

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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S.C. 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

APPENDIX
VOLUME 2 OF 10

E. CHARLES GROSE, JR.
The Grose Law Firm, LLC
404 Main Street
Greenwood, SC 29646
(864) 538-4466

ALAN WILSON
Attorney General

DONALD J. ZELENKA
Deputy Attorney General

DIANA HOLT
Diana Holt, LLC
P.O. Box 6454
Columbia, SC 29260
(803) 782-1663

MELODY J. BROWN
Senior Assistant Deputy Attorney General

Post Office Box 11549
Columbia, South Carolina 29211
(803)734-3727

**ATTORNEYS FOR
RESPONDENT-PETITIONER**

**ATTORNEYS FOR
PETITIONER-RESPONDENT**

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¹ State's Exhibits 1-11 were previously marked and entered into evidence on August 19, 2008. They are included under the exhibits listed for that date.

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² Court's Exhibit # 1 was previously marked and entered into evidence on August 19, 2008. It is included under the exhibits listed for that date.

³ Defense Exhibits # 32-43 were included in the Record on Appeal and are included with the Record on Appeal in this Appendix.

⁴ Court's Exhibit 3 was included in the Record on Appeal and is included with the Record on Appeal in this Appendix.

responded to Tennessee after Inman's arrest. Inman made a statement, after waiving Miranda rights. ROA p. 80-86. He described the belongings from Ms. Souers apartment being thrown out as he was driving back to Tennessee and hiding the sheets in the woods. ROA p. 90-91. In describing with Inman the extradition process and whether the charges qualified for the death penalty Inman stopped him and declared: "That's what I want. I killed a 20-year old college student with everything to live for. And he said he deserved the death penalty." ROA p. p. 94, ll. 1-5, p. 98, l. 22 - p. 99, l. 2.

S. ___ C. ___ described an event with Inman which occurred December 14, 1987. ROA p. 101. She stated that she was awakened in her apartment by a man with a revolver. She described being tied up by him and being told for her to tie up her roommate. ROA p. 103. With a gun to her head and hands tied, she was penetrated vaginally and anally. ROA p. 105. The assault lasted 20 minutes. Her roommate was forced to watch. He took money and keys, then threatened to kill them if they called the police. As a result, Inman pled guilty to the crime. ROA p. 108.

The prosecution published Inman's **prior convictions**. These included: 1). Dec. 14, 1987 - Sexual Battery - S. ___ C. ___ - 30 years (8-18-1989), 2). Robbery - 30 years, 3). Armed Burglary - 30 years, 4). Grand Theft Motor Vehicle - 5 years, 5). Kidnapping (2 counts) - 30 years, 6). Aggravated Assault - 5 years, 7). July 10, 1998 - Second Degree Sexual Assault - 20 years - (N.C.) - 9-26-88, and 80. Attempted Escape - February 5, 1991 - one year, ROA p. 112-13.

B. ___ B. ___ P. ___ testified concerning a May 23, 2006 incident with Inman. ROA p. 120. She described taking her daughter to the bus stop that morning. She described returning home at lunch when someone came from behind her, covered her mouth and put a knife to her throat.

ROA p. 122. She screamed and he placed her on the floor tying her hands behind her back. ROA p. 123. He stated he had found \$250, after she had denied having cash in the house. He then forced her into the bedroom from the kitchen. He then forced her pants and underwear down and saw she was on her period. ROA p. 126-27. At that point, he put her into a bedroom closet and told her he was going to take her car and stash it. ROA p. 127. After he left she was able to get to the phone and hit re-dial. The police determined that he had entered the house by cutting a hole in the floor. ROA p. 129. Two weeks later, she saw Inman's photo on CNN and identified him as her attacker. ROA p. 129-130.

