases where the State seeks the death penalty, that:

> "The Sixth Amendment protects a defendant's right to an impartial jury. This right required Florida to base Timothy Hurst's death sentence on a jury's verdict, not a judge's fact finding. *Florida's sentencing scheme, which required the judge alone to find the existence of an aggravating circumstance, is therefore unconstitutional.*
>
> The judgment of the Florida Supreme Court is reversed, and the case is remanded for further proceedings not inconsistent with this opinion." *Hurst,* 136 S. Ct. 616, at 624 (2016) (emphasis supplied).

Moreover, just as important here, was the judgment of the *Proffitt* Court that, "since *a trial judge is more experienced in sentencing than the jury,* and therefore is *better able to impose sentences similar to those imposed in analogous cases."* 428 U.S. at 252. This is in direct derogation of the, aforesaid, "procedural conditions necessary to impose the death penalty," that were recognized by our South Carolina Supreme Court in *State v. Shaw, supra,* to wit:

> "To meet the *concerns that the penalty of death not be imposed in an arbitrary or capricious manner* can be met by a carefully drafted statute that ensures the sentencing authority is given adequate information and guidance. As a general proposition these concerns are best met by a system that provides for a bifurcated proceeding at which the sentencing authority is apprised of the information relevant to the imposition of the sentence and provided with standards to guide its use of the information." *Id.,* 273 S.C. at 202, 255 S.E.2d at 803.

Furthermore, under the South Carolina death penalty complex: S.C. Code (1976) **§16-3-20. Punishment for murder; separate sentencing proceeding when death penalty sought**, if the State seeks the death penalty," for which the jurors are selected for "an impartial jury," the statutory mandate is: "if the defendant pleads guilty," not only does the trial judge become the fact finder in the "guilt phase" of the bifurcated proceeding, but the "sentencing proceeding must be



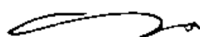
conducted before the judge," thereby conflating the "trial jury" with the "trial judge," and, even though the trial judge, necessarily, "is more experienced in sentencing than a jury," this does not, *ipso facto*, lend itself to the trial judge, necessarily, being qualified to "render a fair and impartial verdict," *infra*, in a particular case.

All potential jurors [but not the "trial judge," as Judge Hill candidly noted in his colloquy (R. at 954-55)] are asked, on their *voir dire:*

> "Can you *lay aside any outside knowledge or any information received prior to this trial,* from any source whatsoever, *and, setting aside such knowledge or information* ***render a fair and impartial verdict*** *based solely on the law and evidence presented and received in this case?* " **The South Carolina Capital Trial,** Honorable Gary E. Clary, (emphasis supplied).

The antithetical nature of this qualification to the statutory mandate that: "if the defendant pleaded guilty, the sentencing proceeding must be conducted before the judge," § 16-3-20(B), was revealed in the very first case to consider the constitutionality of the South Carolina capital punishment scheme.

In *State v. Shaw,* 273 S.C. 194, 255 S.E.2d 799 (1979), "the first capital case reviewed under our current death penalty statutes," the South Carolina Supreme Court determined that "this State's statutory death penalty procedure is sufficiently similar to Georgia's procedure to pass constitutional scrutiny," 273 S.C. at 199, 255 S.E.2d at 802, and held: "[w]e conclude, therefore, that section 16-3-20 through Section 16-3-28, Cum. Supp. 1978, are constitutional, and a sentence of death may be lawfully imposed pursuant to the statutory complex." 273 S.C. at 205B, 255 S.E.2d 804. *State v. Shaw,* 273 S.C. 194, 202, 55 S.E.2d 799, 803 (1979), thereby, became a part of the "existing case law in South Carolina and the statutes," when, "counsel informed the judge of Inman's intent to enter a guilty plea to the crimes and demand a jury trial for sentencing. After a hearing, the judge summarily denied the motion on the ground he was constrained by the existing



case law in South Carolina and the statutes," *Inman*, 395 S.C at 35, 720 S.E.2d at 545-546, but this was prior to *Hurst v. Florida, supra.*

If the judge is "more experienced in sentencing than a jury," *Proffitt v. Florida*, 428 U.S. at 252, 96 S. Ct. at 2966, it is a *complete trifecta for the State*, under § 16-3-20(B), when "the State seeks the death penalty" and the defendant pleads guilty, then, it is mandated by the statute that the Trial Jury is conflated with the Trial Judge, before whom "the sentencing proceeding must be conducted," § 16-3-20(B): *first*, the State is the prosecutor—who seeks the death penalty; *second*, the judge is "the employee of the State," *Blakely v. Washington*, 542 U.S. 296, 314, 124 S.Ct. 2531, 2543, 159 L.Ed.2d 403 (2004), who conducts the proceeding, and, *third*, the judge is the jury, who decides the facts and who sentences the defendant, all without "an impartial jury" as required, not only by the Sixth Amendment to the United States Constitution, *Hurst, supra*, but Article I, Section 14, of the South Carolina Constitution of 1895.

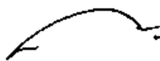
In his colloquy, Judge Miller consciously inquired whether anyone had "made any promise, prediction, or prophesy to [Inman] about what they think my sentence might be," and Inman responded, "No, sir." [R. at 954]. Judge Miller further explained:

> THE COURT: And I want to tell you right now that this is the first time I've been exposed to these facts, and that I have not made up my mind, and that I will listen fairly and impartially to everything that's presented to me.
>
> Do you understand that?
>
> DEFENDANT INMAN: Yes, sir.
>
> THE COURT: But, at the same time, you don't get the right to send me a questionnaire, and you don't get the right to question me the way you would jurors.
>
> Do you understand that?
>
> DEFENDANT INMAN: Yes, sir.

R. at 954-55.

That was the sum and substance of the waiver colloquy as it pertained to the trial judge's "impartiality" during the entire course of the trial relative to assuring that the impartiality of the trial judge was maintained as the "lone" sentencing authority, notwithstanding the explicit provision that: *"in cases involving capital punishment a person called as a juror must be examined by the attorney for the defense."* §16-3-20(D) (emphasis supplied).

Nevertheless, in order to meet the concerns expressed in *Furman v. Georgia, supra,* that the death penalty not be "imposed in an arbitrary or capricious manner," the bifurcated statutory death penalty complex approved in *Gregg v. Georgia, supra,* Act No. 177, enacted by the 1977 South Carolina General Assembly, and the protocols adopted pursuant thereto, provide that, from the time that an impartial trial jury is qualified and selected, all jurors are sequestered in appointed lodging for the duration of the entire trial, under the supervision of South Carolina Law Enforcement Division (SLED) Details of Jury Custodians, who are sworn to keep the jury sequestered and to allow no person to talk to them without leave of the court—even during the twenty-four hour respite between the bifurcated guilt phase and the sentencing phase under § 16-3-20(B), so that they are not exposed to any information about the case or any outside extrajudicial influence that might bear on their ability to serve as impartial death penalty jurors—to include any discussion of the case among themselves—before it is given to them, with proper instructions, for their deliberation and determination of each of the separate verdicts in first, the guilt phase, and then, the sentence phase, of the bifurcated proceedings. See: **OATHS OF BAILIFFS, CONSTABLES, ETC.** TO KEEP A JURY, ETC. **The South Carolina Capital Trial (September 1998)**, Honorable Gary E. Clary, Circuit Court Judge. *Infra at* p. 31. More, particularly, it was not addressed in the trial judge's colloquy with the accused, that the Trial Judge,

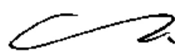


who becomes, both, the "Trier of Facts" as well as the "Sentencer," is not sequestered, even when and after Inman "pleaded guilty" and his plea was accepted by the Court.

As above noted, the trial jury is subjected to sequestration during the entire proceedings of capital trials—to protect the selected and empaneled jurors from any outside or other extra-judicial influences—under strict death sentence protocols, promulgated to protect the jurors from such extra-judicial influences that are not a part of the formal judicial process of a death penalty trial. Conversely, the trial judge is not subject to those protections afforded the trial jury. In fact, it is the duty of the trial judge to hear and determine the admissibility of all matters presented to or brought before the court for the jury's consideration, during the course of capital punishment proceedings, whether the matters are ultimately ruled admissible for the trial jury's consideration, with proper instructions, or not admitted into evidence. All such matters are to be heard and decided by the Trial Judge, and made a part of the trial record for review.

Necessarily, trial judges instruct trial juries that the duties of the jury and judge are separate and distinct, and that "it is impermissible for the judge to express his opinion to the jury, although the opinion may be based upon his experience and the best judgment," and this applies to advice to capital defendants, as well. *State v. Owens,* 362 S.C. 175, 177, 607 S.E.2d 78, 79 (2004). Furthermore, "a trial judge cannot intimate, state, comment on, or make any statement to a trial jury about the facts in a case." Circuit Court Judges' **Criminal Trial Bench Book, Tab. 1,** *Jury Instructions in Criminal Cases,* at p.34.

Inman had sought to exercise his right, once an impartial jury was empaneled pursuant to § 16-3-20(B)(C)(D), to waive his Fifth Amendment rights and plead guilty to stipulated facts upon which the jury, with proper instructions, could make an adjudication of guilt and, if its unanimous verdict was a "conviction or adjudication of guilt," § 16-3-20(B), make its unanimous finding of



any statutory aggravation for its recommendation for the sentence phase, thereby sparing the victims—the family of the decedent—a full scale trial on the facts, in the guilt phase, to protect the victim's family from the spectacle of a guilt phase proceeding, [*cf.* § 16-3-1505. "Legislative Intent of Victim's Rights Constitutional Amendment." Art. 1, § 24, *supra.*], and, yet, Inman would "stand at the bar and admit to the elements of the indictment, and . . . have Your Honor accept the guilty plea and formally acknowledge that," pursuant to § 16-3-20(A). Then, "upon conviction or adjudication of guilt of [the] defendant of murder," *supra*, pursuant to the Sixth Amendment and Article I, § 14, of the respective Federal and State Constitutions, have "the court...conduct a separate sentencing proceeding" pursuant to § 16-3-20(B) and (C), which "proceeding must be conducted by the trial judge before the trial jury as soon as practicable after the lapse of twenty-four hours unless waived by the defendant." *Id.*

Notwithstanding the constitutional guarantee that an "accused shall enjoy the right to a speedy and public *trial, by an impartial jury,*" under the United States Constitution's Sixth Amendment, and the South Carolina Constitution's Article 1, Section 14, which *"right of trial by jury shall be preserved inviolate,"* [5] the South Carolina Supreme Court in *State v. Harper*, 251 S. C. 379, 162 S.E.2d 712 (1968), was compelled to considered the constitutionality of Section 17-553.4 of the S.C. Code (1962), relating to guilty pleas, enacted by the General Assembly in 1962, approximately sixty-eight years after the enactment, in 1894, of Section 16—52, , prescribing death as the punishment for murder, unless the jury found a special verdict recommending the defendant to the mercy of the court, in which event the punishment was life imprisonment. "Under Section 17—553.4, a defendant could tender a plea of guilty of murder and, if accepted with the

[5] "**Inviolate** means 'free from substantial impairment.' Black's **Law Dictionary** (6th Ed. 1990) at 826. It has been held that the right 'cannot be invaded or violated by either legislative act or judicial order or decree.'" *Sorrell v. Thevenir*, 69 Ohio St.3d.415, 422. (1994).

approval of the court, such a plea had the same effect as a recommendation to mercy by a jury, with life imprisonment as the automatic punishment." 251 S.C. at 382—383, 162 S.E.2d at 713—714.

In *Harper*, the South Carolina Supreme Court had found that:

> "The question to be decided in this appeal is whether the ruling of the United States Supreme Court in the recent case of the United *States v. Jackson*, 390 U.S. 570, 88 S.Ct. 1209, 20 L.Ed. 138 [1968], renders constitutionally invalid the South Carolina statutory provisions relating to the imposition of the death penalty for murder. *Id.*, S.C. at 382, and S.E.2d at 713.

In *Jackson*, the United States Supreme Court had declared unconstitutional a provision of the Federal Kidnapping Act (18 U.S.C., Section 1201(a)), that was similar to the South Carolina Code (1962), Section 16—52, that prescribed capital punishment for murder, and Section 17—553.4, relating to guilty pleas, which provided that an accused who pleads guilty is a "defendant who abandons the right to contest his guilt before a jury [and] is assured that he cannot be executed," but "the defendant ingenuous enough to seek a jury acquittal stands forewarned that, if the jury finds him guilty and does not wish to spare his life, he will die." The United States Supreme Court held that: "The death penalty provisions of the Federal Kidnapping Act were, therefore, unconstitutional because the death penalty under the Act was applicable only to those defendants who assert the right to contest their guilt before a jury."

Our South Carolina Supreme Court unanimously held:

"We therefore hold that:

(1) Section 17—553.4 is unconstitutional under the test laid down in *United States v. Jackson*, 390 U.S. 570, 88 S.Ct. 1209, 20 L.Ed. 138 (1968).
(2) Section 16—52 is constitutional and legally severable from the provisions of 17—553.4;
(3) Hereafter, regardless of past custom and practice, the choice between life in imprisonment and the death penalty must be left by the trial courts in this State to the jury in Every case, in accord with Section 16—52, regardless of how the

> defendant's guilt has been determined, whether by verdict of the jury or by a plea of guilty.

State v. Harper, 251 S.C. at 385, 162 S.E. at 715; *see, also, State v. Speights*, 263 S.C. 127, 134, 208 S.E.2d 43, 44 (1974), "section 16-52 remains fully operative law."

Nevertheless, in 1977, some nine years after *Harper* (1968), then *Speights* (1974), when the General Assembly of South Carolina amended "Section 16—52 of the 1962 Code of Laws, setting forth the punishment for murder," by Act No. 177 Section 1, 1977 Acts and Joint Resolutions, approved June 8, 1977, and adopted the provisions of: "**SECTION 16-3-20.** Punishment for murder; separate sentencing proceeding when death penalty sought[,]" it did so, notwithstanding the aforesaid unanimous holding of the South Carolina Supreme Court that:

> "**Hereafter,** regardless of past custom and practice**, the choice between life in imprisonment and the death penalty must be left by the trial courts in this State to the jury in Every case,** in accord with Section 16—52**, regardless of how the defendant's guilt has been determined, whether by verdict of the jury or by a plea of guilty.**"(Emphasis supplied).

State v. Harper, supra, and, *State v. Speights, supra.*

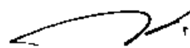
In so doing, the legislature of the State imposed its "*statutory mandate*," *State v. Patterson,* 278 S.C. 319, 322, 295, S.E.2d 264, 266 (1982)(emphasis supplied), into Section 16-3-20(B) that:

> "If trial by jury has been waived by the defendant and the State, or **if the defendant pleaded guilty**, the sentencing proceeding must be conducted before the judge."

This was done in abrogation of the unanimous holding of our Supreme Court in *Harper,* and later *Speights, supra,* that:

> ". . . **the choice between life in imprisonment and the death penalty must be left by the trial courts in this State to the jury in Every case, . . . regardless how the defendant's guilt has been determined, whether by verdict or by plea of guilty.**" *Supra.*

Moreover, the State's "*statutory mandate*," *State v. Patterson, supra,* nullifies the right of an accused to a trial—in the sentencing phase—"by an impartial jury," *contra, Hurst v. Florida,*



supra, as guaranteed by our founders when they adopted, in 1791, the Sixth Amendment to the Constitution of the United States that provides:

Amendment VI

"In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, *by an impartial jury* of the State and district wherein the crime shall have been committed; ... (emphasis supplied).

