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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

On Petition for Writ of Certiorari to Court of Common Pleas

CAPITAL PCR ACTION

APPEAL FROM PICKENS COUNTY
Honorable Alexander S. Macaulay, Circuit Court Judge

Jerry Buck Inman, #5256
a/k/a Jerry Buck Inmon.....Respondent-Petitioner

v.

State of South Carolina.....Petitioner-Respondent.

Appellate Case No. 2020-000881

STATE'S PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

Whether the PCR court erred in considering a procedurally barred challenge to the constitutionality of the provision in S.C. Code § 16-3-20(B) for judge sentencing following a guilty plea in a capital case, then erred again in granting relief on that issue despite a lack of factual support for finding Inman's plea involuntary, and despite this Court's precedent rejecting identical challenges to the statutory provision.

INTRODUCTION TO THE PETITION

On or about May 26, 2006, Tiffany Souers, a Clemson University student, was attacked and murdered in her apartment. Inman, who had no connection to Ms. Souers before the attack but randomly preyed on Ms. Souers, pled guilty to her murder, kidnapping and sexual assault. After presentation of sentencing evidence, the Honorable Edward W. Miller found three statutory aggravating circumstances:

> ... I have carefully considered the evidence presented at the sentencing proceeding and make the following findings concerning the existence of statutory aggravating circumstances, I find the State has proven beyond a reasonable doubt that the Defendant committed the murder for which he is charged while in the commission of the crimes of kidnapping, burglary in the first degree, and criminal sexual conduct in the first degree.
>
> The circumstances surrounding the murder of Tiffany Souers are savage, brutal, and unconscionable. I find that the State has proven beyond a reasonable doubt that Tiffany Souers home was broken into in the nighttime by the Defendant constituting burglary in the first degree, that she was held against her will constituting kidnapping, and that she was the victim of a forcible rape constituting criminal sexual conduct in the first degree, and that she was, subsequently, choked by the Defendant until she died constituting murder. …

[App. p. 3756, line 16 – p. 3757, line 9].

Judge Miller, noting the difficulty in considering the punishment of death, then found death to be appropriate under the circumstances:

> …Regrettably, Jerry Buck Inman falls within a small group of deviant predators who exhibit in their conduct a callous disregard for society and the rights and safety of others.

> While this has been one of the hardest decisions of my life, I am firmly convinced that the murder and rape of Tiffany Souers and the characteristics of Jerry Buck Inman warrant the penalty of death. I have carefully considered all relevant facts and circumstances, including the existence of statutory aggravating circumstance, as well as statutory and non-statutory mitigating circumstances. My verdict is not the result of passion, prejudice, or any other arbitrary circumstance.

[App. p. 3763, lines 16-24].

This Court affirmed on direct appeal finding the plea unconditional and voluntary, and the sentence proportionate. *State v. Inman*, 395 S.C. 539, 720 S.E.2d 31 (2011). In PCR, the judge granted relief upon finding the plea was involuntary. Contrary to this Court's precedent, the PCR judge concluded that S.C. Code § 16-3-20(B), requiring judge sentencing after a guilty plea is unconstitutional. The PCR judge then found that the plea was not voluntary – even though Inman personally and knowingly waived all jury proceedings as noted in the direct appeal – because the statute is unconstitutional. In light of these findings, the PCR judge granted entirely new proceedings. The PCR court's ruling lacks support in law or fact. It is contrary to the findings in the direct appeal. It is contrary to this Court's precedent. It is contrary to federal precedent. The grant of relief is unwarranted and must be reversed.

STATEMENT OF THE CASE

Trial Level Proceedings

Inman was indicted at a November 2006 term of General Sessions for Pickens County 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) (which was amended in August 2008), and burglary in the first degree (2006-GS-39-2222). [App. pp. 2588 - 95]. On August 22, 2006, the State noticed Inman of the intent to seek the death penalty. [App. p. 2596]. This Court assigned the case to Judge Miller. James W. Bannister, Esq., and Symmes W. Culbertson, Esq., of the Greenville Bar represented Inman with Pickens County Public Defender John W. DeJong, Esq.

Mode of Trial Challenge

On August 17, 2007, Inman filed a Motion to Determine the Mode of Trial. [App. pp. 4221-22]. In the motion, counsel informed the judge of Inman's intent to enter a guilty plea to murder and to demand a jury trial for sentencing. [App. p. 4221]. The State filed its response noting the case law contrary to Inman's position. [App. p. 4223]. After a hearing on the motion on September 14, 2007, Judge Miller denied the motion. [App. p. 3840]. A written order followed on November 15, 2007. [App. pp. 2606-2608]. Counsel served and filed a notice of appeal from the November 15, 2007 order. [App. pp. 2597-98]. However, on January 9, 2008, without requiring a response or pleading from the State, this Court dismissed the notice without prejudice. [App. pp. 2655-57]. Inman thereafter sought certiorari review from the Supreme Court of the United States. On June 9, 2008, the Supreme Court denied the petition. [App. p. 2723]. *See also Inman v. State of South Carolina*, No. 07-1268, 128 S.Ct. 2908 (June 9, 2008).

Competency and Plea of August 19, 2008

Judge Miller heard testimony from Dr. Donna Schwartz-Watts that Inman was competent to understand the proceedings and had the capacity to communicate with counsel. [See App. p. 3926]. She stated from the first time she met Inman in September 2006, he had a desire to plead guilty and knew what he is doing. She stated that he had made it clear to her that he wished to receive a death sentence and felt he deserved to die for what he had done. [App. p. 3930]. Judge Miller questioned the doctor: "There's no question in your mind that Mr. Inman is competent," to which she replied, "No question, Your Honor." [App. p. 3934, lines 2-4; see also App. p. 3929, line 12 – p. 3930, line 2 (similarly confirming no doubt as to competency)]. The judge then addressed Inman, and, after a series of probing questions, accepted the guilty plea. [See App. pp. 3934-73]. Judge Miller deferred sentencing until September8, 2008. [App. p. 3974].