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Michael Hannon of the Tennessee Bureau of Investigations testified that he responded to Chief McCoig on June 6, 2006 concerning Inman. ROA p. 139-140. He described getting a waiver from Inman on June 7, 2006 at 12:30 a.m. ROA p. 143-46. Subsequently, he stated he spoke with Inman concerning an incident in Rainsville, Alabama. ROA p. 151-52, 157-163. In the statement he gave concerning the May 23, 2006 incident, Inman described breaking into the house by cutting a hole in the vent. ROA p. 163. He stated he entered the house and found a blue bank bag with cash. However, once inside, the owner returned. He confirmed he intended to have sex with her, but she told him she was on her period and he put her into a closet. ROA p. 163, ll. 10-17. He took the money bag and her car which he drove a short distance and parked it and then switched back to his car. ROA p. 163. He described leaving Alabama and then going to South Carolina. ROA p. p. 163, ll. 22-25. He stated that when he got to South Carolina, he was not there a whole day before the incident with Tiffany in Clemson. ROA p. 163-64.

Michael Hannon testified about a subsequent statement Inman made after his arrest describing the rape of a mother with the child in the bedroom. ROA p. 214-15.

Rhonda Jackson, an investigator with the DeKalb County Sheriff's Department in 2006, testified that they developed a suspect from the interview she had with B. _ P. _ after she called when she saw the picture of Inman on CNN. ROA p. 169. After she gave Chief McCoig the details of the crime, he agreed to interview Inman about the incident. She subsequently came to Pickens County and interviewed him on June 8, 2006. ROA p. 173-181. Inman gave a detailed statement about the entry into the home and his intent to rape her and the fact he could not do so "because she told me she was on her period... she was a single mom and had a little..." ROA p. p. 183, ll. 2-5. He described leaving.

J. _ G. _ from Sevierville, Tennessee testified on May 22, 2006, she woke up and found someone on top of her with a knife to her throat around 5:00. ROA p. 193. He asked her where the money and jewelry was located and she showed him. When they returned to the bedroom, he tied her hands with her bra behind her back. ROA p. 196. Her little girl was crying. He demanded that if she cooperated no one would get hurt. ROA p. 196, ll. 19-23. With her knees on the floor, the man unsuccessfully attempted to rape her from the rear, and then turned her over, continuing to hold the knife against her neck. ROA p. p. 197, ll. 13-20. At that point, he raped her. ROA p. p. 197, l. 23 - p. 198, l. 12. He then took her to the bathroom and made her clean herself with shampoo twice. ROA p. 198. He continued to make them get items and place them on bed. He then placed her and her daughter into the bathroom. ROA p. 200. After ten (10) minutes she left the bathroom, got her purse, and then called the police. ROA p. 200. She next saw him about 2 weeks later on the evening news. ROA p. 201.

On September 9, 2008, **Dr. Eric Christiansen, the forensic pathologist**, testified about the cause and manner of death of Tiffany Souers. He certified that she died as a result of

asphyxia due to ligature strangulation. ROA p. p. 223, ll. 8-9. A bathing suit top was used. He stated she was rendered unconscious before she died. ROA p. 232. He found evidence of trauma or traumatic sexual relations in damage to her body. ROA p. 234. She had extensive bruising around both wrists which suggested a struggle while restrained and bruising above her ankles.

The Defense Case in Mitigation

Dr. David Price

Dr. David Price , an expert in forensic psychology, clinical psychology and neuropsychology, testified about an evaluation of Inman.⁵ He affirmed stated that he had an opinion that at the time of the crime, a factor in the commission of the crime, Inman was under

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ba - ⁵ Prior to the beginning of the mitigation testimony, Solicitor Ariail returned to an earlier motion he had made concerning expert witnesses requesting the disclosure of the underlying data. ROA p. 250. In particular, he noted that the experts would be testifying about their opinions based upon underlying data that had not been provided to the State. Solicitor Ariail stated that the disclosure would speed up the process. As he stated: "if fact we don't know what it is [and] I'm not sure who their experts are." ROA p. 250, l. 8-11. He requested first, a reasonable amount of time prior to the testimony of the experts of the underlying data upon which they are going to rely, pointing out Dr. Schwartz-Watts prior disclosed report which noted data that the state did not have. He stated this was necessary for appropriate and meaningful cross-examination. Second, he requested that since they do not have the documents, that when the experts arrive that he underlying data is brought with them to court. ROA p. 251. Lastly, Solicitor Ariail stated, in a manner to give the court a heads up about the manner that some witnesses had testified in the past. In particular, he pointed out that Dr. Loring, who had a Ph. D. In social work, had a testimonial style that was a "rambling recitation of rank hearsay." ROA p. 251, l. 17-21. As such, he declared it was difficult to keep things clear on what was her opinion under SCRE Rule 703 and what was "hearsay." Solicitor Ariail noted that he was not objecting to "opinions", but did have objection to the parroting of totally uncorroborated hearsay. ROA p. 252-253.