More importantly, the State's gratuitous *statutory mandate* of Section 16-3-20(B) vitiates the explicit provision of the South Carolina Constitution of 1895, as amended:

ARTICLE I

Declaration of Rights

(Formerly Article 1, Section 25; and Article I, Section 11, Constitution of 1868) [6]

"Section 14. The *right of trial by jury* ***shall be preserved*** ***inviolate***. Any person charged with an offense shall enjoy the *right to a* speedy *and public trial by an impartial jury*; . . . ." Article I, Section 14. (Emphasis supplied.)

Moreover, S.C. Code (1976): **SECTION 16-3-20. Punishment for murder; separate sentencing proceeding when death penalty sought,**" *without the statutory mandate here-involved*, expressly and constitutionally provides, otherwise, that:

(A) A person who...**pleads guilty to murder** must be punished by death, or a mandatory minimum term of imprisonment for thirty years to life. If the State seeks the death penalty and a statutory aggravating circumstance is found beyond a reasonable doubt . . . and *a recommendation of death is not made, the trial judge must impose a sentence of life imprisonment.*

* **

(B) When the **State seeks the death penalty**, upon conviction or adjudication of guilt of a defendant of murder, *the court shall conduct a separate sentencing proceeding*... The proceeding *must be conducted by the trial judge before the trial*

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[6] "The South Carolina Constitution of 1868 . . . was the most democratic and equitable of the seven constitutions in the history of this state." **The South Carolina Constitutional Convention of 1868**, Nic Butler, Ph.D., March 2, 2018, Charleston County Public Library. This was reflected in its ARTICLE I, DECLARATIONS OF RIGHTS, *SECTION 11*, where it is succinctly provided: *"The right of trial by jury shall remain inviolate;"* then, in SECTION 13, that:" every person shall have a right . . . to have a speedy and public trial by an impartial jury; " and, in SECTION 14, that: "No person shall be deprived of his life . . . but by the judgement of his peers . . . . And the General Assembly shall not enact any law that shall subject any person to punishment without trial by jury; . . . ." *South Carolina Constitution of 1868.*

jury as soon as practicable after the lapse of twenty-four hours unless waived by the defendant.

* * *

(C). . . If the jury has *found a statutory aggravating circumstance or circumstances beyond a reasonable doubt, the jury shall designate this finding, in writing, signed by all members of the jury.* The *jury shall not recommend the death penalty if the vote for such penalty is not unanimous as provided.* If members of *the jury after a reasonable deliberation cannot agree on a recommendation as to whether or not the death sentence should be imposed on a defendant found guilty of murder,* the *trial judge shall dismiss such jury and shall sentence the defendant to life imprisonment* as provided in subsection (A).

Nevertheless, "[w]hen the State seeks the death penalty," it abrogates, by the aforesaid "mandatory statutory provision," the rights guaranteed by the Constitutions of the United States and South Carolina "to a trial by an impartial jury," and creates a *Catch 22* [7] for a defendant, such as Inman, in that:

"If a trial by jury has been **waived by the defendant and the State,** or ***if the defendant pleaded guilty, the sentencing process must be conducted before judge.*** " § 16-3-20(B) S.C. Code Ann. (1976).

In this regard, it has been held, as part of the South Carolina "case law," that **"the condition that the jury determine punishment,"** would be "an *impermissible condition* under the ***statutory mandate*** that **the trial judge alone determines punishment when a defendant pleads guilty to murder,**" *State v. Patterson,* 278 S.C. 319, 322, 295, S.E.2d 264, 266 (1982) (emphasis supplied), notwithstanding the Sixth Amendment and Art. 1, Section 14, of our respective Constitutions, *supra,* and, more particular, the further explicit provision of the South Carolina Constitution that:

"*The right of trial by jury shall be preserved inviolate.* Any person charged with an offense shall enjoy the right to a speedy and public *trial by an impartial jury. Id.* (Emphasis supplied).

But, see, *State v. Truesdale*, 278 S.C. 368, 296 S.E.2d 528 (1982), where it was held that:

"*Pleas of guilty are unconditional*, and ***if an accused attempts to attach any condition or qualification*** thereto, ***the trial court should direct a plea of not guilty***.

[7] "A hidden difficulty or means of entrapment: catch." **Merriam-Webster** Dictionary (original emphasis).

(Citations omitted). The basis for this rule is, of course, the settled doctrine that a guilty plea constitutes wavier of all prior claims of constitutional rights or deprivations thereof." *State v. Patterson*, supra; *Whetsell v. State*, 276 S.C. 295, 277 S.E.2d 891; *Rivers v. Strickland*, 264 S.C. 121, 213 S.E.2d 97; *Lefkowitz v. Newsom*, 420 U.S. 283, 289, 95 S. Ct. 886, 889, 43 L.Ed.2d 196 (and cases cited therein). (Emphasis supplied).

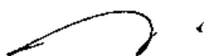
Therefore, the accused, Inman, could not freely and voluntarily waive his Fifth Amendment right to plead guilty, upon stipulated facts, before a duly qualified trial jury and the trial judge, in the guilt phase of the bifurcated proceeding, when, as above noted, it is expressly mandated under the South Carolina statutory capital sentencing scheme, that:

"**SECTION 16-3-20. Punishment for Murder; separate sentencing proceeding when death penalty sought.**

(A) **A person who** is convicted or **pleads guilty to murder must punished by death, or by a mandatory minimum term of imprisonment for thirty years to life.**

(B) ***When the State seeks the death penalty, upon*** conviction or ***adjudication of guilt of a defendant of murder, the court shall conduct a separate sentencing proceeding.*** In the proceeding, *if a statutory aggravating circumstance is found, the defendant must be sentenced to either death or life imprisonment. If no statutory aggravating circumstance is found, the defendant must be sentenced to either life imprisonment or a mandatory minimum term of imprisonment for thirty years to life.* ***The proceeding must be conducted by the trial judge before the trial jury*** as soon as practicable after the lapse of twenty-four hours unless waived by the defendant. *If trial by jury* has been waived by the defendant and the State, or ***if the* defendant pleaded guilty, THE SENTENCING PROCEEDING MUST BE CONDUCTED BEFORE THE JUDGE.** In the sentencing proceeding, the jury or *judge shall hear additional evidence in extenuation, mitigation, or aggravation of the punishment.* Only such evidence in aggravation as the State has informed the defendant in writing before the trial is admissible. **This section must not be construed to authorize the introduction of any evidence secured in violation of the Constitution of the United States or the State of South Carolina or the applicable laws of either.** (Emphasis supplied.)

Under the statutory mandate of Section 16-3-20 (B), then, Inman had no alternative but to involuntarily forfeit—not freely and voluntarily waive—his constitutional "right to a trial by an impartial jury," under the Sixth Amendment, and Article I, Section 14, of the Federal and State Constitutions, respectively, in the sentencing phase of the bifurcated proceeding, in order "to avoid



imposing additional burdens on victims [and] '*consider the trauma the victims of these particularly heinous crimes would experience in a . . . trial, forcing them to relive harrowing experiences now long past*' " [*see, Inman,* concurring opinion of Justice Pleicones, *infra* (emphasis supplied)], or "the trial court should direct a plea of not guilty," *Truesdale, supra,* thereby compelling the State to proceed with the trial on the facts before the trial jury in the guilt phase, regardless of the impact and effect upon the victim's family, whose rights are to be "honored and protected by law enforcement agencies, prosecutors and judges in a manner no less vigorous than the protections afforded criminal defendants," § 16-3-1505, in implementing "the rights guaranteed to victims in the Constitution of this State," Victims' Rights, Art. I, § 24(A) (12), "to have all rules governing criminal procedure and the admissibility of evidence to protect victims' rights."

Justice (later, Chief Justice) Pleicones' concurring opinion, in *Inman,* on the question of a mistrial, addressed such "*weighty concerns*:"

> "As the United States Supreme Court has noted, interests beyond the supervision of prosecutorial behavior are implicated by a decision to grant a new trial. *United States v. Hastings*, 461 U.S. 499, 506—507, 103 S. Ct. 1974, 76 L. Ed2d 96 (1983). Although the duty to curb prosecutorial misconduct is compelling, other ***weighty concerns*** *are also at stake, including the need* to conserve judicial resources and ***to avoid imposing additional burdens on victims.*** *Id.* at 509, 103 S. Ct. 1974. The *Hastings* Court rebuked the court below for failing to '*consider the trauma the victims of these particularly heinous crimes would experience in a . . . trial, forcing them to relive harrowing experiences now long past, or the practical problems of retrying these sensitive issues more than four years after the events.*' "

State v. Inman, 395 S.C. 539, 568—569, 720 S.E.2d 31, 47 (2011) (emphasis supplied).

"The South Carolina Constitution and case law place unfettered discretion to prosecute solely in the State prosecutor's hands. 'Prosecutors may pursue a case to trial, or they may plea bargain it down to a lesser offense or they may simply decide not to prosecute the offense in its entirety.' "*State v. Thrift,* 312 S.C. 282, 291-292, 440 S.E.2d 341, 346 (1994). Our Supreme Court,

in the first death penalty trial, in which "the sentencing proceeding [was] conducted before the judge," without a jury, pursuant to the "statutory mandate" of Section 16-3-20(B), held that:

> "While these three defendants are equally guilty of the crime of murder as defined by the laws of this State, they are not *ipso facto* deserving of the same punishment. (Citation omitted).
>
> * * *
>
> The Solicitor chose to bargain with Mahaffey rather than Shaw or Roach because it was unlikely a death sentence would be imposed on Mahaffey."

State v. Shaw, 273 S.C. 194, 255 S.E.2d 799, 804 (1979).

Therefore, "whenever a solicitor seeks the death penalty he shall notify the defense attorney of his intention to seek such penalty at least thirty days prior to trial of the case." § 16-3-26(A). Then, "[i]f trial by jury has been waived by the defendant and the State, or if the defendant pleaded guilty, the sentencing proceeding must be conducted before the judge." § 16-3-20(B).

As above discussed [and Inman was to find out after the State exercised the statutory mandate that "the sentencing proceeding be conducted before the trial judge," *id.*] — although Inman was not advised in his colloquy with the trial judge or at any other time — that upon appeal from a conviction in the proceedings conducted solely by the trial judge, even, if the Supreme Court "concluded that the Solicitor's actions constituted prosecutorial misconduct, the question becomes whether a mistrial was warranted." The burden of proof was upon the accused, and, it would be up to the Defendant, Inman, to establish "prejudice sufficient to warrant such a severe remedy." As our Supreme Court noted:

> "First, any assessment of *prejudice to Inman must be viewed from the posture of a bench trial* as opposed to a jury trial. It is *well-established that it is a near insurmountable burden for a defendant to prove prejudice* in the context of a bench trial as a *judge is presumed* to disregard prejudicial or inadmissible evidence.
>
> * * *
>
> Although we find the Solicitor committed prosecutorial misconduct, we conclude Inman's sentence of death was not imposed in violation of his due process Rights." *Inman, supra,* 395 S.C. at 565—566, 720 S.E.2d at 45—46 (emphasis supplied).

The significance of "a bench trial as opposed to a jury trial" . . . "by an impartial jury," was not lost on the exceedingly capable trial judge in *Inman.* At the time that Judge Miller made his ruling on the defendant's motion for mistrial, being the conscientious judge he is, he candidly stated:

> "Now, *if this had been a jury trial* in September, *there may have been a different result. But I am,* in fact, *the fact finder, as well as sitting in my capacity as the Judge.* I didn't ask for this. I don't want it. But that's where I sit. And I don't find that there is — that the Defendant's rights are prejudicially effected by the remarks or the conduct of the prosecutor." (Emphasis supplied).

R. 647-48.

Because of the statutory mandate of § 16-3-20(B), Inman was faced with a "Catch 22," in that his stated offer was that: "*he wants to alleviate what he sees would be the cruel impact that the media attention in this case has already had, that impact it would have on both the [victim's] family and his own family,*" such being the explicit: "Legislative Intent of Victim's Rights Constitutional Amendment, § 16-3-1505," *but* **he could not insist on pleading guilty to stipulated facts in the guilt phase,** *and* "stand at the bar and admit to the elements of the indictment, and to have [the trial judge] accept his guilty plea and formally acknowledge that before a[n 'impartial' trial] jury," with proper instructions, pursuant to § 16-3-20(A), *and then,* "upon conviction or adjudication of guilt of [the] defendant of murder," pursuant to the Sixth Amendment and Article 1, Section 14 of the respective Federal and State Constitutions, have "the court...conduct a separate sentencing proceeding," which "proceeding must be conducted by the trial judge before the trial jury as soon as practicable after the lapse of twenty-four hours unless waived by the defendant." § 16-3-20(B) (C).

Moreover, notwithstanding, Inman's "weighty concerns . . . to avoid additional burdens on victims," (Justice Pleicones concurring in separate opinion, *Inman* at 395 S.C. at 569, 720 S.E.2d at 47):

> "In effect, [as Judge Miller found, Inman had] entered a conditional plea which is a practice not recognized in South Carolina and a practice we expressly disapprove. Pleas of guilty are unconditional, and, if an accused attempts to attach any condition or qualification thereto, *the trial judge should direct a plea of not guilty.*"

State v. Truesdale, 278 S. C. 368, 370, 296 S.E.2d 528, 529 (1982) (citations omitted).

In which event, Inman would be compelled to have the State conduct a full scale trial in the guilt phase notwithstanding his aforesaid "desire to avoid additional burdens on victims."

Yet, because Inman did "consider the trauma the victims [and their families] of these particularly heinous crimes would experience in a . . . trial, forcing them to relive harrowing experiences now long past, . . . [and] these sensitive issues more than four years after the events," *Inman, supra,* Inman offered to forego his Fifth Amendment right not "to be a witness against himself," and to plead guilty in the guilt phase of the bifurcated trial. But, Inman, personally and by and through his counsel, could not "freely and voluntarily waive", but was required to forswear and forfeit, "his right to a ... public trial, by an impartial jury," otherwise, guaranteed by the Sixth Amendment, and Article I, Section 14, of the respective Federal and State Constitutions, in "the separate sentencing proceeding," which "proceeding must be conducted by the trial judge before the trial jury as soon as practicable after the lapse of twenty-four hours unless waived by the defendant," as provided by:

> "§ 16-3-20(B). Punishment for murder; separate sentencing proceeding when death penalty sought.
>
> (A) A person who is convicted of or pleads guilty to murder must be punished by death, or a minimum term of imprisonment for thirty years or life. If the State seeks the death penalty and a statutory aggravating circumstance is found beyond a

reasonable doubt pursuant to subsections (B) and (C), and a recommendation of death is not made, the trial judge must impose a sentence of life imprisonment.

* * *

(B) When the State seeks the death penalty, upon conviction or adjudication of guilt of a defendant of murder, the court shall conduct a separate sentencing proceeding. . . . The proceeding must be conducted by the trial judge before the trial jury as soon as practicable after twenty-four hours unless waived by the defendant."