The September Sentencing Proceeding

On September 8-11, 2008, Judge Miller held a non-jury sentencing proceeding as a result of the guilty plea to murder. As part of the defense presentation, Dr. Marti Loring was offered as an expert regarding Inman's background, but the proceedings broke down after the solicitor's voir dire of the witness. Defense counsel made a motion for mistrial alleging the solicitor's questions regarding the doctor's license status in South Carolina had "chilled her ability to testify…." [See App. p. 3412, line 4 – p. 3413, line 7]. The judge denied the motion, but continued the proceedings until April 20, 2009. [See App. p. 3435].

The April 20-22, 2009 Sentencing Proceedings

When resumed, the defense presented Dr. Loring, John Mauldin, Esq., Troy Tessier, Esq., Susan Allen, and Dessa Ballard, Esq., on their claim of prosecutorial misconduct. [See App. pp. 3472-3501 and pp. 3511-3641]. Counsel also placed on the record he would have called witnesses from Georgia, but the Court declined to suspend the proceedings again. [App. pp. 3642-3645]. Counsel also expressed he would move for a continuance to obtain a new social historian. [App. p. 3646]. On April 21, 2009, the judge allowed another break for the defense to meet with Dr. Loring. [App. pp. 3664-65]. On April 22, 2009, the defense resumed presentation of their mitigation case and called Kenneth McArthur. [App. p. 3666]. Thereafter, the defense declined to call Dr. Loring, with counsel stating, "… I don't believe it would be in our client's best interest to call any further witnesses for mitigation." [App. p. 3668]. The Court called Dr. Loring as a court witness. [App. pp. 3671, line 13- p. 3672, line 18]. The following day, after testimony, arguments of counsel, Judge Miller recessed from 3:30 pm to 4:49 pm. [App. p. 3750]. Judge Miller returned to the bench and advised Inman of his right to testify, which Inman did not wish to do. [App. pp. 3750-51]. He also asked the defense to specify which statutory

mitigating circumstances they wanted considered. The defense cited to two, six, and seven from the statute. [App. pp. 3751-52]. The Court recessed again at 4:53 pm and reconvened at 6:23 pm. [App. p. 3752]. Judge Miller announced he found three statutory aggravating circumstance: "Defendant committed the murder for which he is charged while in the commission of the crimes of kidnapping, burglary in the first degree, and criminal sexual conduct in the first degree." [App. p. 3756, line 15 – p. 3757, line 9]. Judge Miller, "only after serious deliberate and careful consideration," resolved "that the murder and rape of Tiffany Souers and the characteristics of Jerry Buck Inman warrant the penalty of death." [App. p. 3763, lines 16-19]. Judge Miller also placed on the record that the "verdict is not the result of passion, prejudice, or any other arbitrary circumstance." [App. p. 3763, lines 19-24]. Judge Miller also imposed the death sentence, plus two consecutive thirty year terms for burglary first and criminal sexual conduct. The kidnapping sentence was subsumed in the murder sentence pursuant to S.C. Code § 16-3-910. [App. p. 3763, line 25 – p. 3765, line 1]. Judge Miller issued a written order that same day. [App. pp. 4064-4072]. Inman appealed.

The Direct Appeal

Senior Appellant Defender Joseph L. Savitz and Chief Appellate Defender Robert M. Dudek, of the South Carolina Office of Appellate Defense, represented Inman in the appeal. By final brief of appellant filed June 20, 2011, appellate counsel raised the following issue relevant to this petition:

> 1. The judge committed reversible error by accepting Inman's guilty plea, despite defense counsel insistence that the judge's refusal to allow jury sentencing was preserved for review by the Supreme Court on direct appeal, because the defense's position rendered the plea conditional and thus invalid under South Carolina law.

[See App. p. 2731 and pp. 2733-38].

After the completion of briefing, this Court heard oral arguments on September 21, 2011. On December 28, 2011, the Court affirmed Inman's guilty plea convictions and sentences including his death sentence. [App. pp. 2874 - 2903]. *See also State v. Inman,* 395 S.C. 539, 544, 720 S.E.2d 31, 34 (2011). Additionally, the Court conducted the proportionality review pursuant to S.C. Code § 16-3-25(C), and found "a review of prior cases establishes that the death sentence in this case is proportionate to that in similar cases and is neither excessive nor disproportionate to the crime." [App. p. 2899]. *See also Inman*, 395 S.C. at 567, 720 S.E.2d at 46. Inman's subsequent petition for rehearing was denied on January 25, 2012. [App. p. 2910].

On June 11, 2012, Inman filed Petition for Writ of Certiorari in the United States Supreme Court; however, he raised claims only pertaining to the social worker witness. [App. pp. 2929-63]. The Petition for Writ of Certiorari was denied on October 1, 2012. [App. p. 2986]. *See also Inman v. South Carolina,* 568 U.S. 863, 133 S. Ct. 219 (2012).

PCR Proceedings

The PCR action began with an application filed on June 21, 2012. [App. pp. 488-95]. This Court assigned the matter to the Honorable Alexander S. Macaulay. [App. pp. 482-83]. Judge Macaulay appointed Diana Holt, Esq., and Charles Grose, Esq., to represent Inman in the action. [App. pp. 484-87]. Over six years later, on August 20, 2018, the Honorable Alexander Macaulay convened an evidentiary hearing. [See App. p. 837]. Inman declined to attend but gave sworn responses to the PCR court via telephone. [See App. p. 188, line 17 – 1029, line 13]. At the conclusion of the hearing, the judge requested proposed orders *in lieu* of post-hearing briefing from each party. [See App. p. 2].

By Order dated April 17, 2020, Judge Macaulay granted relief, finding S. C. Code § 16-

3-20(B) unconstitutional in light of *Hurst v. Florida*, 577 U.S. ___, 136 S.Ct. 606 (2016).[1] [App. pp. 1-68]. Judge Macaulay then vacated the plea and sentence, and ordered that the matter be "remanded to the Court of General Sessions of Pickens County for new trial by an impartial jury pursuant to the constitutional provisions of Section 16-3-10, *et seq.*, South Carolina Code of Laws (1976), and the constitutional laws made and provided in such cases." [App. p. 60]. Both the State and Inman moved to alter or amend pursuant to Rule 59(e), SCRCP, which Judge Macaulay denied on May 18, 2020, as amended May 20, 2020. [App. pp. 69-91].