Counsel Bannister objected to the disclosure of the reports and data, contending that would be "per se ineffective." ROA p. 253, l. 23-25. The Solicitor stated that he did not want a "report," but the data underlying the opinion, i.e, if the expert says that they looked at prison records from Florida, I want to see the prison records that they reviewed, which is allowed and required under SCRE Rule 703. ROA p. 254. The Court stated he would return to this issue later.

the influence of mental and emotional disturbance, and that his capacity to conform his conduct to the requirements of law was substantially impaired. ROA p. 258. He stated that he had reviewed 15 three to four inch thick notebooks which included records about his family, his incarceration, newspapers, and his mental health treatment records of over 3,000 pages. He confirmed Inman was the subject of mental health treatment for the 19 years he was incarcerated. ROA p. 259. He opined that Inman had a number of mood disorders, including dysthymia (sustained or intermittent depression for over 2 years), major depressive disorder - recurrent type, major depressive disorder - with psychotic features, bipolar disorder and psychorhythmic disorder. ROA p. 260. He noted that Inman had prior diagnosis of personality disorders, including schizoid personality disorder and he opined that he could also be diagnosed with dissociative identity disorder and sexual paraphilia. ROA p. 260. He noted the presence in the records of multiple suicide attempts, suicide ideation and withdrawal. ROA p. 261. He rated him of the Global Assessment of Functioning with a 30 as someone with serious impairment with the ability to communicate and with judgment and profound impairment in overall ability to function. Id. Dr. Price stated the schizoid personality disorder was illustrated by the fact he was an introvert with intermittent relationships within his family.

In the social history, Dr. Price noted that Inman had a genetic predisposition for the mental disorders because his mother had paranoid schizophrenia and father was an alcoholic. ROA p. 265. He stated Inman was raised in a turbulent and unstable environment, began using drugs at age 10, ran away at age 13, living on the streets at 15 and in jail at 17. Id. He noted that this disorder is often associated with depression.

Concerning dissociative identity disorder, he stated that Inman was not very forthcoming

about his illness. However, Dr. Price learned that in discussion with treatment providers and his pastor, Inman will assume a different effect and response which is like changing from one identity to another. He stated that the primary identity is a passive-dependant and depressed person that has difficulty with guilt. ROA p. 268-269. He stated that the evidence of depression , self-mutilation by tattooing and suicidal ideation supports the diagnosis. ROA p. 269. Also that he traveled in his series of sexual assaults is consistent. ROA p. 269.

Dr. Price describe Inman as a serial rapist. He felt it "astounded " him that he was not similarly diagnosed in Florida. He felt the Rapid Risk Assessment for Sexual Offender Recidivism (RRASOR) suggested that he clearly met that criteria. ROA p. 271-272.

Dr. Price found that Inman had significant records for being sexually abused, physically abused, living in an unstable environment with a mother with periods of anger who they thought was depressed. ROA p. 272-273. Dr. Price felt that Inman had one stable relationship - his maternal grandfather who died when he was young. He was abandoned by his father who had sexually abused him and began to act out of conflict at age 10 with drugs, failing school, and winding up on the street. ROA p. 273. In reviewing Inman's crimes, he found similarity from the victim's crimes with Inman's own experiences where his sister was also subject to bondage when she was tied up and the rapes tended to follow a certain pattern - hand tied , kneeling down, lean forward over the bed in an awkward position, suggesting that he was acting out what had happened to him. ROA p. 275. This was part of his "compulsive rape." ROA p. 275. He stated that Inman felt 'shame and loathing about this rape and murder." ROA p. 276. This similar feeling was consistent throughout his records, noting that he had attempted suicide on 7 occasions (six while incarcerated). Id. Dr. Price described the various ways he attempted to kill

himself including slit wrist, cutting his jugular vein, swallowing barbed-wire, and trying to starve himself. ROA p. 279.