Moreover, if the State merely does ***not*** agree to Defendant's waiver of a trial in the guilt phase, as Inman offered in the instant case, and denies the defendant's demand for a jury trial in the sentencing phase, Inman was compelled to accept the state's *Hobson's Choice* [8] to "plead guilty," if he was to spare "the trauma the victims of these particularly heinous crimes would experience in a [guilt phase] trial, forcing them to relive harrowing experiences now long past," contrary to the intent of the Constitution of South Carolina Victims' Rights Act, which "rights...extended to victims...are [to be] honored and protected by law enforcement agencies, prosecutors, and judges in a manner no less vigorous than the protections afforded criminal defendants." § 16-3-1505. In so doing, the statutory mandate of § 16-3-20(B), conflates the separate and distinct duties of the trial judge with those of "an impartial [trial] jury," of the Federal and State Constitutions, upon "a lone employee of the State," *Blakely v. Washington,* 542 U.S. 296, 314, 124 S.Ct. 2531, 2543, 159 L.Ed.2d 403 (2004), the trial judge, who, then, becomes, both the "trier of facts" and the "sentencer."

This is patently inimical to the aforesaid, "*procedural conditions necessary to impose the death penalty,*" as stated by Mr. Justice Stewart, "speaking for the Court in *Gregg* [*v. Georgia,* 428 U.S. 153, 96 S. Ct. 2909, 49 L.Ed.2d 859 (1976)]," upon which our present statutory death penalty complex, §§ 16-3-20 through 16-3-28, S.C. Code Ann. (1976), is patterned — as it was amended

[8] No real choice at all—the only options being either accept what is offered or refuse it. The expression is effectively "take it or leave it."

by two (2) additional aggravating circumstances and one (1) additional mitigating circumstance being added — after its enactment in 1977 as Act No. 177, Section 1:

> Justice Stewart: "In summary, *the concerns* expressed in *Furman (v. Georgia*, 408 U.S. 238, 92 S. Ct. 2726, 33 L.Ed.2d 346 (1972)*) that the penalty of death imposed by an arbitrary or capricious manner* can be met by carefully drafted statutes that the sentencing authority is given adequate information and guidance. As a general proposition, **these concerns are best met by a system that provides a <u>bifurcated proceeding</u>** at which the **sentencing authority is apprised of the information relevant to the imposition of sentence and provided with standards to guide its use of information.** 428 U.S. at 195, 96 S. Ct. at 2935, 49 L.Ed.2d at 887. (Emphasis supplied.)

State v. Shaw, 273 S.C. 194, 202, 55 S.E.2d 799, 803 (1979) (emphasis supplied), where it was concluded, on appeal, "that Section 16-3-20 through Section 16-3-28, Cum. Suppl. 1978, [were at that time, **prior to** *Hurst*], constitutional, and that a sentence of death may be lawfully imposed pursuant to the statutory complex," 273 S.C. at 205, 55 S.E.2d at 804, without a jury determination in the imposition of the death penalty. As herein noted and addressed, the "statutory complex" mandates that: "If trial by jury is waived by the defendant and the State, or **<u>if the defendant pleaded guilty, the sentencing proceeding must be conducted before the judge."</u>** § 16-3-20(B) (emphasis supplied.)

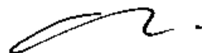
Shaw was "the first capital case reviewed under our current death penalty statutes," 273 S.C. at 197, 55 S.E. at 800, and it continues to constitute part of "the existing case law in South Carolina and the statutes," § 16-3-20(A) — (E), S.C. Code Ann., when;

> "After a circuit court judge determined that Inman was competent to stand trial, defense counsel filed a motion to determine the mode of trial. In the motion, counsel informed the judge of Inman's intent to enter a guilty plea to the crimes and demand a jury trial for the sentencing. After a hearing, *'the judge summarily denied the motion on the ground he was <u>'constrained by the existing case law in South Carolina and the statutes.'</u>"*
>
> *State v. Inman,* 395 S.C. 539, 545-546, 720 S.E.2d 31, 35 (2011) (emphasis supplied).

State v. Shaw, 273 S.C. 194, 255 S.E.2d 799 (1977), being the seminal case to be tried under our current death penalty statutes, it is, therefore, of particular interest in light of the United States Supreme Court's holding in *Hurst v. Florida, supra,* that "[t]he Sixth Amendment requires a jury, not a judge, to find each fact necessary to impose a sentence of death." *Id. Hurst* gives meaning to the "longstanding tenets of common-law criminal jurisprudence: that the 'truth of every accusation' against a defendant 'should afterwards be confirmed by the unanimous suffrage of twelve of his equals and neighbors,' 4 W. Blackstone, Commentaries on the Laws of England 343 (1789)," *Apprendi v. New Jersey,* 530 U.S. 466, 490, 120 S. Ct. 2348, 147 L.Ed.2d 435 (2000); and "the State should suffer the modest inconvenience of submitting its accusation to 'the *unanimous suffrage of twelve* of his equals and neighbors,' *rather than a* ***lone employee*** *of the State."* 4 W. Blackstone, *supra. Blakely v. Washington,* 542 U.S. 296, 314, 124 S. Ct. 2531, 2543, 159 L.Ed.2d 403 (2004) (emphasis supplied).

The Defendant in *State v. Shaw,* Joseph Carl Shaw, whose guilty plea was accepted and his subsequent sentence to death, by the trial judge, pursuant to Sections 16-3-10, *et seq.*, South Carolina Code of Laws, 1976 (Cum. Supp. 1978), had been "meticulously considered" and AFFIRMED, by our South Carolina Supreme Court, 273 S.C. 194, 212, 255 S.E.2d 799, 807 (1979), thereafter, was the "Applicant Shaw," who filed an application for Post-Conviction Relief (PCR) under the provisions of Sections 17-27-10, *et seq.* of the S.C. Code Ann. (1976). At the start of his post-conviction evidentiary hearing, Shaw filed a motion alleging that the PCR Hearing Judge had a personal bias and had failed to disqualify himself from presiding over his post-conviction proceedings, which motion and his PCR Application, both, respectively, were ultimately denied by the hearing judge.

On appeal to the South Carolina Supreme Court, the Court found and held that:



"Evidence submitted by appellant's [Shaw's] lawyers indicated that certain criminal defense lawyers were present in the hearing judge's chambers at a time prior to sentencing of the appellant [Shaw] by another judge. At that time, the hearing judge in these proceedings, which are currently before the Court, allegedly said that another judge had already discussed the matter concerning the appellant [Shaw] with the sentencing judge and that if the appellant [Shaw] was not sentenced to death, the sentencing judge would be holding court in some remote part of the State. The statement was made in the judge's chambers to public defenders who were well-known to the judge. They additionally indicated that the statement was made in an 'off-hand and joking manner by . . . (the hearing judge).'" *Shaw v. State,* 276 S.C. 190, 192, 277 S.E.2d 140, 141 (1981).

[**ATTACHMENT**: Article reported in **THE STATE**—Columbia, S.C., Friday, Jan. 25, 1980, 2-C, by Holly Gatling, Staff Writer.]

After noting that:

"Our Court has apparently not specifically considered the authority of a judge to resolve a motion for disqualification of which he is the subject. After much consideration of the authorities, we conclude that as a general rule the judge in determining whether to proceed, must accept as true the factual allegations of a motion to disqualify. However, this does not prevent the judge from exercising his right to consider the legal sufficiency of those facts. [Citations omitted.] Additionally, the fair meaning of any remark must be interpreted in the light of the context in which it was uttered in determining whether the remarks show personal bias or prejudice on the part of the judge sufficient to require that he be disqualified. *U.S. v. Birrell,* (D.C.), 276 F.Supp. 798. With these premises in mind, we considered the record.

Assuming the truth of the factual allegations, we think that the only reasonable view of the facts alleged are they indicate *an attempt at levity to ease the tensions created by the magnitude of the case concerning Mr. Shaw,* rather any actual bias on the part of the judge. Neither of the judges who allegedly discussed the sentencing judge's assignments has any authority or ability to affect a judge's assignment. Under our State's Constitution, this authority rests exclusively with the Chief Justice. The attorneys to whom the statements were made were well-known to the judge as public defenders who are dedicating all of their talents and energies to the defense of others. It is totally unreasonable to conclude that a judge would make such a statement and thereby reveal *actual improper conduct* to the public defenders, if such actions had actually occurred. In fact, the affidavits belie the conclusion of actual personal bias or improper conduct. They indicate that the *comments, if made, were made in a joking manner.* The fact that a more reflective manner might have been used *to ease the obviously sobering discussion* is insufficient, under the facts of this case, to require a judge's disqualification.

Our conclusion is further supported by the denial of the hearing judge that he made the statement attributed to him, his denial of any personal bias or prejudice in this matter, and his affirmance that he could conduct a fair and impartial hearing. The fair and impartial manner in which the proceedings were conducted evidences a complete lack of any personal bias.

In view of the total lack of any reasonable basis for the charge of bias and prejudice on the part of the trial judge, we conclude that he properly ruled on the motion to recuse."

Of course, the question of recusal of the judge who presided at the post-conviction hearing was designed, ultimately, to reach the issue of whether the alleged statements adversely affected the ability of the sentencing judge to consider the matter in an unbiased manner. Alleged errors in the refusal to subpoena the sentencing judge in an attempt to develop prejudice on his part are of no consequence in view of the absence of proof that the nature of the statements, if made, were such to create a likelihood that they adversely influenced him. There is no intimation that anyone contacted him for the purpose of influencing his decision. The alleged *statements were, admittedly, jokingly made*, if made at all. The sentencing judge also denied any contact of the nature charged. We find the charges of bias and prejudice on the part of the trial judges in this case to be completely without foundation.

Shaw v. State, 276 S.C. 190, 193-194, 277 S.E.2d 140, 141-142 (1981) (emphasis supplied).

If any of the extrajudicial comments allegedly made to "the trial judges" that "indicate an attempt at levity to ease tensions created by the magnitude of the case concerning Mr. Shaw," even "if made in a joking manner...to ease the obviously sobering discussion," ***Id.***, had been made to a member of a qualified, selected and empaneled capital trial jury, sequestered under the supervision of sworn SLED Details of Custodians, pursuant to the protocols in such cases, such unauthorized extrajudicial contact would not have been permitted without some consequence to participants in those discussions of the pending proceedings, see, § 16-9-350 S.C. Code Ann. (1976).

The protocols for the enforcement of the capital trial jury's sequestration is such that:

<u>OATHS OF BAILIFFS, CONSTABLES, ETC.</u>

<u>TO KEEP A JURY</u>

"DO YOU SWEAR THAT YOU WILL KEEP THE JURORS SWORN OF THIS JURY...UNTIL THEY HAVE AGREED ON THEIR VERDICT OR YOU

ARE OTHERWISE ORDERED BY THE COURT; THAT YOU WILL ALLOW NO PERSON TO SPEAK TO THEM, INCLUDING YOURSELF, WITHOUT LEAVE OF THE COURT, EXCEPT FOR YOU TO ASK WHETHER THEY HAVE AGREED ON THEIR VERDICT; THAT YOU WILL SEE THAT THEY CARRY OUT ALL ORDERS OF THE COURT; AND THAT YOU WILL CARRY OUT ALL ORDERS OF THIS COURT PERTAINING TO YOUR RESPONSIBILITIES TO THE COURT IN THIS CASE?

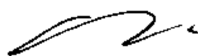
Also, ESCORTING TO MEALS and ESCORTING TO SEE PROPERTY.

The South Carolina Capital Trial, *supra.*

The Supreme Court went on to affirm the judgment of the hearing judge, who had denied, both, Shaw's motion for the hearing judge's disqualification, and Shaw's application for post-conviction relief, and his refusal to subpoena the sentencing judge," noting that "[t]here is no intimation of anyone contacted him for the purpose of influencing his decision. The alleged statements were, admittedly, jokingly made, if made at all." *Shaw,* 276 S.C. at 194, 277 S.E.2d at 142. The two justices noted as "not participating," in the decision, each a distinguished justice in his own right, thereafter, in due course, did serve as Chief Justice under our State's Constitution with all the prerogatives appertaining thereto.

Nevertheless, both *State v. Shaw, supra,* and *Shaw v. State, supra,* became and were a part of the "existing case law in South Carolina and the statutes," when the able and conscientious trial judge in *Inman,* "[a]fter a hearing, the judge summarily denied the motion on the ground he was 'constrained by the existing case law in South Carolina and the statutes,'" *Inman, supra,* which was prior to the United States Supreme Court holding in *Hurst v. Florida,* 577 U.S. ____, 136 S.Ct. 616, 193 L.Ed.2d 504 (2016), that:

> "The Sixth Amendment protects a defendant's right to an impartial jury. This right required Florida to base Timothy Hurst's death sentence on a jury's verdict, not a judge's fact finding. Florida's sentencing scheme, which required the judge alone to find the existence of an aggravating circumstance, is therefore unconstitutional." *Id.* 136 S. Ct. at 624.



Moreover, inasmuch as "the judge summarily denied the motion on the ground he was 'constrained by the existing case law in South Carolina and the statutes,'" the 1895 Constitution of South Carolina, Art. I, Declaration of Rights, explicitly provides:

> "Section 3. The *privileges and immunities of* ***citizens of this State and the United States under this Constitution shall not be abridged,*** **nor** shall **any person be deprived of life**, liberty or property **without due process of law,** nor shall any person be denied the equal protection of the laws.
>
> * * *
>
> Section 14. The *right of trial by jury shall be preserved* ***inviolate***. Any person charged with an offense shall enjoy the right to a speedy and public ***trial by an impartial jury***; . . ." (emphasis supplied),

"The Sixth Amendment protects a defendant's *right to an impartial jury*. This right required [the State] to base [the Defendant's] death sentence on a jury's verdict, not a judge's fact finding. *The State's sentencing scheme, which required the judge alone to find the existence of an aggravating circumstance, is therefore unconstitutional."* *Hurst v. Florida*, 136 S. Ct. at 624 (emphasis supplied).

THRESHOLD QUESTION

Accordingly, as conceded by the State, "this Court must consider the issue...whether *Hurst v. Florida," supra,* does "impose upon state criminal proceedings a substantive standard not previously recognized or right not in existence at the time of the state court trial," as provided by S.C. Code §17-27-45(B). *Hurst* did "create a new rule," in that, the United States Supreme Court held:

> "We granted *certiorari* to resolve whether Florida's capital sentencing scheme violates the Sixth Amendment in light of *Ring v. [Arizona]* [] 575 U.S. ___, 135 S. Ct. 1531, 191 L.Ed.2d 558 (2015). We hold that it does, and reverse.
>
> ***
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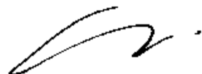
> The Sixth Amendment provides: 'In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, *by an impartial jury...'* This right, in conjunction with the *due process* clause, requires that each element of a crime



be proved to a jury beyond a reasonable doubt." *Hurst, supra,* 136 S. Ct. at 621 (emphasis supplied).