The State served and filed its notice of appeal on June 16, 2020. Inman served and filed a notice of cross-appeal on June 17, 2020. This petition follows.

STATEMENT OF FACTS

In the direct appeal, this Court summarized the facts[2] as follows:

> On the evening of May 25, 2006, Tiffany Marie Souers (the Victim), a rising junior at Clemson University, was alone in her off-campus apartment as her roommates were gone for the day. When one of her roommates returned to the apartment during the afternoon of May 26, 2006, she discovered the Victim's partially-clad body on the bedroom floor. An autopsy revealed the Victim had been sexually assaulted and died as the result of asphyxia due to ligature strangulation with a bathing suit top.
>
> Surveillance photographs taken during the early morning hours of May 26, 2006 captured a male, whose face was covered by a bandana, attempting to use the Victim's ATM card at two different bank machines in Clemson.
>
> On June 5, 2006, law enforcement was able to identify Inman as the Victim's perpetrator based on DNA evidence obtained from the crime scene and processed through the National DNA Database, which had Inman's DNA evidence on file

[1] The PCR judge did not alternatively grant relief on any of the remaining claims of ineffective assistance of counsel; ineffective assistance of appellate counsel; other challenges to the murder statute; cumulative error; denial of a fair trial based on prosecutorial misconduct and rushed proceedings due to a "forgone conclusion" of death; and a challenge to the proportionality review as conducted by this Court following direct appeal review. (App. pp. 3-4).

[2] This Court noted in the opinion that Inman had conceded the correctness of these facts during the guilty plea proceeding. *Id.*, 359 S.C. at 546, 720 S.E.2d at 35.

> due to his prior out-of-state convictions for sexual offenses in 1987 and 1988. Using this information, law enforcement conducted a well-publicized nationwide search for Inman. On June 6, 2006 at approximately 11:45 p.m., law enforcement apprehended Inman in Dandridge, Tennessee.
>
> Shortly after his arrest, Inman orally confessed to the crimes involving the Victim. Within the course of the next three hours, Inman gave separate written statements to an agent with the Tennessee Bureau of Investigation and to agents with the South Carolina Law Enforcement Division (SLED). In these two statements, Inman again confessed to the charged crimes and recounted in detail the events underlying these crimes. When asked to sign these statements, Inman declined and stated "we still have to go to court."
>
> Ultimately, Inman was extradited to South Carolina and detained in the Pickens County Detention Center where a DNA sample was taken from him and again conclusively matched to the DNA evidence recovered from the Victim and her apartment. Subsequently, a Pickens County grand jury indicted Inman for murder, kidnapping, first-degree criminal sexual conduct, and first-degree burglary….

State v. Inman, 395 S.C. 539, 544–45, 720 S.E.2d 31, 34 (2011).

STANDARD OF REVIEW

"On review of a PCR court's resolution of procedural questions arising under the [Uniform] Post-Conviction Procedure Act or the South Carolina Rules of Civil Procedure," this Court will "apply an abuse of discretion standard." *Love v. State*, 428 S.C. 231, 238, 834 S.E.2d 196, 199 (2019) (*citing Mangal v. State*, 421 S.C. 85, 92, 805 S.E.2d 568, 571 (2017)).

Appellate courts "review questions of law de novo, with no deference to trial courts." *Smalls v. State*, 422 S.C. 174, 180–81, 810 S.E.2d 836, 839 (2018). "Questions of statutory interpretation are questions of law, which are subject to *de novo* review and which we are free to decide without any deference to the court below." *Rutland v. State*, 415 S.C. 570, 576, 785 S.E.2d 350, 353 (2016) (*citing State v. Whitner*, 399 S.C. 547, 552, 732 S.E.2d 861, 863 (2012)).

"This Court will uphold the findings of the PCR court if there is any evidence of probative value to support them." *Brown v. State*, 383 S.C. 506, 514–15, 680 S.E.2d 909, 914 (2009) (*citing Cherry v. State*, 300 S.C. 115, 119, 386 S.E.2d 624, 626 (1989)). Factual findings

that are not supported by "probative evidence" are not upheld. *Id.* (*citing Jackson v. State*, 355 S.C. 568, 570, 586 S.E.2d 562, 563 (2003)).

ARGUMENT

> Inman's claim challenging the constitutionality of S.C. Code §16-3-20(B) was procedurally barred under *Simmons v. State* and should not have been reached. Even so, the PCR court's ruling lacks both factual and legal support and must be reversed.

The PCR court not only decided an issue that was procedurally barred and unavailable for review, but also granted relief on that issue without factual or legal support. While the State can show error procedurally and substantively, what stands out in this case is the lack of factual support. Inman personally and firmly rejected the suggestion that his waiver of jury proceedings was in any way involuntary or unknowing. Inman not only made his understanding and personal choice clear during his guilty plea, he reaffirmed his position at the PCR hearing:

> APPLICANT INMAN: I understand that there's a question of when I pled guilty, that I was asking for a jury trial. That's false. When I pled guilty, it was with the understanding that I wanted a judge sentencing and not a jury sentencing. And I understood that, and, again, that's what I wish for.

[App. p. 1029, lines 3-8].

The PCR judge egregiously erred in passing over Inman's unqualified, sworn responses at the plea and at the PCR. Then, multiplying error, the PCR judge failed to defer to this Court's precedent, and the federal precedent, in assessing the merits of the procedurally barred issue. The grant of relief is unsustainable. This Court must reverse.

The PCR Allegation and Ruling:

Inman through PCR counsel asserted in his amended petition that "S.C. Code Ann. Section 16-3-20, allowing for judge sentencing, violates the Fifth, Sixth, Eighth, and Fourteenth Amendments…." [App. p. 543]. At the hearing, PCR counsel relied in part upon *Hurst v.*

Florida, 577 U.S. ___, ___, 136 S.Ct. 616 (2016), to assert the statute was invalid. [See, for example, App. p. 852, pp. 859-60; pp. 871-72; p. 906; pp. 914-15]. The PCR court found that *Hurst* created a new rule and declined to find the issue procedurally barred as argued by Respondent. [App. pp. 31- 41]. The PCR court then concluded that the statute is unconstitutional in light of *Hurst*, and that the plea was not voluntary.[3] [App. pp. 41-61]. The judge granted new proceedings. [App. p. 60].