On the first day of the evidentiary hearing, this Court entertained argument and discussion of the constitutionality of S.C. Code 16-3-20 (B), in particular, the statutory mandate that a defendant's decision to waive his Fifth Amendment right, not to "be compelled ... to be a witness against himself," and to plead guilty in the guilt phase of the bifurcated proceeding, constitutes a forfeiture of the defendant's right to a trial "by an impartial jury" in the sentencing phase, under the Sixth Amendment to the United States Constitution and Art. I, §§ 3 and 14, of the South Carolina Constitution. The statute mandates that: "if the defendant pleaded guilty, the sentencing proceedings must be conducted before the judge," § 16-3-20 (B), without a jury, in what, otherwise, would be the bifurcated proceeding provided by the statutory capital sentencing scheme: "S.C. Code Ann. § **16-3-20. Punishment for Murder; separate sentencing proceeding when death penalty sought.**"

> (A) **A person who** is convicted or **pleads guilty to murder must be punished by death, or by a mandatory minimum term of imprisonment for thirty years to life.** *If the State seeks the death penalty and a statutory aggravating circumstance is found beyond a reasonable doubt pursuant to subsections (B) and (C), and **a recommendation of death is not made, the trial judge must impose a sentence of life imprisonment.***
>
> ***
>
> (B) **When the State seeks the death penalty, upon conviction or adjudication of guilt of a defendant of murder, the court shall conduct a separate sentencing proceeding.** In the proceeding, if a statutory aggravating circumstance is found, the defendant must be sentenced to either death or life in imprisonment. If no statutory aggravating circumstance is found, the defendant must be sentenced to either life imprisonment or a mandatory minimum term of imprisonment for thirty years to life. ***The proceeding must be conducted by the trial judge before the trial jury** as soon as practicable after the lapse of twenty-four hours unless waived by the defendant. **If trial by jury has been*** **waived by the defendant and the State, or if the defendant pleaded guilty, the sentencing proceeding must be conducted before the judge. In the sentencing proceeding, the jury or judge shall hear**

additional evidence in extenuation, mitigation, or aggravation of the punishment.

* * *

(C) . . . **The jury, if its verdict is a recommendation of death, shall designate in writing signed by all members of the jury, the statutory aggravating circumstance or circumstances which it found beyond a reasonable doubt. The jury, if it does not recommend death, after finding a statutory aggravating circumstance or circumstances beyond a reasonable doubt, shall designate in writing signed by all members of the jury, the statutory aggravating circumstance or circumstances it found beyond a reasonable doubt. *In nonjury cases the JUDGE SHALL MAKE THE DESIGNATION OF THE STATUTORY AGGRAVATING CIRCUMSTANCE OR CIRCUMSTANCES.* Unless at least one of the statutory aggravating circumstances enumerated in this section is found, the death penalty must not be imposed.**

* * *

If the jury has found a statutory aggravating circumstance or circumstances beyond reasonable doubt, the jury shall designate this finding, in writing, signed by all members of the jury.The ***jury shall not recommend the death penalty if the vote is not unanimous*** as provided. If members of the ***jury after a reasonable deliberation cannot agree*** on a recommendation as to whether or not the death sentence should be imposed on a defendant found guilty of murder, ***the trial judge shall dismiss such jury and shall sentence the defendant to life imprisonment as provided in subsection (A)***."

S.C. Code Ann. §16-3-20 (1976) (emphasis supplied).

Applicant's counsel in the evidentiary hearing on Inman's Application, as last amended, relied upon *Hurst v. Florida, supra,* and maintained S.C. Code § 16-3-20 was inimical to the United States Constitution under that case. [See, for example, PCR Tr. at 23-24; 35-36; 70; 78.] This Court similarly considered the issue under *Hurst* throughout the proceeding. [See, for example, PCR Tr. p. 177]. The issue raised in the application is precisely that issue.

The relevant issue as raised in the second amended application is:

Ground 10(d) S.C. Code Ann. Section 16-3-20, allowing for judge sentencing, violates the Fifth, Sixth, Eighth, and Fourteenth Amendments of the United States Constitution.

11(d) S.C. Code Ann. Section 16-3-20, as written by the General Assembly and construed by the South Carolina Supreme Court, denied Mr. Inman his right to have a jury determine the existence of aggravating circumstances,

consider statutory and non-statutory mitigating circumstances, and determine whether a death sentence should be imposed.

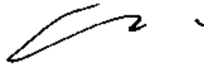
Therefore, the threshold issue before the Court is whether *Hurst v. Florida*, 136 S. Ct. 616, 193 L. Ed.2d 504, ___ U.S. ___ (2016), renders the South Carolina capital sentencing scheme unconstitutional, as argued by Inman at the evidentiary hearing pursuant to his Amended Application on August 20, 2018.

Respondent argues the issue cannot be reached because it is a freestanding claim that falls in the category of direct appeal claims; however, concedes that *Hurst* does "impose upon state criminal proceedings a substantive standard not previously recognized or right not in existence at the time of the state court trial," as provided by S.C. Code § 17-27-45 (B):

> "*When a court whose decisions are binding upon the Supreme Court of this State* or the Supreme Court of this State holds that the Constitution of the United States or the Constitution of South Carolina, or both, *impose upon state criminal proceedings a substantive standard not previously recognized* or a right not in existence at the time of the state court trial, *and if the standard or right is intended to be applied retroactively, an application under this chapter may be filed* not later than one year after the date on which the standard or right was determined to exist." (Emphasis supplied). [*Hurst v. Florida*, supra, was decided January 12, 2016, and Inman's PCR was filed June 21, 2012, and last amended and heard August 20, 2018].

Moreover, *Hurst* did create a new rule.

> "The Florida Supreme Court affirmed 4 to 3 [the sentence in *State v. Hurst,* 147 So.3d 435 (2014)]. As relevant here, the court rejected Hurst's argument that his sentence violated the Sixth Amendment in light of *Ring* 536 U.S. 584, 122 S. Ct. 2428, 153 L.Ed2d 556. *Ring*, the court recognized, 'held that capital defendants are entitled to a jury determination of any fact on which the legislature conditions an increase in the maximum punishment.' 147 So.3d, at 445. But the court considered *Ring* inapplicable in light of this Court's repeated support of Florida's capital sentencing scheme in pre-*Ring* cases. 147 So.3d, at 446-447 (citing *Hildwin v. Florida*, 490 U.S. 638, 109 S.Ct. 2055, 104 L.Ed.2d 728 (1989) (*per curiam*)); see, also *Spaziano v. Florida*, 468 U.S. 447, 457-465, 104 S.Ct. 3154, 82 L.Ed2d 340 (1984). Specifically, in *Hildwin*, this court held the Sixth Amendment 'does not require that specific findings authorizing the imposition of the sentence of death be made by the jury.' 490 U.S., at 640-641, 109 S.Ct. 2055. The Florida Court noted



that we have 'never expressly overruled *Hildwin*, and did not do so in *Ring*.' 147 So.3d at 446-447.

Justice Pariente, joined by two colleagues, dissented from this portion of the court's opinion. She reiterated her view that '*Ring* requires any fact that qualifies a capital defendant for a sentence of death to be found by a jury.' *Id.*, at 450 (opinion concurring in part and dissenting in part).

We granted certiorari to resolve whether Florida's capital sentencing scheme violates the sixth amendment in light of *Ring*. 575 U.S. ---, 135 S.Ct 1531, 191 L.Ed2d558 (2015). **We hold it does, and reverse.**"

II

The sixth Amendment provides: 'In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an *impartial jury*. . . .' This right in conjunction with the due process clause, requires that each element of a crime be proved to a jury beyond a reasonable doubt. *Alleyne v, United States*, 570 U.S.___ ____, 133 S. Ct. 2151, 2156, 186 L.Ed.2d 435 (2013). In *Apprendi v. New Jersey*, 530 U.S. 466, 494, 120 S. Ct. 2348, 147 L.Ed.2d 435 (2000), this Court held that any fact that "expose[s] the defendant to a greater punishment than that authorized by a jury's guilty verdict" is an "element that must be submitted to a jury. In the years since *Apprendi*, we have applied its rule to instances involving plea bargains, *Blakely v. Washington*, 542 U.S. 296, 124 S. Ct. 2531, 159 L.Ed.2d 403 (2004) . . . and in *Ring*, 536 U.S. 584, 122 S. Ct. 2428, 153 L.Ed.2d 556, capital punishment."

Hurst v. Florida, 136 S. Ct. 616, 620-621, 193 L.Ed.2d 504 (2016)
As reflected by the *Syllabus*, 136 S.Ct. at 617, the United States Supreme Court found that:

"Under Florida law, the maximum sentence a capital felon may receive on the basis of a conviction alone is life imprisonment. He may be sentenced to death, but only if an additional sentencing proceeding 'results in findings by the court that such person shall be punished by death.' Fla. Stat. § 775.082(1). In that proceeding, the sentencing judge first conducts an evidentiary hearing before a jury. § 921.141(1). Next, the jury, by majority vote, renders an 'advisory sentence.' § 921.141(2). Notwithstanding that recommendation, the court must independently find and weigh the aggravating and mitigating circumstances before entering a sentence of life or death. § 921.141(3).

A Florida jury convicted petitioner Timothy Hurst of first-degree murder for killing a co-worker and recommended the death penalty. The court sentenced Hurst to death, but he was granted a new sentencing hearing on appeal. At resentencing, the jury again recommended death, and *the judge again found the facts necessary to sentence Hurst to death.* The Florida Supreme Court affirmed, rejecting Hurst's argument that his sentence violated the Sixth Amendment in light of *Ring v. Arizona*, 536 U.S. 584, 122 S. Ct. 2428, 153 L.Ed.2d 556, in which this Court found

unconstitutional an Arizona capital sentencing scheme that permitted a judge rather than the jury to find the facts necessary to sentence a defendant to death.

Held: Florida's capital sentencing scheme violates the Sixth Amendment in light of *Ring*. 136 S. Ct. at pp. 620 – 624.

As is relevant here, the Florida Supreme Court had rejected Hurst's argument that his sentence violated the Sixth Amendment in light of *Ring v. Arizona*, 536 U.S. 584, 122 S. Ct. 2428, 153 L.ED.2d 556 (2002), "in which [the United States Supreme] Court found unconstitutional an Arizona capital sentencing scheme that permitted a judge rather than the jury to find facts necessary to sentence a defendant to death. *Held*: Florida's capital sentencing scheme violates the Sixth Amendment in light of *Ring*. Pp. 620-624." *Hurst v. Florida*, 136 S.E.2d 616, 617, 193 L. Ed.2d 504, ___ U.S. ___ (2016). In *Apprendi v. New Jersey*, 530 U.S. 466, 494, 120 S. Ct. 2348, 147 L.Ed.2d 435 (2000), the United States Supreme Court had held that any fact that "exposes the defendant to a greater punishment than that authorized by the jury's guilty verdict" is an element that must be submitted to a jury.

The South Carolina capital punishment sentencing scheme, S.C. Code Ann. Section 16-3-20, expressly provides:

(A) ***A person*** convicted of or ***pleads guilty to murder*** *must be punished by death, or a mandatory minimum term of imprisonment for thirty years to life. If the State seeks the death penalty and a statutory aggravating circumstance is found beyond a reasonable doubt* pursuant to sections (B) and (C), *and* ***a recommendation of death is not made,*** *the* ***trial judge must impose a sentence of life imprisonment.***

(B) ***When the state seeks the death penalty, upon*** conviction or ***adjudication of guilt of a defendant of murder***, *the* ***court shall conduct a separate sentencing proceeding.*** In the proceeding, ***if a statutory aggravating circumstance is found, the defendant must be sentenced to either death or life imprisonment. If no statutory aggravating circumstance is found,*** the defendant must be *sentenced to* ***either life imprisonment or a mandatory minimum term of imprisonment for thirty years to life. The proceeding must be conducted by the trial judge before the trial jury*** as soon as practicable after the lapse of twenty-four hours unless waived by the defendant. If trial by jury has been waived by the defendant and the

State, or ***if the defendant pleaded guilty, the sentencing proceeding must be conducted before the judge***."

(C) . . . ***In nonjury cases*** ***the JUDGE SHALL MAKE THE DESIGNATION OF THE STATUTORY AGGRAVATING CIRCUMSTANCE OR CIRCUMSTANCES.*** **Unless at least one of the statutory aggravating circumstances enumerated in this section is found, the death penalty must not be imposed.**

* * *

The ***jury shall not recommend the death penalty if the vote is not unanimous*** as provided. If members of the ***jury after a reasonable deliberation cannot agree*** on a recommendation as to whether or not the death sentence should be imposed on a defendant found guilty of murder, ***the trial judge shall dismiss such jury and shall sentence the defendant to life imprisonment as provided in subsection (A)***."

Although the trial counsel assiduously sought to preserve Inman's right to have a jury make the critical specific factual findings of the statutory aggravating circumstance(s) — after considering statutory mitigation — necessary to impose the death penalty under the state's capital sentencing scheme, our Supreme Court held:

"... even if Inman preserved his challenge to section 16–3–20(B), he specifically abandoned this issue on appeal as he correctly recognizes that this issue has been decided against his position. See *State v. Allen,* 386 S.C. 93, 687 S.E.2d 21 (2009), *cert. denied,* —— U.S. ——, 130 S.Ct. 3329, 176 L.Ed.2d 1229 (2010) (noting, in appeal of guilty plea and capital sentence, South Carolina precedent finding that section 16–3–20 does not violate the Sixth Amendment to the United States Constitution and concluding that it also did not violate the Eighth and Fourteenth Amendments; noting that the statute requires the sentencing judge to consider any mitigating circumstances allowed by law and that a defendant is not precluded from offering evidence of his remorse and acceptance of responsibility); *State v. Crisp,* 362 S.C. 412, 608 S.E.2d 429 (2005) (adhering to *Downs* and rejecting claims that section 16–3–20(B) was unconstitutional); *State v. Wood,* 362 S.C. 135, 607 S.E.2d 57 (2004) (citing *Downs* and concluding section 16–3–20(B) was constitutional); *Downs,* 361 S.C. at 146, 604 S.E.2d at 380 (discussing constitutionality of section 16–3–20(B) and finding capital defendant who pleaded guilty waived his right to jury trial on both guilt and sentencing).

Inman, 395 S.C. at 556, 720 S.E.2d at 40.

It was the holding of the *Inman* Court:

"Turning to the facts of the instant case, we find that Inman's guilty plea was unconditional. Significantly, *Iman never attempted to reserve the right to challenge or deny the merits of his guilt.* Any condition **he sought to attach to the *plea***

involved an appellate challenged to section 16-3-20(B)**, which mandates that a judge rather than a jury determine sentencing in a capital case* if the defendant enters plea of guilty. Under the mandatory appeal procedures in capital cases, ***Inman was permitted to appeal this secondary sentencing issue; however, any decision as to this issue did not affect the entry or validity of his plea. *Cf. Downs*, 361 S.C. at 145-46, 604 S.E.2d at 379-80.

* * *

Furthermore, even if Inman preserved his challenge to section 16-3-20(B), he specifically abandoned this issue on appeal as he correctly recognizes that *this issue had been decided against his position.* See *State v. Allen*, 386 S.C. 93, 687 S.E.2d 21 (2009), *cert. denied*, ___ U.S. ____, 130 S. Ct. 3329, 176 L.Ed.2d 1229 (2010)(noting, **in appeal of guilty plea and capital sentence**, *South Carolina precedent finding that section* ***16-3-20 does not violate the Sixth Amendment*** to the United States Constitution and concluding that it also *did not violate the Eighth and Fourteenth Amendments;* noting that the statute requires the sentencing judge to consider any mitigation circumstances allowed by law and the a defendant is not precluded from offering evidence of his remorse and acceptance of responsibility); *State v. Crisp*, 362 S.C. 412, 608 S.E2nd 429 (2005) (adhering to *Downs* and rejecting claims that Section 16-3-20(B) was unconstitutional); *State v. Wood*, 362 S.C. 135, 607 S.E.2d 57 (2004)(citing Downs and concluding section 16-3-20(B) was constitutional; *Downs*, 361 S.C. at 146, 604 S.E2d at 380(discussing constitutionality of section 16-3-20(B) and finding capital defendant plead guilty waived his right to trial by jury on guilt and sentencing).

Finally, as found by the Inman Court:

"Significantly, Inman never attempted to reserve the right to challenge or deny the merits of his guilt. [The only] condition involved [was] an appellant challenge of the constitutionality of section 16-3-20(B), which mandates that a judge rather than a jury determine sentencing in a capital case if the defendant enters a plea of guilty. Under the mandatory appeal procedures in capital cases, ***Inman was permitted to appeal this secondary sentencing issue***; however, any decision as to this issue did not affect the entry or validity of his plea."

State v. Inman (emphasis supplied), 395 S.C. at 555, 720 S.E.2d at 40.

Inman's appeal of his guilt and sentence proceedings, under the mandate of § 16-3-20(B), was decided December 28, 2011, and, on January 25, 2012, his rehearing was denied, thereafter, on June 21, 2012, he filed his Application for Post- Conviction. While his PCR was pending, on January 12, 2016, the United States Supreme Court decided *Hurst v. Florida*, 136 S.Ct. 616 (2016), holding that "Florida's capital sentencing scheme, under which . . . the judge makes the critical

findings needed for imposition of a death sentence, violates the Sixth Amendment right to jury trial, overruling (its prior decisions) and abrogating (state decisions holding it was constitutional)." **Synopsis,** *Hurst, supra.* The application was amended to reflect the *Hurst* decision's impact on Inman's "appellate challenge to section 16-3-20(B), which mandates that a judge rather than a jury determine sentencing in a capital case if the defendant enters a guilty plea." *Inman, 395 S.C.* at 40, 720 S.E.2d at and 555. Therefore, his PCR Application was amended, pursuant to S.C. Code § 17-27-45 (B), and addressed at the evidentiary hearing August 20-23, 2018.

The State's assertion that Inman's "challenge to section 16-3-20(B), was specifically abandoned . . . as he correctly recognize[d] that this issue has been decided against his position" in previous holdings, *id.*, was also addressed by the United States Supreme Court in *Hurst v. Florida,* where:

> "[T]he State next argues that *stare decisis* compels us to uphold Florida's capital sentencing scheme. As the Florida Supreme Court observed, this Court 'repeatedly has reviewed and upheld Florida's capital sentencing statute over the past quarter of a century. *Bottoson v. Moore*, 833 So.2d 693, 695 (2002) (*per curiam*) (citing *Hildwin*, 490 U.S. 638, 109 S. Ct. 2055, 104 L.Ed. 728; *Spaziano*, 468 U.S. 447, 104 S. Ct. 3154, 82 L.Ed2d 340). 'In a comparable situation,' the Florida court reasoned, 'the United States Supreme Court held:
>
>> 'If a precedent of this Court has direct application in a case, yet appears to rest on reasons rejected in some other decisions, the [other courts] should follow the case which directly controls, leaving this Court the prerogative of overruling its own decisions.' "*Bottoson*, 833 So.2d, at 695 ('quoting' citations omitted).
>
> We now expressly overrule *Spaziano* and *Hildwin* in relevant part.
>
> *Spaziano* and *Hildwin* summarized earlier precedent to conclude that 'the Sixth Amendment does not require specific findings authorizing the imposition of the sentence of death be made by the jury.' *Hildwin,* 490 U.S., at 640—641, 109 S.Ct. 2055. Their conclusion was wrong, and irreconcilable with *Apprendi.* Indeed, today is not the first time we recognized as much. In *Ring*, we held that another pre-*Apprendi* decision — *Walton,* 497 U.S. 639, 110 S.Ct. 3047, 111 L.Ed.2d 511— could not "survive the reasoning of *Apprendi.*" 536 U.S., at 603, 122 S.Ct. 2428.

Walton for its part, was a mere application of *Hildwin*'s holding to Arizona's capital sentencing scheme. 497 U.S., at 648, 110 S.Ct. 3047.

"Although ' "the doctrine of *stare decisis* is of fundamental importance to the rule of law [,]' . . . [o]ur precedents are not sacrosanct,' . . . [W]e have overruled prior decisions where the necessity and propriety of doing so has been established.' "*Ring*, 536 U.S., at 608, 122 S. Ct. 248 (citations omitted). And in the *Apprendi* context, we have found that *stare decisis* does not compel adherence to a decision whose underpinnings have been 'eroded' by subsequent developments of constitutional law." *Alleyene*, 570 U.S. at ---, 133 S. Ct., at 2155 (SOTOMAYOR, J., concurring); see also (citations omitted).

Time and subsequent cases have washed away the logic of *Spaziano* and *Hildwin*. The decisions are overruled to the extent they allow a sentencing judge to find an aggravating circumstance, independent of a jury's finding, that is necessary for the imposition of the death penalty."

Hurst v. Florida, 136 S. Ct. at 623 – 624.

Inasmuch as the South Carolina authorities relied upon by our Supreme Court that, "'even if Inman preserved his challenge to section 16-3-20(B), he specifically abandoned this issue on appeal as he correctly recognizes that this issue has been decided against his position, See *State v. Allen*, 386 S.C. 93, 687 S.E.2d 21 (2009), *cert. denied*, -- U.S. --, 130 S.Ct. 3329, 176 L.Ed.2d 1229 (2010) (noting, in appeal of guilty plea and capital sentence, South Carolina precedent finding that section 16-3-20 does not violate the Sixth Amendment to the United States Constitution and concluding that it also did not violate the Eighth and Fourteenth Amendments;" *Inman*, 395 S.C. at 556, 720 S.E.2d at 40, where "[c]ontrary to Allen's assertion, the statute's requirement that the trial judge conduct sentencing does not deprive him of due process, nor does it result in cruel and unusual punishment. . . . S.C. Code Ann. § 16-3-20 (B)(C)," preceded ***Hurst v. Florida* (2016),** *supra.*

There, as above-noted, the United States Supreme Court held that:

". . . [o]ur precedents are not sacrosanct.' . . . [W]e have overruled prior decisions where the necessity and propriety of doing so has been established.' "*Ring*, 536

U.S., at 608, 122 S. Ct. 248 (citations omitted). And in the *Apprendi* context, we have found that *stare decisis* does not compel adherence to a decision whose underpinnings have been eroded by subsequent developments of constitutional law." *Alleyene*, 570 U.S. at ---, 133 S.Ct., at 2155 (SOTOMAYOR, J., concurring); see also (citations omitted).

Time and subsequent cases have washed away the logic of *Spaziano* and *Hildwin*. **The decisions are overruled to the extent they allow a sentencing judge to find an aggravating circumstance, independent of a jury's finding, that is necessary for the imposition of the death penalty.** *Id.* (emphasis supplied).

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The Sixth Amendment protects a defendant's right to an impartial jury. This right required Florida to base Timothy Hurst's death sentence on a jury's verdict, not a judge's fact finding. Florida's sentencing scheme, which required the judge alone to find the existence of an aggravating circumstance, is therefore unconstitutional."

Hurst v. Florida (emphasis supplied), 136 S. Ct. at 124.

Accordingly, the Court makes the following Findings of Fact and Conclusions of Law pursuant to S.C. Code §§ 17-27-80 and 160(D). *Fishburne v. State*, Op. No. 27911 (S.C. Sup. Ct. filed July 31, 2019).

FINDINGS OF FACT

The Court finds the following specific facts:

1. The statute providing for the "Punishment for murder; separate sentencing proceeding when death penalty sought," §16-3-20, S.C. Code Ann. (1976), was adopted in 1977, to avoid unconstitutional "arbitrary or capricious" death penalty verdicts, as cited, by our South Carolina Supreme Court, in the first case to be tried and reviewed under the South Carolina death penalty scheme:

"Mr. Justice Stewart speaking for the Court in *Gregg*, summarized the procedural conditions necessary to impose the death penalty:

"In summary, the *concerns expressed* in *Furman* (*v. Georgia*, 408 U.S. 238, 92 S. Ct. 2726, 33 L.Ed.2d 346 (1972)) that *the penalty of death not be imposed in an arbitrary or capricious manner* can be met by a carefully drafted statute that

ensures that the *sentencing authority is given adequate information and guidance.* As a general proposition **these concerns are best met by a system that provides for a bifurcated proceeding** at which the **sentencing authority is apprised of the information relevant to the imposition of sentence and provided with standards to guide its use of the information.** 428 U.S. at 195, 96 S. Ct. at 2935, 49 L.Ed.2d at 887." (Emphasis supplied). *State v. Shaw,* 273 S.C. 194, 202, 55 S.E.2d 799, 803 (1979).

2. In South Carolina, prior to *Furman v. Georgia,* 408 U.S. 238, 92 S. Ct. 2726, 33 L.Ed.2d 346 (1972), it was provided under the S.C. Code of Laws (1962), that:

§ 16-52. Punishment for Murder—Whoever is guilty of murder shall suffer the punishment of death; *provided however,* that in any case in which the prisoner is found guilty of murder the jury may find a special verdict recommending him to the mercy of the court, whereupon the punishment shall be reduced to imprisonment in the Penitentiary with hard labor during the whole lifetime of the prisoner.

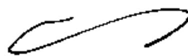
It was held that: "We believe it was the manifestly the wise intent of the statute that the full responsibility for recommendation to mercy in murder cases and the reducing the sentence from death to life imprisonment was placed upon the jury rather than upon the presiding judge and their discretion in this matter is an unlimited one." *State v. Jones,* 201 S.C. 403, 23 S.E.2d 387, 392 (1942).

3. In striking down, as unconstitutional, a separate sentencing statute enacted in 1962, Act No. 864, 52 Stat. 2155, then Section 17-553.4, 1962 Code (1967 Supp.), relating to guilty pleas, that permitted a defendant to plead guilty before the trial judge and, if accepted, to be sentenced as if a trial jury had recommended mercy to life in the Penitentiary, our Supreme Court held:

"Hereafter, regardless of past custom and practice, the choice between life imprisonment and the death penalty must be left to the jury in Every case, in accord with Section 16-52, **regardless of how the defendant's guilt has been determined, whether by verdict of the jury or by plea of guilty."** *State v. Harper,* 251 S.C. 379, 385, 162 S.E.2d 712, 715 (1968) (emphasis supplied).

4. The South Carolina Supreme Court's holding in *Harper, supra,* was and is in accord with the South Carolina Constitution that has provided and, now, does explicitly provide:

"The **right of trial by jury shall be preserved inviolate**. Any person charged with an offense shall enjoy the right to a speedy and public *trial by an impartial jury;*"



... Art. 1, §14, Constitution of South Carolina of 1895, formerly Art. I, §11, Constitution of 1868. (Emphasis supplied).

5. In *Furman v. Georgia,* 408 U.S. 238, 92 S. Ct. 2726, 33 L.Ed.2d 346 (1972), the United States Supreme Court, by a Per Curiam Decision, five justices concurring in separate opinions, and four justices dissenting in separate opinions, held that the imposition of the death penalty constitutes cruel and unusual punishment in violation of the Eighth and Fourteenth Amendments "when jury sentencing may be characterized as arbitrary or discriminatory." Opinion of Justice Douglas, 408 U.S. at 448, 92 S. Ct. at 2833.

6. It was thereafter, as noted, *supra,* that "Mr. Justice Stewart, speaking for the Court in *Gregg* (*v. Georgia,* 428 U.S. 153, 96 S. Ct. 2909, 49 L.Ed.2d 859 (1976)), summarized the procedural conditions necessary to impose the death penalty:

"In summary, the concerns expressed in *Furman* (*v. Georgia,* 408 U.S. 238, 92 S. Ct. 2726, 33 L.Ed.2d 346 (1972)) that the penalty of death not be imposed in an arbitrary or capricious manner can be met by carefully drafted statutes that **the sentencing authority** is given adequate information and guidance. As a general proposition, **these concerns are best met by a system that provides a bifurcated proceeding** at which the **sentencing authority is apprised of the information relevant to the imposition of sentence and provided with standards to guide its use of information.** 428 U.S. at 195, 96 S. Ct. at 2935, 49 L.Ed.2d at 887.

State v. Shaw, 273 S.C. 194, 202, 55 S.E.2d 799, 803 (1979).

7. The "first capital case tried and reviewed under our current death penalty statutes, Section 16-3-20 through Section 16-3-28 [S.C. Code Ann. (1976), formerly Section 16-52, 1962 Code of Laws]," was *State v. Shaw,* 273 S.C. at 197, 202 S.E.2d at 800, and, because the two Defendants, who "pleaded guilty, [and the mandate of § 16-3-20(B) required] the sentencing proceeding . . . be conducted before the judge", each of those defendants forfeited their aforesaid "right to trial by an impartial jury," granted under the Federal and State Constitutions, and were tried, convicted and sentenced to death by the trial judge.

(a) On appeal, when our Supreme Court "considered whether this State's statutory death penalty procedure is sufficiently similar to Georgia's procedure to pass constitutional scrutiny," they found that:

"Upon conviction or adjudication of guilt of a capital defendant of murder, a separate sentencing proceeding is conducted to determine whether the capital defendant shall be sentenced to death or life imprisonment. The sentencing proceeding is conducted before the trial jury, or **if the capital defendant pled guilty** or if the trial jury is waived by both the capital defendant and the State, **the sentencing proceeding is conducted before the court.** Section 16-3-20(B), Cum. Supp. 1978."
273 S.C. at 200, 255 S.E.2d at 802

(b) This was, and is, in direct conflict with the unanimous Supreme Court holding nine years before that:

Hereafter, regardless of past custom and practice, the choice between life imprisonment and the death penalty must be left to the jury in Every case, in accord with [then] Section 16-52, **regardless of how the defendant's guilt has been determined, whether by verdict of the jury or by plea of guilty."** *State v. Harper,* 251 S.C. 379, 385, 162 S.E.2d 712, 715 (1968) (emphasis supplied), *see, also, State v. Speights,* 263 S.C. 127, 134, 208 S.E.2d 43, 44 (1974), "section 16-52 remains fully operative law."

(c) And, the explicit provision of the South Carolina Constitution of 1895, that:

"The *right of trial by jury* shall be *preserved inviolate.* Any person charged with an offense shall enjoy the right to a speedy and public *trial by an impartial jury*; . . . ." Article 1, Section 14 (formerly, Article 1, Sections 18 and 25; and Article I, Sections 11, 13 and 14 of the South Carolina Constitution of 1868) (emphasis supplied).

And, now, it has been succinctly held by the United States Supreme Court that, pursuant to the United States Constitution:

"The Sixth Amendment requires a jury, not a judge, to find each fact necessary to impose a sentence of death."
Hurst v. Florida, 577 U.S. ___, 136 S .Ct. 616, 619, 193 L.Ed2d 504 (2016).

8. Prior to the United States Supreme Court's decision in *Hurst v. Florida,* ___ U.S. ___, 136 S. Ct. 616, 193 L.Ed2d 504 (2016), the South Carolina Supreme Court had held that:

"This Court has found, in capital cases in which the defendant pleads guilty, that statutorily mandated sentencing by the trial judge does not violate the United States

Supreme Court's opinion in *Ring v. Arizona,* 536 U.S. 584, 122 S.Ct. 248, 153 L.Ed.2d 556, (2002). *State v. Downs,* 361 S.C. 141-146-147, 604 S.E.2d at 380 (2004). *State v. Allen,* 386 S.C. 93, 101-102, 687 S.E.2d 21, 25 (2009).