Discussion:

I. *Inman's claim was procedurally barred under the Simmons Doctrine and the PCR statute's express jurisdictional limitations.*

The claim presented is a freestanding claim suited for direct appeal. Thus, under the Simmons Doctrine and S.C. Code § 17-27-20 (B), the issue may not be considered on the merits. *Simmons v. State*, 264 S.C. 417, 423, 215 S.E.2d 883, 885 (1975) ("Errors in a petitioner's trial which could have been reviewed on appeal may not be asserted for the first time, or reasserted, in post-conviction proceedings."); S.C. Code § 17-27-20 (B)(PCR "is not a substitute for nor does it affect any remedy incident" to trial or direct appeal); *see also Fortune v. State*, 428 S.C. 545, 558, 837 S.E.2d 37, 44 (2019) ("As we have repeatedly explained, in most instances, a PCR claim is properly presented as a Sixth Amendment claim for ineffective assistance of counsel."); *Drayton v. Evatt*, 312 S.C. 4, 8, 430 S.E.2d 517, 520 (1993) ("The Simmons rule gives effect to the Legislature's clear intent that the post-conviction relief procedure is not a substitute for appeal or a place for asserting errors for the first time which could have been reviewed on direct appeal. There is an exception. An issue that was not available at the time of the trial and appeal may be raised within one year from "the date on which the standard or right was determined to

[3] As *Hurst* only involved the Sixth Amendment, *see* 136 S.Ct. at 621, and the Fourteenth as it makes the Sixth applicable to the states, there was no ruling on the Fifth and Eighth Amendments portions of the claim.

exit." S.C. Code § 17-27-45 (B). Contrary to the PCR court's conclusion, though, *Hurst* cannot save the procedurally barred claim because *Hurst* is not a new rule that would allow Inman to avoid the limitation.

In *Hurst*, the Supreme Court merely applied its 2002 ruling in *Ring v. Arizona*, 536 U.S. 584 (2002). 136 S.Ct. at 621. Leaving no doubt to this fact, the Supreme Court in *McKinney v. Arizona*, 589 U.S. ___, ___, 140 S.Ct. 702 (2020) expressly set out that it merely "applied Ring" in the *Hurst* ruling. 140 S.Ct. at 707. The Court in *McKinney* also underscored that "*Ring* and *Hurst* do not apply retroactively on collateral review." 140 S.Ct. at 708.[4] Given this fact, the PCR court's conclusion that "*Hurst* did 'create a new rule' " that would allow the issue to be reached as a free-standing, timely claim in state PCR is incorrect under clearly established precedent and Supreme Court precedent.[5] [App. pp. 31 and 34-36]. If applicable at all, the critical date would be the date *Ring* was decided.

Ring, decided in 2002, was available precedent at Inman's August 2008 guilty plea. Defense counsel pursued an issue based upon *Apprendi v. New Jersey*, 530 U.S. 466 (2000), *Ring*, and *Blakely v. Washington*, 542 U.S. 296, 310 (2004), was pursued during Inman's trial

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[4] Multiple courts had similarly recognized *Hurst* was nothing more than an application of *Ring* before *McKinney*. *See, e.g., Dunlap v. Paskett*, No. 1:99-CV-559, 2019 WL 1274862, at *5 (S.D. Ohio Mar. 20, 2019) (*Hurst* "simply applied *Apprendi* and *Ring*."); *United States v. Conui*, No. 3:13-CR-123, 2017 WL 1393485, at *2 (M.D. Pa. Apr. 18, 2017) ("*Hurst* merely applied *Ring*'s holding"); *Sneed v. Jenkins*, No. 5:17 CV 83, 2017 WL 564821, at *4 (N.D. Ohio Feb. 13, 2017) (*Hurst* "neither expanded the *Apprendi/Ring* rule nor announced a new rule."); *State v. Lotter*, 917 N.W.2d 850, 864 (Neb. 2018) ("*Hurst* merely applied *Ring.*"); *Ex parte Bohannon*, 222 So. 3d 525, 532 (Ala. 2016) ("Hurst applies Ring"). Florida also ties applicability to *Ring*. *See Robinson v. State*, 260 So. 3d 1011, 1014 (Fla. 2018) ("Prisoners whose sentences of death were final before the United States Supreme Court issued its decision in *Ring* are not entitled to retroactive application of *Hurst.*…").

[5] The PCR court references a concession that *Hurst* was a new rule. [App. p. 34]. If the PCR court considered that there was a concession by the State, that is ***absolutely wrong***. The State submitted just the opposite in the proposed order denying relief, and pointed out the error in the motion to alter or amend. [See App. p. 227].

level proceedings. In the PCR, Inman, as he was constrained to do, conceded he relied upon *Ring* in his challenge to the mode of trial. [App. p. 872]. The PCR court even recognized that fact in its Order. [App. p. 6]. Yet, the PCR court declined to consider the issue barred.[6]

Adding more weight to the procedurally barred side of the scales, this Court has already determined in Inman's direct appeal that "an appellate challenge to section 16-3-20(B)" ***would have been allowed*** "[u]nder the mandatory appeal procedures in capital case," citing S. C. Code § 16-3-25(A). *Inman,* 395 S.C. at 555, 720 S.E.2d at 40 and n. 14. This Court has also already decided that the plea was unconditional (finding "Inman never attempted to reserve the right to challenge or deny the merits of his guilt"), and was voluntary (finding "a review of the plea colloquy reveals Inman entered his plea knowingly and voluntarily as he repeatedly acknowledged that he understood the charges against him, the consequences of his plea, and the rights he was waiving by pleading guilty, including the right to have a jury determine his guilt and sentence."). *State v. Inman,* 395 S.C. 539, 556, 720 S.E.2d 31, 40 (2011). The Simmons bar is directly applicable. This Court's precedent and the PCR statute provisions necessitates that Inman's claim be considered procedurally barred. *Fortune, supra. Accord Lee v. State,* 244 So. 3d 998, 1003 (Ala. Crim. App. 2017) ("Because the decision in Hurst did not create a new rule, Lee's Ring/Hurst claim was subject to the procedural bars" in state's post-conviction relief procedure). Even so, the facts and law confirm that relief is not warranted on the merits. The PCR court's reasoning that led to its wrong conclusion is flawed in several respects. [7]

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[6] The PCR court did find the bar inapplicable to the action at all. He correctly applied the Simmons bar to other similarly situated issues. [See App. pp. 3-4].