State v. Downs, supra (2004) and *State v. Allen, supra* (2009), *cert. denied,* -- U.S. --, 130 S.Ct. 3329, 176 L.Ed.2d 1229 (2010), which decisions preceded *Hurst v. Florida* that held:

"[such] decisions are overruled to the extent they allow a sentencing judge to find an aggravating circumstance, independent of a jury's finding, that is necessary for the imposition of the death sentence."

Hurst, 136 S. Ct. at 623-624 (2016).

9. *Ring* held an Arizona statute which required the trial judge to find the existence of statutory aggravating circumstances, after the jury found defendant guilty, violated the Sixth Amendment right to a jury trial." *Id.* fn. 6.

10. "The capital-sentencing procedure invalidated in *Ring* does not exist in South Carolina. *Arizona's statute required the judge to factually determine whether there existed an aggravating circumstance supporting the death penalty regardless whether the judge or a jury had determined guilt.* Ariz. Rev. Stat § 13-703(C) (2001) (amended 2002); *Ring,* 536 U.S. at 597, 122 S. Ct. at 2437, 153 L.Ed.2d at 569. (Emphasis supplied). **In South Carolina, conversely, a defendant convicted by a jury can be sentenced to death only if the jury also finds an aggravating circumstance and recommends the death penalty.** S.C. Code Ann. § 16-3-20(B) (2003); *Sheppard v. State,* 357 S.C. 646, 652, 594 S.Ed.2d 462, 466 (2004)." *State v. Downs,* (emphasis supplied) 361 S.C. at 146, 604 S.E.2d at 380.

11. Under South Carolina's capital sentencing scheme, "Section 16-3-20. Punishment for murder; separate sentencing proceeding when death sentence sought.

(A) A person who is **convicted or pleads guilty** to murder must be punished by **death, or** a mandatory minimum term of imprisonment of

thirty years to life. If the State **seeks the death penalty and a statutory aggravating circumstance** is **found** beyond a reasonable doubt pursuant subsections (B) and (C), and a **recommendation of death is not made,** the trial **judge must impose** a **sentence of life** imprisonment.

* * *

(B) When the State seeks the death penalty, upon conviction or adjudication of guilt of a defendant of murder, the court shall conduct a separate sentencing proceeding. In the proceeding, if a statutory **aggravating circumstance is found,** the defendant must be sentenced to **either death or life imprisonment.** If **no aggravating circumstance is found,** the defendant must be sentenced to either life imprisonment or a **mandatory minimum term of imprisonment for thirty years to life**. The proceeding must be conducted by the trial judge before the trial jury as soon as practicable after the lapse of twenty-four hours unless waived by the defendant.

* * *

(C) The judge . . . shall include in his instructions to the jury for it to consider, mitigating circumstances otherwise authorized by law and . . . statutory aggravating and mitigating circumstances . . . supported by the evidence:

* * *

Where a **statutory aggravating circumstance is found** and *a* **sentence of death is not recommended by the jury,** *the* **trial judge shall sentence the defendant to life imprisonment** as provided in subsection (A). . . .Where a **statutory circumstance is not found**, the **trial judge shall sentence the defendant to either life imprisonment or a mandatory minimum term of imprisonment for thirty years.**" S.C. Code Ann. § 16-3-20(C).

12. Inman's trial counsel did not waive his insistence that his client was entitled to have a jury to determine and recommend his sentence pursuant to the bifurcated capital sentencing scheme provided by S.C. Code Ann. §16-3-20, and assiduously sought to have the right for his client to have "any fact that increases the penalty for a crime beyond the prescribed statutory maximum must be submitted to a jury, and proved beyond a reasonable doubt," which is "*one of the longstanding tenets of common-law criminal jurisprudence that*:

"[T]he '*truth of every accusation*' against a defendant 'should *afterwards be confirmed by unanimous suffrage of twelve* of his equals and neighbors.' 4 W. Blackstone, Commentaries on the Laws of England 343 (1769), . . . '***rather than a lone employee of the State***.' "

Blakely v. Washington, 542 U.S. 296, 314, 124 S.Ct. 2531, 2543, 159 L.Ed.2d 403 (2004).

Our founders recognized and adopted this "right to a speedy and public trial, by an *impartial jury,*" with the enactment of the Sixth Amendment to the United States Constitution, ratified December 15, 1791.

13. Moreover, in light of trial counsel's assiduous and unwavering insistence on the defendant's right to be sentenced by an impartial trial jury, is Article 1, Section 14, of the South Carolina Constitution of 1895, that explicitly provides:

> **"The right of trial by jury shall be preserved *inviolate*.** Any person charged with an offense shall enjoy **the right to a speedy and public *trial by an impartial jury*.** (Emphasis supplied.)"

14. On the first day of the evidentiary hearing, this Court entertained argument and discussion on:

> **Ground 10(d)** S.C. Code Ann. Section 16-3-20, allowing for judge sentencing, violates the Fifth, Sixth, Eighth, and Fourteenth Amendments of the United States Constitution.

> **Ground 11(d)** S.C. Code Ann. Section 16-3-20, as written by the General Assembly and construed by the South Carolina Supreme Court, denied Mr. Inman his right to have a jury determine the existence of aggravating circumstances, consider statutory and non-statutory mitigating circumstances, and determine whether a death sentence should be imposed.

The grounds regarding the constitutionality of the statutory provision that a decision to pursue a guilty plea in the guilt phase preempts the defendant's right to a "trial by an impartial jury," *Id.*, in the sentencing phase, when it mandates that: "if the defendant pleaded guilty, the sentencing proceedings must be conducted before the judge," without a jury, in what would otherwise be the bifurcated proceeding under the statutory capital

sentencing scheme of "Section 16-3-20. Punishment for murder; separate sentencing proceeding when death penalty sought."

15. "The constitutionality of Section16-3-20(B) . . . rests, *inter alia*, on whether the statute comports with the right to a jury trial as established by this Court and the United States Supreme Court in interpreting the state and federal constitutions." *State v. Crisp,* 362 S.C. 412, at 418-419, 608 S.E.2d 429, at 433 (2005). *See, also, State v. Wood,* 362 S.C. 135, 607 S.E.2d 57 (2004).

(a) The United States Supreme Court, in its decision in *Hurst v. Florida*, 577 U.S. ___, 136 S .Ct. 616, 193 L.Ed2d 504 (2016), held:

"The Sixth Amendment requires a jury, not a judge, to find each fact necessary to impose a sentence of death." 136 S. Ct. at 619.

[And]

"The Sixth Amendment protects a defendant's right to an impartial jury. [9] This right required Florida to base Timothy Hurst's death sentence on a jury's verdict, not a judge's fact finding. Florida's sentencing scheme, which required the judge alone to find the existence of an aggravating circumstance, is therefore unconstitutional." 136 S. Ct. at 624.

(b) Moreover, the South Carolina Constitution Article I, Section 14, explicitly provides that:

"The *right of trial by jury* shall be preserved inviolate. Any person charged with an offense shall enjoy the right to a speedy *and* public trial *by an impartial jury*;" (Emphasis supplied.)

"**Inviolate** means 'free from substantial impairment.' **Black's Law Dictionary** (6th Ed. 1990) at 826. It has been held that the right "*cannot be invaded or violated by either legislative act or judicial order or decree.*" *Sorrell v. Thevenir,* 69 Ohio St.3d 415, 422 (1994) (emphasis supplied).

IMPARTIAL JURY. Within constitutional provision is one which is of impartial frame of mind at beginning of trial, is influenced only by legal and competent evidence produced during trial, and bases its verdict upon evidence connecting defendant with the commission of the crime charged. Const. U.S. Amend. 6, *Durham v. State,* 182 Tenn. 577, 188 S.W.2d 555 (1945), 160 A.L.R. 746. Black's Law Dictionary (Rev. 4th Ed. 1968) at p.886.

(c) The South Carolina Supreme Court in upholding the former Section 16-52 of the 1962 Code, Punishment for Murder, amended by Section 16-3-20, S.C. Code (1976), held:

1. **Section 17—553.4** [relating to guilty pleas], is unconstitutional under the test laid down in *United States v. Jackson*;

2. **Section 16—52. Punishment for Murder**, is constitutional and legally severable from the provisions of 17—553.4;

3. Hereafter, regardless of past custom and practice, the choice between life in imprisonment and the death penalty must be left by the trial courts in this State to the jury in Every case, in accord with Section 16—52, regardless of how the defendant's guilt has been determined, whether by verdict of the jury or by a plea of guilty.

State v. Harper, 251 S.C. at 385, 162 S.E. at 715; *see, also, State v. Speights*, 263 S.C. 127, 134, 208 S.E.2d 43, 44 (1974), "section 16-52 remains fully operative law."

16. Nevertheless, in 1977, some nine years after *Harper* (1968); six years after the South Carolina electorate ratified and declared, in the 1970 General Election, to transpose certain sections in Article I, Declaration of Rights, of the Constitution of 1895, and, in 1971, by Act No. 276, 1971 Acts 316, the General Assembly did designated the former sections: "Section 3. . . [t]he privileges and immunities of citizens . . . due process and equal protection of the laws;" and "Section 14. The right of trial by [an impartial] jury shall be preserved inviolate . . . "; and three years after *Speights* (1974); the General Assembly of South Carolina, then, amended "Section 16—52 of the 1962 Code of Laws, setting forth the punishment for murder," by Act No. 177 Section 1, 1977 Acts and Joint Resolutions, approved June 8, 1977, and adopted: "**SECTION 16-3-20. Punishment for murder; separate sentencing proceeding when death penalty sought,"** and did so notwithstanding the aforesaid unanimous holding of the South Carolina Supreme Court:

"Hereafter, regardless of past custom and practice**, the choice between life in imprisonment and the death penalty must be left by the trial courts in this**

State to the jury in Every case, in accord with Section 16—52, **regardless of how the defendant's guilt has been determined, whether by verdict of the jury or by a plea of guilty."**

State v. Harper, supra, and, *State v. Speights, supra.*

17. In so doing, the legislature of the State, gratuitously, imposed its "*statutory mandate,*" *State v. Patterson,* 278 S.C. 319, 322, 295, S.E.2d 264, 266 (1982) (emphasis supplied), onto Section 16-3-20(B) that:

"If trial by jury has been waived by the defendant and the State, or **if the defendant pleaded guilty**, the sentencing proceeding must be conducted before the judge."

This was done in direct violation of Article 1, Section 14, South Carolina Constitution of 1895, notwithstanding the case law of this state as reflected in the aforesaid unanimous holdings of our Supreme Court in *Harper,* and later *Speights, supra,* that:

"Hereafter, regardless of past custom and practice, **the choice between life in imprisonment and the death penalty must be left by the trial courts in this State to the jury in Every case, . . . regardless how the defendant's guilt has been determined, whether by verdict or by plea of guilty."** *supra.*

18. Moreover, the State's "*statutory mandate*" abrogates the right of an accused to a trial—in the sentencing phase—"by an impartial jury," *accord, Hurst v. Florida, supra,* as guaranteed by our founders when they adopted, in 1791, the Sixth Amendment to the Constitution of the United States that provides:

Amendment VI

"In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, *by an impartial jury* of the State and district wherein the crime shall have been committed; ... (emphasis supplied).

Most significantly, the State's *statutory mandate* of Section 16-3-20(B) vitiates the explicit provision of the South Carolina Constitution of 1895, as ratified by the electorate in 1970, and amended by Act No. 276, 1971 Acts 315, as noted above:

ARTICLE I

Declaration of Rights
(Formerly Article 1, Section 25; and Article I, Section 11, Constitution of 1868 [10])

"Section 14. The *right of trial by jury shall be preserved* inviolate. Any person charged with an offense shall enjoy the *right to a* speedy and *public trial by an impartial jury;* . . . ." Article I, Section 14, South Carolina Constitution of 1895 (emphasis supplied.)

19. Moreover, S.C. Code Ann. "§ 16-3-20(B). **Punishment for murder; separate sentencing proceeding when death penalty sought,**" otherwise, **without** the *statutory mandate*, expressly provides that:

(A) A person who...pleads guilty to murder must be punished by death, or a mandatory minimum term of imprisonment for thirty years to life. If the State seeks the death penalty and a statutory aggravating circumstance is found beyond a reasonable doubt pursuant to subsections (B) and (C), and a recommendation of death is not made, the trial judge must impose a sentence of life imprisonment

(B) When the **State seeks the death penalty**, upon conviction or adjudication of guilt of a defendant of murder, the court shall conduct a separate sentencing proceeding. In the proceeding, if a statutory aggravating circumstance is found, the defendant must be sentenced to either death or life imprisonment. If no statutory aggravating circumstance is found, the defendant must be sentenced to life imprisonment or a mandatory minimum term of imprisonment for thirty years to life. The proceeding must be conducted by the trial judge before the trial jury as soon as practicable after the lapse of twenty-four hours unless waived by the defendant.

20. Nevertheless, "[w]hen the State seeks the death penalty," it mandates, thereafter, that: "if the defendant pleaded guilty, the sentencing proceeding must be conducted before the judge," in unlawful derogation of the rights guaranteed by the Constitutions of the United

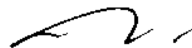
[10] "The South Carolina Constitution of 1868 . . . was the most democratic and equitable of the seven constitutions in the history of this state." **The South Carolina Constitutional Convention of 1868,** Nic Butler, Ph.D., March 2, 2018, Charleston County Public Library. This was reflected in its ARTICLE I, DECLARATIONS OF RIGHTS, *SECTION 11*, where it is succinctly and explicitly provided: *"The right of trial by jury shall remain inviolate;"* then, in SECTION 13, that:" every person shall have a right . . . to have a speedy and public trial by an impartial jury; " and, in SECTION 14, that: "No person shall be deprived of his life . . . but by the judgement of his peers . . . . And the General Assembly shall not enact any law that shall subject any person to punishment without trial by jury; . . . ." *South Carolina Constitution of 1868.*

States and South Carolina "to a trial by an impartial jury," and creates a *Catch 22* for a defendant, such as Inman, in that, it has been held, as part of the South Carolina "case law," that: **"the condition that the jury determine punishment,"** would be "an *impermissible condition* under the ***statutory mandate*** that **the trial judge alone determines punishment when a defendant pleads guilty to murder,**" *State v. Patterson,* 278 S.C. 319, 322, 295, S.E.2d 264, 266 (1982) (emphasis supplied), notwithstanding the Sixth Amendment and Art. 1, Section 14, of our respective Constitutions, *supra*, and, more particular, the explicit provision of the South Carolina Constitution that:

"The right of trial by jury shall be *preserved inviolate.* Any person charged with an offense shall enjoy the right to a speedy and public *trial by an impartial jury.* *Id.* (Emphasis supplied).