[7] The reasoning results in the findings of fact and conclusions of law on Order pp. 41-58 of the Order. [See App. pp. 41-58]. Respondent's reference to the reasoning is in specific challenge to all the findings and conclusions that follow without unnecessary duplicative references. To be clear, the order lacks factual support and legal support in all aspects.

II. *The record before the PCR court offered no factual basis to find Iman's guilty plea which resulted in judge sentencing was not voluntary.*

At his PCR hearing, Inman confirmed what the plea transcript shows – that it was his choice to plead guilty and have the judge sentence him:

> APPLICANT INMAN: I understand that there's a question of when I pled guilty, that I was asking for a jury trial. That's false. When I pled guilty, it was with the understanding ***that I wanted a judge sentencing and not a jury sentencing***. And ***I understood that***, and, again, ***that's what I wish for***.

[App. p. 1029, lines 3-8]. (emphasis added).

The PCR judge failed to consider, much less give the credit due, Inman's unqualified, sworn responses both in the record of the plea proceedings and in the collateral proceedings. Notably, this Court had reviewed and relied upon the responses at the plea to determine that "Inman entered his plea knowingly and voluntarily…." *Inman*, 395 S.C. at 556, 720 S.E.2d at 40. Rather than address this dispositive evidence, the PCR court relied upon trial counsel's preferences as opposed to Inman's stated choice. [App. pp. 5-7; p. 15; p. 23; p. 37; and pp. 46-47]. That is simply wrong as a matter of law. The right to make that decision belongs to Inman, not trial counsel. *McCoy v. Louisiana*, 584 U.S. ___, ___, 138 S. Ct. 1500, 1508 (2018) ("Some decisions, however, are reserved for the client—notably, **whether to plead guilty**, **waive the right to a jury trial**, testify in one's own behalf, and forgo an appeal.") (emphasis added). Inman was competent (as confirmed prior to the plea), and fully informed of the rights waived. The record shows that Inman tendered his plea knowing the statute mandated that he be sentenced by the judge.

Judge Miller was extremely careful to ensure that Inman understood that a plea would result in Judge Miller being the fact finder and sentencer. Inman personally waived his right to a

jury trial, and personally professed, time and again, that he understood he would be sentenced by Judge Miller. [App. pp. 3938-44; pp. 3962-65]. Judge Miller questioned Inman several times, several different ways, to ensure that Inman understood that he was "giving that right [to a jury] up and" asked him directly if he was "requesting that the Court be the fact finder and the determiner of the sentence; is that right?" to which Inman responded, "Yes." [App. p. 3964, lines 17-20]. Inman chose to enter his guilty plea with that knowledge. That is a valid waiver.

There was no doubt that trial counsel (Bannister) interrupted several times, but Inman consistently clarified that he was waiving the right to a jury trial and to have a jury sentence him. Inman affirmed that he had discussed "the issue of the jury trial versus the guilty plea" with his attorneys and still wished to plead guilty." [App. p. 3973, lines 9-17]. These various exchanges – all supporting voluntary waiver – were also presented to this Court in the direct appeal. Notably, this Court acknowledged that "defense counsel interjected that Inman should be entitled to enter a guilty plea and then proceed to a jury trial for sentencing," 395 S.C. at 546, 720 S.E.2d at 35, but that did not overcome Inman's independent, express desire to plead guilty with the knowledge that he would be sentenced by the judge. *Id.* And, if there could be any doubt remaining from this extensive on-the-record discussion, Inman dispelled it by his own admission, volunteered through sworn testimony at the PCR hearing. [App. p. 1029, lines 3-8]. The PCR judge failed to afford this knowing and intelligent, voluntary waiver the recognition, importance and deference it deserves.

The Supreme Court of the United States has recognized that "nothing prevents" waiver other than showing a knowing and intelligent decision: "[i]f appropriate waivers are procured, States may continue to offer judicial factfinding as a matter of course to all defendants who plead guilty." *Blakely v. Washington*, 542 U.S. 296, 310 (2004) (rejecting notion that "*Apprendi* works

to the detriment of criminal defendants who plead guilty by depriving them of the opportunity to argue sentencing factors to a judge"). It has reasoned, logically, that its precedent could not "possibly work to the detriment of those who are free, if they think its costs outweigh its benefits, to render it inapplicable." *Id.* *See also Lewis v. Wheeler*, 609 F.3d 291, 309 (4th Cir. 2010) (rejecting argument that *Ring* established "that a defendant who pleads guilty to capital murder and waives a jury trial under the state's capital sentencing scheme retains a constitutional right to have a jury determine aggravating factors"); *Mahdi v. Stirling*, No. CV 8:16-3911-TMC, 2018 WL 4566565, at *42 (D.S.C. Sept. 24, 2018) (noting in rejecting a similar challenge to the state statute that Mahdi not only "waiv[ed] his right to a jury trial," he also "expressly and voluntarily waived his right to jury sentencing," and "admitted to the facts of the crime as stated by the Solicitor.")

Here, the PCR judge not only failed to apply statutory jurisdictional limitations and contrary precedent, he then directed Inman to be placed before a jury despite Inman's express decision to the contrary. This decision runs counter to the established right afforded a defendant to assert *or independently decide to waive* his right to a jury trial, and actually compels relief *offensive to Inman's own decision*. The PCR court was wrong.

III. *The PCR court's decision lacks legal support. It is contrary to this Court's prior decisions on the same issue, and federal precedent applying the same principles.*

At issue is a specific portion of the provisions of S.C. Code § 16-3-20 (B), in particular:

> 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.