21. Moreover, under *State v. Truesdale*, 278 S.C. 368, 296 S.E.2d 528 (1982), it was held that: "*Pleas of guilty are unconditional*, and ***if an accused attempts to attach any condition or qualification*** thereto, ***the trial court should direct a plea of not guilty.*** (Citations omitted). In which event, Inman would have been compelled to go forward with a guilt phase trial in which the State would have to prove its case, before the trial jury, by trying the sensitive issues with the facts of the particularly heinous crimes, without consideration for the victims, "forcing them to relive the harrowing experiences now long past." ***Inman, supra.***

21. Therefore, the accused, Inman, could not freely and voluntarily waive his Fifth Amendment right and plead guilty, upon stipulated facts, before a duly qualified trial jury, in the guilt phase of the bifurcated proceeding, "to avoid imposing additional burdens on victims" and "consider the trauma the victims of these particularly heinous crimes would experience in a . . . trial, forcing them to relive



harrowing experiences now long past," *State v. Inman*, 395 S.C. 539, 569, 720 S.E.2d 31, 47 (2011), Justice Pleicones, concurring in separate opinion.[11]

22. This was, notwithstanding, the unanimous decisions of the South Carolina Supreme Court that:

> **"Hereafter,** regardless of past custom and practice, **the choice between life in imprisonment and the death penalty must be left by the trial courts in this State to the jury in Every case,** in accord with Section 16—52, **regardless of how the defendant's guilt has been determined, whether by verdict of the jury or by a plea of guilty."**

State v. Harper, 251 S.C. at 385, 162 S.E. at 715 (1968); *see, also, State v. Speights*, 263 S.C. 127, 134, 208 S.E.2d 43, 44 (1974), "section 16-52 remains fully operative law,"

Nevertheless, in 1977, some eleven years after *Harper* (1968), then *Speights* (1974), when the General Assembly of South Carolina amended "Section 16—52 of the 1962 Code of Laws, setting forth the punishment for murder," by Act No. 177 Section 1, 1977 Acts and Joint Resolutions, approved June 8, 1977, and adopted: "**SECTION 16-3-20**. Punishment for murder;

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[11] See: South Carolina Constitution of 1895, Article I, Section 24(A). "To preserve and protect victims' rights to justice and due process...victims of crime have the right to:

***

(12) have all rules governing criminal procedure and the admissibility of evidence in all criminal proceedings protect victims' rights and have these rules subject to amendment or repeal by the legislature to ensure protection of these rights.

* * *

§ 16-3-1505. Legislative intent.

"[T]o implement the **rights guaranteed to victims in the Constitution of this State,** the General Assembly declares its intent, in this article, **to ensure that all victims of ... a crime are treated with dignity, respect, courtesy, and sensitivity;** that the rights ... extended in this article to victims of ... a crime **are honored and protected by** law enforcement agencies, **prosecutors, and judges** in a manner no less vigorous than the protections afforded criminal defendants; . . . " (Emphasis supplied).

§ 16-3-1510. Definitions.

(a) "Victim" means any individual who suffers direct or threatened physical, psychological, or financial harm as the result of the commission or attempted commission of a criminal offense, ..."Victim" also includes any individual's spouse, parent, child, or the lawful representative of a victim who is:

(b) Deceased;" . . . (emphasis supplied).

separate sentencing proceeding when death penalty sought," it did so, notwithstanding the aforesaid unanimous holding of the South Carolina Supreme Court that:

> "**Hereafter,** regardless of past custom and practice, **the choice between life in imprisonment and the death penalty must be left by the trial courts in this State to the jury in Every case,** in accord with Section 16—52, **regardless of how the defendant's guilt has been determined, whether by verdict of the jury or by a plea of guilty."**

State v. Harper, 251 S.C. at 385, 162 S.E. at 715, and *State v. Speights*, 263 S.C. 127, 134, 208 S.E.2d 43, 44 (1974).

In so doing, the legislature of the State imposed its *"statutory mandate,"* *State v. Patterson,* 278 S.C. 319, 322, 295, S.E.2d 264, 266 (1982)(emphasis supplied), inupon Section 16-3-20(B) that:

> "If trial by jury has been waived by the defendant and the State, or **if the defendant pleaded guilty**, the sentencing proceeding must be conducted before the judge."

This was done in abrogation of the aforesaid unanimous holding of our Supreme Court in *Harper,* and later *Speights, supra,* that:

> ". . . **the choice between life in imprisonment and the death penalty must be left by the trial courts in this State to the jury in Every case, . . . regardless how the defendant's guilt has been determined, whether by verdict or by plea of guilty."** *supra..*

23. The conflation of the Trial Jury and the Trial Judge, requires the Judge to conduct the trial, to determine the facts — to include credibility of witnesses and the admissibility of evidence of aggravation and mitigation — and, then, to decide the matter of any applicable statutory aggravating circumstances, and the ultimate consequence of the proceedings, considering only relevant and material matters, and, if guilt is found, determine the appropriate punishment. The judge, who is not sequestered, is by the public nature of the proceedings subject to potential compromise, in that "[a] judge is s presumed to weigh evidence properly," *Inman,* 395 S.C. at 570,

720 S.E.2d, at 48 (citation omitted), and, therefore, more likely to be exposed to extra-judicial influences than are jurors, who are questioned, qualified, selected and seated as impartial jurors, according to statutes and rules governing the same, and, then, pursuant to the protocols and procedures of a death penalty trial, are sequestered during the entire bifurcated proceedings to maintain their "impartiality," until they have reached their verdicts, and are dismissed. That is unless the Trial Judge would be required to be sequestered, also, as is the Trial Jury, to prevent the possibility of any appearance of untoward extra-judicial attempts "to ease the tensions created by the magnitude of the case," *Shaw v. State, supra,* where the State seeks the death penalty.

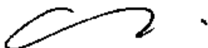
24. Such was a purported incident, allegedly occurring during a PCR hearing arising out of the first case to be tried pursuant to the "mandate" included in Section 16-3-20(B). *Ib.*

> "Evidence submitted by appellant's lawyers indicated that certain criminal defense lawyers were present in the hearing judge's chambers at a time prior to the sentencing of the appellant to death by another judge. At that time, the hearing judge in these proceedings, which are currently before the Court, allegedly said he and another judge had already discussed the matter concerning the appellant with the sentencing judge and that if the appellant was not sentenced to death, the sentencing judge would be holding court in some remote part of the State. The statement was made in the judge's chambers to public defenders who were well-known to the judge. They additionally indicated that the statement was made in an "off-hand and joking manner by (the hearing judge).
>
> * * *
>
> Assuming the truth of the factual allegations, we think the only reasonable view of the facts alleged are that they indicate an attempt at levity to ease the tensions created by the magnitude of the case concerning Mr. Shaw, rather than any actual bias on the part of the judge. . . . They indicate that the comments, if made, were made in a joking manner. The fact that a more reflective manner might have been used to ease the obviously sobering discussion is insufficient, to require the judge's disqualification. . . . We find the charges of bias and prejudice on the part of the trial judges to be completely without foundation.

Shaw v. State, 276 S.C. 190, 277 S.E2d 140, 141-142 (1981).

CONCLUSIONS OF LAW

In view of the foregoing, it is concluded that:



(1) Because Mr. Inman pleaded guilty to murder, it was mandated that his "sentencing proceeding must be conducted before the judge," by S.C. Code Ann. Section. 16-3-20(B), therefore, the guilty plea to murder, standing alone, did not make him eligible for the death penalty, in that, under South Carolina's capital sentencing scheme, Section 16-3-20 (C), it is provided, in pertinent part, "[w]here a statutory aggravating circumstance is found and a **sentence of death is not recommended by the jury,** the trial judge shall sentence the defendant to life imprisonment as provided in subsection (A)," which provides: "If the State seeks the death penalty and a statutory aggravating circumstance is found beyond a reasonable doubt pursuant to subsections (B) and (C), and a recommendation of death is not made, **the trial judge must imposed a sentence of life imprisonment.**"

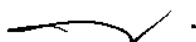
(2) Nevertheless, Mr. Inman's guilty plea, pursuant to the statutory mandate gratuitously imposed upon Section 16-3-20(B), does not preclude application of *Hurst v. Florida*. The *"statutory mandate" included in "Section 16-3-20(B). Punishment for murder; separate sentencing proceeding when death penalty sought,"* that provides: "If trial by jury has been waived by the defendant and the State, or *if the defendant pleaded guilty*, **the sentencing proceeding must be conducted before the judge,**" is unconstitutional under that test laid down in *Hurst v. Florida*, 577 U.S. ___, 136 S .Ct. 616, 193 L.Ed2d 504 (2016):

> "We hold this sentencing scheme unconstitutional. The Sixth Amendment requires a jury, not a judge, to find each fact necessary to impose a sentence of death. A jury's mere recommendation is not enough." 136 S. CT. at 619.
>
> [And]
>
> "The Sixth Amendment protects a defendant's right to an impartial jury. The right required the [State] to base [Inman's] death sentence on a jury's verdict, not a judge's fact finding. [South Carolina's] sentencing scheme, which required the judge alone to find the existence of an aggravating circumstance, is therefore unconstitutional." 136 S. Ct. at 624.

Justice BREYER, concurring in the judgement.

> "I concur in the judgment here based on my view that 'the Eighth Amendment requires that a jury, not a judge, make the decision to sentence a defendant to death.' [*Ring v. Arizona*, 536 U.S. 584, 614, 122 S. Ct. 2428 (153 L.Ed.2d 556 (2002))]; at 614, 122 S. Ct. 2428; see *id.*, at 618, 122 S. Ct. at 2428 ('[T]he danger of unwarranted imposition of the [death] penalty cannot be avoided unless the 'decision to impose the death penalty is made by a jury rather than by a single government official' " (quoting *Spaziano v. Florida*, 468 U.S. 447, 104 S. Ct. 3154, 82 L.Ed.2d 340 (1984) (STEVENS, J. concurring in part and dissenting in part))).
>
> *Hurst v. Florida*, 577 U.S. ___, 136 S. Ct. 616, at 624, 193 L.Ed2d 504 (2016).

(3) The Sixth Amendment to the United States Constitution provides that: "the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State;" and



(4) Article 1, Section 14 of the South Carolina Constitution of 1895 provides that:

"The right of trial by jury shall be preserved *inviolate*. Any person charged with an offense shall enjoy the right to a speedy and public trial by an impartial jury;" and

The 'the statutory mandate' of Section 16-3-20(B), that "if the defendant pleaded guilty, the sentencing proceeding must be conducted before the judge," is unconstitutional in that it specifically violates Article 1, Section14, of the South Carolina Constitution of 1895, as well as the Sixth Amendment to the United States Constitution.

(5) Section 16-3-20(B), is legally severable from the unconstitutional provision imposed upon it that: "if the defendant pleaded guilty, the sentencing proceeding must be conducted before the judge," and, as so modified, S.C. Code Ann. (1976) "**SECTION 16-3-20.** Punishment for Murder; Separate sentencing procedure when death penalty is sought," is constitutional.

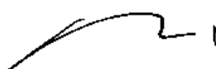
(6) "Regardless of past custom and practice, the choice between life imprisonment and the death sentence must be left by the trial courts in this State to the jury in every case, in accord with [the constitutional provisions of Section 16-3-20(B)], regardless of how the defendant's guilt was determined, whether by the verdict of the jury or by a plea of guilty." *State v. Harper* and *State v. Speight.*

(7) The trial court in *Inman* did not follow the case law that "the choice between life imprisonment and the death sentence must be left by the trial courts in this State to the jury in every case . . . regardless of how the defendant's guilt was determined, whether by the verdict of the jury or by a plea of guilty," *State v. Harper* and *State v. Speight, supra,* and, instead, enforced the statutory mandate that "if the defendant pleaded guilty, the sentencing proceeding must be conducted before the judge," without a jury." Section 16-3-20(B).

(8) Nevertheless, under "**Section 16-3-20.** Punishment for Murder; separate sentencing proceeding when death penalty is sought. (A) . . . Where a statutory aggravating circumstance is found beyond a reasonable doubt and *a sentence of death is not recommended by the jury*, the trial judge shall sentence the defendant to life imprisonment as provided in subsection (A)." Section 16-3-20(C).

(9) In a case where the "sentence is greater than what state law authorized on the basis of the verdict alone." * * * Whether the judge's authority to impose an enhanced sentence depends on finding a specified fact (as in *Apprendi*), or one of several specified facts (as in *Ring*), or *any* aggravating fact (as here), it remains the case that the jury's verdict alone does not authorize the sentence. The judge acquires that authority only upon finding some additional fact."

Because the State's sentencing procedure did not comply with the Sixth Amendment, petitioner's sentence is invalid." *Blakely v. Washington*, 542 U.S. 296, 124 S. Ct. 2531, 538, 159 L.Ed.2d 403 (2004)



(10) Inasmuch as the decision of the United States Supreme Court in *Hurst v. Florida* did "impose upon state criminal proceedings a substantive standard not previously recognized or a right not in existence at the time of trial," and, the Defense pre-trial motion for a jury trial in the sentencing phase, which "the judge summarily denied . . . on the ground he was constrained by the existing case law in South Carolina and the statutes," and Inman's PCR action was, at the time of the *Hurst* decision, and is now pending, it is proper for consideration in these Post-Conviction Relief proceedings, as provided by S.C. Code §17-27-45(B).

JUDGEMENT

Accordingly, it is the judgment of the court that:

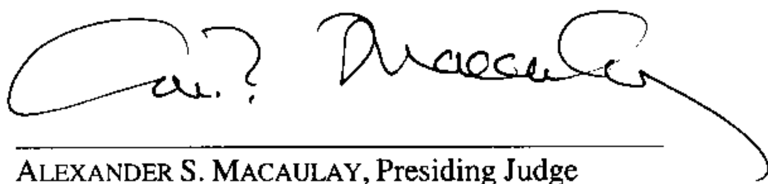
(1) The Sixth Amendment to the United States Constitution protects a defendant's right to be tried by an impartial jury.

(2) That Article 1, Section 14, Constitution of South Carolina 1895, explicitly provides, *inter alia*, that:

"The right of trial by jury shall be preserved inviolate. Any person charged with an offense shall enjoy the right to a speedy and public trial.

(3) The Post-Conviction Relief Application of the Applicant Jerry Buck Inman, also known as Jerry Buck Inmon, must be GRANTED, and the matter remanded to the Court of General Sessions of Pickens County for a new trial by an impartial jury pursuant to the constitutional provisions of Sections 16-3-10, *et seq.*, South Carolina Code of Laws (1976), and the constitutional laws made and provided in such cases.

AND, IT IS SO ORDERED.



ALEXANDER S. MACAULAY, Presiding Judge

April 17 , 2020
Walhalla, South Carolina

CLERK OF COURT
2020 APR 21 P 12:41

ATTACHMENT

2020 APR 21 P 12:42

CLERK OF COURT
PICKENS COUNTY
SOUTH CAROLINA

Appeal Set Monday

Lawyers Accuse Judge Peeples Of Commenting On Shaw Case

By HOLLY GATLING
Staff Writer

The judge hearing condemned murderer Joseph Carl Shaw's appeal for a life sentence has been accused of once saying he favored capital punishment for Shaw.

Three local attorneys gave sworn statements alleging Circuit Judge Rodney Peeples of Barnwell made the remarks in Lexington County in December 1977, the same month Shaw and James Terry Roach received death sentences for murdering two Columbia teen-agers.

Shaw and Roach pleaded guilty together, but are appealing their cases separately.

One of Shaw's attorneys, John Delgado, filed Thursday the sworn statements as part of the documents arguing that his condemned client has the right to question Peeples under oath about the statements.