This section mandates that whether the guilt phase is settled by a bench trial or a plea, sentencing falls to the judge. There is no doubt in the record that Inman knew that if he pled guilty, the statutory framework moved sentencing to the judge's responsibility. There is equally

no doubt that Inman knew that he could choose jury proceedings. Nothing was inadvertently given up by virtue of the plea. The plea was valid. Even so, the PCR judge determined the statute interfered with the right to a jury trial. The law does not support his conclusion.

In finding the statutory provision unconstitutional, the PCR court cited to this Court's 1979 capital case direct appeal, *State v. Shaw*, 273 S.C. 194, 255 S.E.2d 799 (1979). [See App. p. 27). Yet, in *Shaw*, this Court upheld the statute. 273 S.C. at 203, 255 S.E.2d at 802–04. More directly, this Court has repeatedly upheld the statute when challenged on this particular provision.[8] Even in Inman's own direct appeal, this Court noted the long line of recent cases upholding the statutory provision. *Inman*, 395 S.C. at 556, 720 S.E.2d at 40 (citing *State v. Allen*, 386 S.C. 93, 687 S.E.2d 21(2009); *State v. Crisp*, 362 S.C. 412, 608 S.E.2d 429 (2005); *State v. Wood*, 362 S.C. 135, 607 S.E.2d 57 (2004); *State v. Downs*, 361 S.C. 141, 604 S.E.2d 377 (2004)). Further, the federal courts, applying federal law (specifically *Ring* and *Hurst*) in an offered challenge to the state statute, have similarly upheld the statutory provision, most recently in a March 25, 2020 order in *Allen v. Stephan*:

> This District has considered this argument twice before and found South Carolina's death penalty statute complies with the Sixth Amendment. *See Mahdi v. Stirling*, No. 8:16-cv-3911-TMC, 2018 WL 4566565, at *41–42 (D.S.C. Sept. 24, 2018) (finding "South Carolina's capital sentencing procedures have not violated Mahdi's constitutional rights" where Mahdi pled guilty and agreed to the facts as stated by the State during his plea); *Wood v. Stirling*, No. 0:12-cv-3532-DCN-PJG, 2018 WL 4701388, at *15–18 (D.S.C. Oct. 1, 2018), *Report and Recommendation adopted by* 2019 WL 4257167 (D.S.C. Sept. 9, 2019) (finding the state court did not err in finding South Carolina's death penalty statute does not violate either the Sixth or Fourteenth Amendment). Petitioner has not distinguished his case from *Mahdi* or *Wood* or provided the Court with novel argument warranting reconsideration of its prior holdings.

[8] The PCR court's references to alleged comments made or intended in the *Shaw* matter does not bear – in any way – on the constitutionality of the statutory provision or the proceedings before Judge Miller. Nor do those referenced comments in a case separated from Inman's proceedings by approximately three decades somehow impugn Judge Miller or the discharge of his duties. The *Shaw* matter did not involve Judge Miller or the proceedings for Inman.

Allen v. Stephan, No. 0:18-CV-01544-DCC, 2020 WL 1446717, at *35 (D.S.C. Mar. 25, 2020). The District Court in *Allen* also noticed the same challenge had been rejected by the Fourth Circuit in review of Virginia's similar statute:

> In addition, the Fourth Circuit has rejected the same challenge to Virginia's capital sentencing scheme, which is functionally equivalent to South Carolina's, finding *Ring* did not hold "that a defendant who pleads guilty to capital murder and waives a jury trial under the state's capital sentencing scheme retains a constitutional right to have a jury determine aggravating factors." *Lewis v. Wheeler*, 609 F.3d 291, 309 (4th Cir. 2010). Petitioner "acknowledges" the Fourth Circuit's decision in *Lewis* and that Virginia's statutory scheme is "comparable" to South Carolina's, but "contends that *Lewis* is inconsistent with *Ring*," without further elaboration. ECF No. 63 at 78. Petitioner's disagreement with the Fourth Circuit's conclusion is not reason for the Court to disregard the Fourth Circuit's clear position on this issue.

Id.

The PCR court also made reference to the South Carolina Constitution in finding a right to a jury trial is provided specifically by this State. [See App. p. 8]. However, that provision does not prohibit guilty pleas, and does not speak to the legislative structure that provides the options for choosing a jury or waiving that right. The State Constitution, like the Federal Constitution, preserves the right, but does not force the right on any defendant.

> … the Sixth Amendment was not written for the benefit of those who choose to forgo its protection. It guarantees the *right* to jury trial. It does not guarantee that a particular number of jury trials will actually take place.

Blakely v. Washington, 542 U.S. at 312 (emphasis in original). *See also Ring v. Arizona*, 536 U.S. at 609 ("If the defendant preferred the common-sense judgment of a jury to the more tutored but perhaps less sympathetic reaction of the single judge, he was to have it.") (quoting *Duncan v. Louisiana*, 391 U.S. 145, 155–156 (1968)). There is not – and never has been – some type of a presumption that a judge cannot be fair in bench proceedings. *See, e.g., Duncan,* 391 U.S. at 157-58 ("We would not assert, however, that every criminal trial—or any particular

trial—held before a judge alone is unfair or that a defendant may never be as fairly treated by a judge as he would be by a jury."). Again, the choice rests with the defendant. *McCoy, supra.*

In short, the gist of the guarantee afforded by *Ring* and its progeny is not that jury proceedings cannot be waived; rather, the cases hold the opportunity to make the decision is preserved. That opportunity is preserved in the state statute. The right to a jury trial never has to be waived under the state statute, and if a jury trial is a defendant's choice, the jury hears both guilt and sentencing phases. Our statute simply does not mirror the infirmities in Arizona (*Ring*) or Florida (*Hurst*). There is no provision in our state statute – as there was in the Arizona statute – that even when the jury is impaneled, the judge must nonetheless conduct sentencing. And, unlike *Hurst* a judge cannot reject a jury's finding. A careful and fair reading of *Ring* and *Hurst* (and for that matter *Blakely*) shows the PCR court's error.

IV. The PCR court impermissibly considered whether the right to jury proceedings in capital cases should be waived when that decision is not the court's decision but one exclusively reserved to the defendant.

The PCR judge also impermissibly considered whether the right to a jury trial *should* be waived. The PCR judge discusses that a trial judge is not subject to qualification in a *voir dire* process,[9] nor subject to being sequestered, and is ordinarily not allowed to comment on facts.

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[9] The suggestion that *voir dire* questions should be allowed has been rejected:

> This state's capital sentencing scheme contains no provision for *voir dire* examination of a trial judge, ***nor do we believe one is necessary. A judge's oath requires him to follow and uphold the law in all cases***, including capital cases. Had appellant waived the jury and chosen sentencing by the court, the judge would have been required to consider applicable mitigating and aggravating circumstances under Section 16–3–20(C) before imposing a sentence. The judge is entitled to a presumption that he would have done so, regardless of his "personal beliefs" about capital punishment."

[See App. pp. 13-14; pp. 27-30]. These observations are inapposite to the inquiry. These observations go to an opinion on the wisdom of the decision – a benefit, "pro" and "con" consideration – not to any constitutional infirmity in the proceeding. Judge Miller carefully considered the proper evidence of statutory mitigating circumstances and non-statutory mitigation evidence, and expressed:

> While this has been one of the hardest decisions of my life, I am firmly convinced that the murder and rape of Tiffany Souers and the characteristics of Jerry Buck Inman warrant the penalty of death. I have carefully considered all relevant facts and circumstances, including the existence of statutory aggravating circumstance, as well as statutory and non-statutory mitigating circumstances. My verdict is not the result of passion, prejudice, or any other arbitrary circumstance.

[App. p. 3763, lines 16-24]. Further, this Court found in the direct appeal:

> After reviewing the entire record, we conclude the sentence of death was not the result of passion, prejudice, or any other arbitrary factor, and the judge's finding of three statutory aggravating circumstances for the murder is supported by the evidence. In its case, the State presented evidence of Inman's confessions, which detailed the events of the Victim's murder, as well as testimony from the forensic pathologist that confirmed Inman committed the murder while in the commission of kidnapping, first-degree criminal sexual conduct, and first-degree burglary.

Inman, 395 S.C. at 567, 720 S.E.2d at 46.

The record here shows no evidence of any bias or improper influence. The *potential* for error is not real error. *See Ray v. State*, 330 S.C. 184, 188, 498 S.E.2d 640, 642 (1998) (affirming death sentence where "gory photographs" introduced in sentencing before the judge when there was "neither an assertion, nor any evidence, that [the] judge was improperly influenced"); *Inman*, 395 S.C. at 570, 720 at 48 ("A judge is presumed to weigh evidence properly.") (Pleicones, J. concurring). 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

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State v. Matthews, 296 S.C. 379, 383, 373 S.E.2d 587, 590 (1988) (emphasis added). The PCR court's findings resting on ways a trial judge may be "subjected to potential comprise," [App. pp. 54-55), fail to also reference that judge's oath, or the presumption as reflected in *Matthews.*

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."); *State v. Brewer*, 328 S.C. 117, 120, 492 S.E.2d 97, 99 (1997) (finding the trial court erred in denying the request to waive the right to counsel, noting: "It appears that the trial judge denied the motion to proceed *pro se* based on the fact that the trial judge did not believe that appellant's decision to represent himself in a death penalty case was a good decision. A decision can be made intelligently, with an understanding of the consequences, without the decision itself being a wise one."). "Some decisions, however, are reserved to" the defendant personally, including the decision whether to "waive the right to a jury trial…." *McCoy*, 138 S.Ct. at 1508. Neither judge nor attorney can override that decision. *Id.*, at 1509.

V. The PCR court also impermissibly relied on the Victim's Bill of Rights to support a finding that the plea was involuntary.

The PCR court also included repeated references to Inman's desire to plead guilty to spare the victim's family from the *guilt phase* as a type of offer to enforce the Victim's Bill of Rights. This logic is legally and factually wrong. In his pleading for "mode of trial," Inman's trial counsel asserted that he wished to have the plea as evidence of remorse, *i.e. to use the legal entry of the plea as evidence in mitigation.* [App. p. 7, citing Record on Appeal p. 800-01, plea was "The only way he can *adequately show the remorse* he feels and *acknowledge the moral guilt* that he is dealing with… ***as a subset of that***, wants to alleviate what he sees would be the cruel impact that the media attention … would have…"] (emphasis added). [See also App. pp. 4221-22 (defense motion to determine mode of trial, (resting in part on *Eddings v. Oklahoma*, 455 U.S. 104 (1982) and *Skipper v. South Carolina*, 476 U.S. 1 (1986)]. Further, it is illogical as

the sentencing phase has the guilt phase testimony incorporated *plus more in aggravation*. *See* S.C. Code § 16-3-20 (B) ("In the sentencing proceeding, the jury or judge shall hear ***additional evidence*** in extenuation, mitigation, or aggravation of the punishment.") (emphasis added). It is unclear what "spectacle" (if trial may be considered a spectacle) the PCR judge considers too harsh. [See App. p. 15].

In the absence of being able to force the state to adopt a procedure that did not exist, the PCR judge then reasons that "Inman had no alternative but to involuntarily forfeit – and not freely and voluntarily waive – his constitutional 'right to trial by an impartial jury,' under the Sixth Amendment, and Article I, Section 14, of the Federal and State Constitutions … *'to avoid imposing additional burdens on the victims'*." [App. pp. 20-21]. If the dilemma is true, that would still be a choice made by the defendant, not between a plea and trial, but election between his personal desires – a personal decision among available choices. That is a key part of assessing a plea for voluntariness: "whether the plea represents a voluntary and intelligent choice among the alternative courses of action open to the defendant." *Parke v. Raley*, 506 U.S. 20, 29 (1992) (*quoting North Carolina v. Alford*, 400 U.S. 25, 31 (1970)).

VI. The PCR court incorrectly relied upon State v. Harper, which speaks to chilling the right to insist upon trial, to determine voluntariness of the plea since Inman wanted to, and did, waive his right to a jury – a position he maintains.