Peeples, who is scheduled to begin hearing Shaw's appeal Monday, said he "categorically refutes making such statements" and has "no independent recollection" of the conversation.

Lexington County Public Defenders Pat McWhirter and Danny Beck gave separate statements saying they heard Peeples, in his chambers, remark that he and South Carolina Supreme Court Justice Julius Ness had spoken with Circuit Judge David W. Harwell who sentenced Shaw and Roach.

Peeples' statement, according to McWhirter, was to the effect that "if he (Harwell) didn't sentence him (Shaw) to die he would be holding court in Walhalla for the rest of his life."

Walhalla is a small town in the Piedmont.

Beck, in his affidavit, said the judge's remark "came up in the general course of conversation and as I recall was made in a somewhat offhand or joking manner by Judge Peeples. I was surprised to have heard Judge Peeples make such a statement."

In a third sworn statement, Lexington attorney John Earl Duncan said he discussed the Shaw case with a neighboring attorney the night before Peeple's alleged comments.

Duncan said the attorney "related she had a conversation with the Honorable David Harwell at which time he had related his surprise and displeasure at having to pass sentence on Joseph Carl Shaw and James Terry Roach. She seemed to believe Judge Harwell was experiencing difficulty in deciding their sentences and much preferred the deciion to be made by a jury.

"I passed on what I had heard to Judge Peeples who then stated as best I recall 'I would have no difficulty and would not hesitate,'" Duncan concluded.

According to Delgado's document, "such a suggestion, even if made in jest, could have had an effect on the mind of the trial judge" and violates the Code of Judicial Conduct.

Earlier this week Peeples declined Shaw's attorneys' requests to remove himself from the case or to grant a delay in the post conviction relief hearing scheduled to begin Monday.

Shaw escaped the electric chair by only a few hours last December after a federal appeals court judge granted a stay of execution. Two other courts declined to halt the death sentence which would have been South Carolina's first since 1962.

Escapee Charged With Assaulting Olympia Woman Is Recaptured

A prison escapee accused of raping a Columbia woman was captured by authorities near Florence Friday night.

State Department of Corrections spokesman Sam McCuen said Michael Godwin Sloan, 19, who fled the Campbell Pre-Release Center in a state-owned van, was captured by corrections officers backed up by Florence deputies.

He was found in a trailer off S.C. 51 about five miles south of Florence.

Sloan became the object of a statewide search after a 29-year-old Olympia area woman was raped in her home Wednesday morning

phone. Again when she replied no he forced his way into the house and raped her, the victim said.

Before leaving the woman's home the man told her

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF PICKENS
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2012- CP-39-918 (PCR)

Jerry Buck Inman, etc.

Diana Holt, Esquire
PLAINTIFF(S)

State of South Carolina

Melody J. Brown, Sr. Dep. Atty. Gen.
DEFENDANT(S)

Submitted by: AlexanderS. Macaulay, Presiding Judge	**Attorney for :** ☐ Plaintiff ☐ Defendant or ☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

☐ **JURY VERDICT**. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☒ **DECISION BY THE COURT**. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.

☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other

☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other

☐ **STAYED DUE TO BANKRUPTCY**

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (*CHECK APPLICABLE BOX*): ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☒ See attached order (formal order to follow) ☐ Statement of Judgment by the Court:

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.
Additional Information for the Clerk :

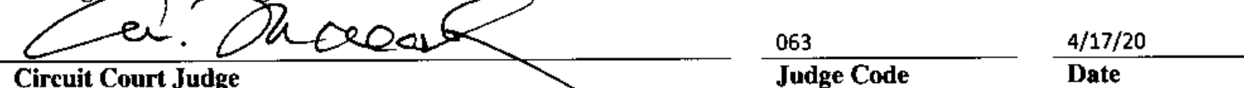
INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
		$
		$
		$

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**
E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.



Circuit Court Judge	063 Judge Code	4/17/20 Date

For Clerk of Court Office Use Only

This judgment was entered on the ~~day of~~ , 20 and a copy mailed first class or placed in ~~the appropriate~~ attorney's box on this day of , 20 to attorneys of record or to parties (when appearing pro se) as follows:

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter:

E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

****

FORM 4C INSTRUCTIONS—JUDGMENT IN A CIVIL CASE

(Instructions for Information Only-Not to be filed with Form 4C)

1. Form 4C-Judgment in a Civil Case has been modified to add order information and enrollment instructions for the clerk of court. The purpose of Form 4 has not changed with the exception that judgment information is provided when applicable.

2. Please note that the Form 4C must be attached to all orders that include information to enroll in the judgment index. The clerk will not be responsible for reading the order to determine enrollment information.

   The attorney or prevailing party will prepare and attach the Form 4C when submitting the proposed order that includes judgment enrollment information for the judgment index. The judge will review and sign Form 4C when he or she signs an order that includes judgment enrollment information for the judgment index.

3. Form 4C is not required to be submitted to the Court with orders that do not include information to enroll in the judgment index. If the clerk receives such an order without Form 4C attached, the clerk should enter and process the order pursuant to Rule 58 and Rule 77(d), SC Rules of Civil Procedure (i.e., the clerk should serve notice of entry of the judgment by mail or provide the attorneys with copies of the signed order by other means).

4. The "Information for the Judgment Index" section should be completed when the judgment affects title to real or personal property or if any amount should be enrolled. In the "Judgment in Favor of" column, enter the name of the party to whom the judgment is awarded. In the "Judgment Against" column, enter the name of the person to whom the judgment is against. The judgment amount to be enrolled should be noted in the "Judgment Amount" column. As necessary, describe any property referenced in the order if it is to be enrolled in the judgment index. If there is no judgment information to enroll, indicate "N/A" in one of the boxes in this section of the form.

5. To enter information to accommodate multiple parties, additional Form 4Cs may be used as necessary. Additional space may be inserted on the form as necessary.

6. The section "For the Clerk of Court Office Use Only" should be completed by the clerk as it has been with the previous version of Form 4.

7. If the matter is on appeal to the Circuit Court, then the parties on the form should be changed from Plaintiff and Defendant to Appellant and Respondent.

8. If an arbitrator prepares an order after arbitration, the arbitrator should strike through "Circuit Court Judge" and indicate "Arbitrator" in the signature block.

9. If a Special Circuit Court Judge, Master in Equity, or Special Referee prepares an order after hearing a Circuit Court matter, then he or she should strike through the title "Circuit Court Judge" below the signature line and indicate the appropriate title.

10. When an Order of Foreclosure is filed, neither the parties or debt owed should be listed in the Information for the Judgment Index Section, unless the foreclosure order specifically requires entry of the full judgment amount before the foreclosure sale, pursuant to Section 29-3-650 of the SC Code.

11. If the deficiency judgment is waived in a Foreclosure action, indicate N/A in the "Judgment Amount To Be Enrolled" box.

12. Foreclosure actions should be ended by the Clerk of Court upon receipt of the Order of Foreclosure. Subsequent information, including deficiency judgments, can be added to the action after the case is ended. The Master in Equity should end the action in the MIE system upon the receipt of the Order of Foreclosure.

13. When judgment enrollment information is included in the Information for the Judgment Index Section (for example, when there is a deficiency judgment), only the parties who the judgment is for and against should be included in the Section. Subordinate parties and lienholders should not be included in the box if there is not a judgment amount specifically for or against them.

14. Form 4C is not required to be attached to Transcripts of Judgment and Confession of Judgment.

2020 APR 21 P 12:39

CLERK OF COURT
[illegible] COUNTY
SOUTH CAROLINA

State of South Carolina
Tenth Judicial Circuit Court

Oconee County Courthouse

ALEXANDER S. MACAULAY
Circuit Judge (Active/Retired)

Post Office Drawer 428
Walhalla, SC 29691-0428

Telephone: (864) 718-1041
Facsimile: (864) 638-4267
amacaulayj@sccourts.org

April 17, 2020

Honorable Harold P. Welborn
Pickens County Clerk of Court
Post Office Box 215
Pickens, South Carolina 29671-0215

Re: Jerry Buck Inman, etc. v State
2012-CP-39-918

Dear Mr. Clerk:

Enclosed herewith find the Order Granting Post-Conviction in the above-referenced PCR Appeal to be filed with the records of your office. I trust you will find it in order, but should there be any questions, please do not hesitate to advise me.

Also enclosed is the Form 4 for service on the Attorneys:

Applicant: Diana Holt, Esquire
Post Office Box 6454
Columbia, South Carolina 29260

State of South Carolina: Melody J. Brown, Senior Deputy Attorney General
Post Office 11549
Columbia, South Carolina 29211.

Thanking you for your attention to and consideration in this matter, I remain

Sincerely,

Alexander S. Macaulay, Judge

Enclosure.

2020 APR 22 P 4:51
CLERK OF
PICKENS COUNTY
SOUTH

State of South Carolina
Tenth Judicial Circuit Court

Oconee County
Courthouse

ALEXANDER S. MACAULAY
Circuit Judge (Active/Retired)

Post Office Drawer 428
Walhalla, SC 29691-0428

Telephone: (864) 718-1041
Facsimile: (864) 638-4267
amacaulayj@sccourts.org

April 20, 2020

Honorable Harold P. Welborn
Pickens County Clerk of Court
Post Office Box 215
Pickens, South Carolina 29671-0215

Re: Jerry Buck Inman, etc. v State
2012-CP-39-918 (Capital PCR)

Dear Mister Clerk:

Please file the enclosed ERRATTA SHEET with the original Order GRANTING POST-CONVICTION RELIEF in the above referenced Capital PCR that I mailed Friday, April 17, 2020, for filing with the records of your office. Unfortunately, I was in a bit of a hurry to get this Order filed as soon as I could considering how long it has been pending.

Then, when I read over my copy this weekend, I realized that I had not completed the statement of Article 1, Section 14, of the Constitution of South Carolina 1895, in Paragraph (2) of the JUDGEMENT on page 58, leaving out the final words: "by an impartial jury." Therefore, I have prepared the ERRATTA SHEET reflecting the correction to be filed with the original, along with the final page now dated today.

I regret the confusion and inconvenience this may cause, but please include the ERRATTA SHEET together with the corrected final page 58, with your records, for service of the Order on the attorneys. I will try to reach you by phone this afternoon to discuss the matter and any questions you may have.

Thanking you for your attention to and patient consideration in this matter, and with kind personal regards, I remain,

Sincerely,

Cc: Diana L. Holt, Esquire
Melody J. Brown, Office of Attorney General

2020 APR 22 P 4:51
CLERK OF COURT
PICKENS COUNTY

State of South Carolina
Tenth Judicial Circuit Court

Oconee County
Courthouse

ALEXANDER S. MACAULAY
Circuit Judge (Active/Retired)

Post Office Drawer 428
Walhalla, SC 29691-0428

Telephone: (864) 718-1041
Facsimile: (864) 638-4267
amacaulayj@sccourts.org

ERRATA SHEET

Jerry Buck Inman, etc. versus State
2012 CP-39-918 (Capital PCR)

Order Granting Post-Conviction Relief, dated and filed April 17, 2020
Court of Common Pleas, Pickens County, South Carolina.

Judgement, page 58, Paragraph:

(2) That Article 1, Section 14, Constitution of South Carolina 1895, explicitly provides, *inter alia*, that:

"The right of trial by jury shall be preserved inviolate. Any person charged with an offense shall enjoy the right to a speedy and public trial ['*by an impartial jury.*']" was inadvertently omitted and is to be added to complete cite.

The corrected Page 58 of 58 is enclosed, dated and signed.

If there are any questions or exceptions please do not hesitate to advise me.

Alexander S. Macaulay, Presiding Judge

April 20, 2020
Walhalla, South Carolina

(10) Inasmuch as the decision of the United States Supreme Court in *Hurst v. Florida* did "impose upon state criminal proceedings a substantive standard not previously recognized or a right not in existence at the time of trial," and, the Defense pre-trial motion for a jury trial in the sentencing phase, which "the judge summarily denied . . . on the ground he was constrained by the existing case law in South Carolina and the statutes," and Inman's PCR action was, at the time of the *Hurst* decision, and is now pending, it is proper for consideration in these Post-Conviction Relief proceedings, as provided by S.C. Code §17-27-45(B).

2020 APR 22 PM 4:57
CLERK OF COURT
PICKENS COUNTY
SOUTH CAROLINA

JUDGEMENT

Accordingly, it is the judgment of the court that:

(1) The Sixth Amendment to the United States Constitution protects a defendant's right to be tried by an impartial jury.

(2) That Article 1, Section 14, Constitution of South Carolina 1895, explicitly provides, *inter alia*, that:

"The right of trial by jury shall be preserved inviolate. Any person charged with an offense shall enjoy the right to a speedy and public trial [*by an impartial jury*].*

(3) The Post-Conviction Relief Application of the Applicant Jerry Buck Inman, also known as Jerry Buck Inmon, must be GRANTED, and the matter remanded to the Court of General Sessions of Pickens County for a new trial by an impartial jury pursuant to the constitutional provisions of Sections 16-3-10, *et seq.*, South Carolina Code of Laws (1976), and the constitutional laws made and provided in such cases.

AND, IT IS SO ORDERED.

____

ALEXANDER S. MACAULAY, Presiding Judge

April 17, 2020
Walhalla, South Carolina

* [Inadvertently omitted from the original. ASM 4/20/2020.]

(10) Inasmuch as the decision of the United States Supreme Court in *Hurst v. Florida* did "impose upon state criminal proceedings a substantive standard not previously recognized or a right not in existence at the time of trial," and, the Defense pre-trial motion for a jury trial in the sentencing phase, which "the judge summarily denied . . . on the ground he was constrained by the existing case law in South Carolina and the statutes," and Inman's PCR action was, at the time of the *Hurst* decision, and is now pending, it is proper for consideration in these Post-Conviction Relief proceedings, as provided by S.C. Code §17-27-45(B).

CLERK OF COURT
COUNTY
SOUTH CAROLINA
APR 22 P 4:51

JUDGEMENT

Accordingly, it is the judgment of the court that:

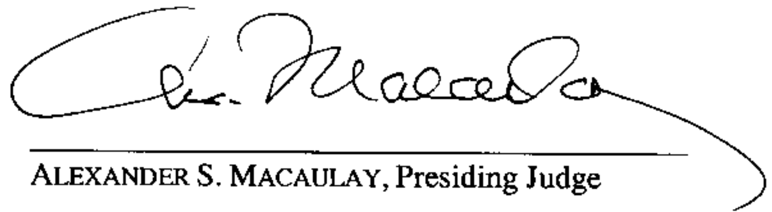
(1) The Sixth Amendment to the United States Constitution protects a defendant's right to be tried by an impartial jury.

(2) That Article 1, Section 14, Constitution of South Carolina 1895, explicitly provides, *inter alia*, that:

"The right of trial by jury shall be preserved inviolate. Any person charged with an offense shall enjoy the right to a speedy and public trial by an impartial jury.

(3) The Post-Conviction Relief Application of the Applicant Jerry Buck Inman, also known as Jerry Buck Inmon, must be GRANTED, and the matter remanded to the Court of General Sessions of Pickens County for a new trial by an impartial jury pursuant to the constitutional provisions of Sections 16-3-10, *et seq.*, South Carolina Code of Laws (1976), and the constitutional laws made and provided in such cases.

AND, IT IS SO ORDERED.



ALEXANDER S. MACAULAY, Presiding Judge

April 20, 2020
Walhalla, South Carolina