The PCR court's reliance on *State v. Harper,* 251 S.C. 379, 162 S.E.2d 712 (1968), is misplaced. [See App. p. 17]. First, the Court in *Harper* reviewed provisions of the old statute, not the current one. Even so, the logic expressed does not extend to the present structure. "In *Harper,* this Court followed [*United States v.*] *Jackson*[10] and held that our sentencing statute for

[10] *United States v. Jackson,* 390 U.S. 570, 583 (1968) (striking provision from federal statute that worked to "deter *exercise* of the Sixth Amendment right to demand a jury trial") (emphasis added). In *Jackson*, the Supreme Court determined that the statute only provided that

the crime of murder was unconstitutional because it provided that the death penalty could be imposed upon a defendant who exercised his right to a jury trial, but could not be imposed upon a defendant who pled guilty." *Shumpert v. S.C. Dep't of Highways & Pub. Transp.*, 306 S.C. 64, 68, 409 S.E.2d 771, 774 (1991). The structure at issue in *Harper* pressured a defendant *to give up the right to a jury trial* to ensure avoiding a death sentence, and would essentially punish for holding fast to the right to trial. Stated another way, the structure unfairly deterred exercising the right to a jury trial. Inman seeks to use the *Harper* shield as sword. He seeks (or more precisely, his counsel seeks) to force a change in the statute, that would allow Inman to assert a right to plead guilty and to have jury sentencing. The conclusion that the modern 1977 statutory provision at issue was upheld "in abrogation of the unanimous holding" in *Harper* is without support. [11] [See App. p. 17]. *Harper* does not speak to whether a defendant may qualify and/or reshape the waiver of his constitutional right. [12]

Even so, the PCR court reasoned the statutory provision, "abrogates … the rights guaranteed by the Constitution of the United States and South Carolina 'to a trial by an impartial jury," and creates a *Catch 22* for a defendant…." [App. p. 19]. The PCR judge then concluded

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a capital sentence could be imposed "if the jury recommended it, but set forth no procedure for imposing the death penalty upon a defendant who waived the right to a jury trial or who pled guilty." *Shumpert*, 306 S.C. at 68, 409 S.E.2d at 774.

[11] It is not clear how *State v. Speights*, 263 S.C. 127, 208 S.E. 2d 43 (1974), also referenced in the Order, is relevant. [App. p. 17]. It does not address a plea. The Court in *Speights* acknowledged *Harper* found unconstitutional a provision that "permitted one to plead guilty and by so doing be assured of a life sentence," and directed a life sentence be imposed "as if the jury had returned a verdict of guilty with recommendation to mercy. 263 at 134-35, 208 S.E.2d at 47.

[12] In fact, that would appear inconsistent with the further logic of the Court. The Court noted that applying both of the statutes at issue led to another unwarranted result; not only could a plea be pressured, but also a defendant could *escape* the death sentence by pleading guilty. In rejecting that result, the Court wrote: "There is present no legislative intent to grant a defendant the absolute right to enter a plea of guilty and thereby escape the death penalty." 251 S.C. at 384. But again, *Harper* is outdated and considered a statute that no longer exists.

"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 guilty phase" because the statutory structure does not allow for separate jury sentencing after a plea. [App. p. 20; pp. 55-58]. This is wrong.

A careful and fair consideration of the statutory structure shows that no defendant is ever forced to plead guilty. A defendant could choose a jury trial and confess guilt. He may even tell the jury that he does so to ensure the jury sentences him. It has been done before. *See Sigmon v. State*, 403 S.C. 120, 125, 742 S.E.2d 394, 397 (2013) (capital defendant did not plead guilty but "conceded guilt and presented no evidence in his defense" to the jury). What Inman's counsel lobbied for was the reverse of the situation in *Harper, supra*. He wanted to force the state to provide a new hybrid procedure not allowed under the statute. Nothing in the state or federal constitution allows that result because nothing in either constitution provides a guarantee of a guilty plea. *Santobello v. New York*, 404 U.S. 257, 262 (1971) ("There is, of course, no absolute right to have a guilty plea accepted."); *see also* Rule 14 (b), SCRCrimP. ("A defendant may waive his right to a jury trial only with the approval of the solicitor and the trial judge.").

VII. The PCR court unreasonably expanded the scope of relief to undo both guilt and sentencing.

Even if error occurred that would warrant setting aside the sentencing phase (and the State maintains there was not), there is no error to warrant setting aside the guilty plea to the charges. This Court has previously found the plea was not conditional. *Inman,* 395 S.C. at 555, 720 S.E.2d at 40. Further, this Court found the plea was knowing and voluntary:

> … a review of the plea colloquy reveals Inman ***entered his plea knowingly and voluntarily*** as he repeatedly acknowledged that he understood the charges against him, the consequences of his plea, and the rights he was waiving by pleading guilty, *including the right to have a jury determine his guilt and sentence.*

Id., 395 S.C. at 556, 720 S.E.2d at 40 (emphasis added).

Indeed, PCR counsel for Inman asked only for resentencing. [App. p. 225]. In *Blakely*, a case Inman's PCR counsel relied upon with *Hurst*, [see App. p. 915-16], the Supreme Court found only that "petitioner's sentence [was] invalid," and did not invalidate his guilty plea to the crimes. 542 U.S. at 305. Again, as noted above, the record shows Inman was a competent and informed defendant who clearly expressed his decision to waive his right to a jury trial. Further, and again as this Court previously found in the direct appeal, Inman admitted by stipulation all of the facts supporting the finding of guilt. *Inman*, 395 S.C. at 546, 720 S.E.2d at 35. To grant more than requested, and more than the record could possibly support, is an error of law.[13]

CONCLUSION

Based on the foregoing, the State asks this Court to grant its petition.

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[13] To the extent this Court may conclude that *Hurst* mandates that a jury *must* consider the evidence in aggravation and mitigation and its relative weight, that would be an incorrect reading of *Hurst*. As the Nebraska Supreme Court stated precisely: "The *Hurst* Court said no such thing." *State v. Lotter*, 917 N.W.2d 850, 863 (Neb. 2018). *See McKinney*, 140 S.Ct. at 707("a jury (as opposed to a judge) is not constitutionally required to weigh the aggravating and mitigating circumstances or to make the ultimate sentencing decision within the relevant sentencing range."). It would be additional error to force jury sentencing on a defendant to comply with a requirement that does not exist.