Dr. Price stated that Inman's statement that "I killed a 20 year old college student with everything to live for - I deserve to get the death penalty"⁶ statement is consistent with Inman's history and also reflected in his unhappiness and hopelessness while in prison. ROA p. 280-81.

Dr. Price opined that he is a national expert in malingering. He felt that Inman was not malingering based upon his extensive psychiatric history. He noted that Inman instead minimizes the problems and is protective of his parents failings in raising him. ROA p. 283. He felt that Inman had tried to hinder Price's effort to get a life sentence. ROA p. 283. He noted that Inman had talents in being a tattoo artist and had carpentry skills.

Concerning his interaction in prison, Dr. Price found that Inman grew up in prison and was afraid about being released. Particularly, he had stated that after release he had planned to work for a year or two give the money to his mother and then commit suicide. ROA p. 284. Dr. Price concurred with a North Carolina doctor that Inman was a lost soul who would continue to be lost based upon his bad genetic loading with the history of a paranoid schizophrenic mother and alcoholic father. He had been physically and sexually abused and abandoned by his father in the unstable environment. He began getting into trouble at age 10 with drug use, by 13 he was running away and on the streets. Inman had a long history of mood disorder and his family had never been able to teach him to develop normal heterosexual relationships. He had a schizoid personality disorder, developed a dissociative identity disorder and developed sexual paraphilia.

⁶See also, ROA p. 299, Defense exhibit 11.

ROA p. 285.⁷

On cross-examination, Dr. Price conceded that he did not bring the 15 notebooks with him that he reviewed to prepare his opinion and testimony. ROA p. 304-305. He stated that he received the material from counsel Bannister's office. Importantly, he admitted that he was influenced by every document he read. Id. At that point, Solicitor Ariail renewed his request to see all the notebooks that Dr. Price reviewed. ROA p. 306. During the questioning, Dr. Price confirmed that as to child abuse, sometimes Inman would report it happened and other times he would not report it. ROA p. 307-308. He admitted that the history showed the Inman had the ability to make choices inasmuch as he did not kill the victim in Florida, said he would not harm the child in Tennessee, did not kill the North Carolina inmate, but did kill Souers. ROA p. 308-309. Concerning death, Dr. Price stated that Inman did not want to die, but thought that the death penalty was the appropriate penalty and that he was remorseful for it, thinking of himself as "scum." ROA p. 311.

 The defense adjourned for the evening seeking to resolve the record production of material reviewed by Dr. Price and the requested disclosure to the State pursuant to SCRE Rule 705. ROA p. 320-323.

⁷ At that point, the defense proffered a series of exhibits. The Solicitor - noting that no foundation had been laid and they were not authenticated or certified - stated that the exhibits were pure hearsay. ROA p. 287.

Counsel Bannister asserted that since this was a penalty phase of a capital case "rules of evidence are more lax than they would be in the guilt phase of a trial." ROA p. 288, l. 1-4. He opined that it would be more expedient to simply mark the exhibits and have them put in the record so the judge could read them. He felt that they should come in as medical records or business records from the prison. Exhibits 3 - 20 were then marked. Dr. Price stated these exhibits were considered by him in making his opinion. ROA p. 291. See ROA p. 294-304.

Dr. Marti Loring

The testimony of **Dr. Marti Loring, a LCSW licensed clinical social worker and board certified expert in traumatic stress** is involved in arguments II and III.⁸ For purposes of this portion, on September 8, 2009, Dr. Loring was called to testify in mitigation. ROA p. 324-325. After she was initially *voir dire*d, she was qualified as an expert in areas of abuse, trauma, social histories and forensic interviewing. Id. R., P. 326. However, it was briefly developed during the state questioning that Dr. Loring had failed to comply with the state licensing law for out of state licensed social workers. ROA p. 328, l. 1-3. See S.C. Code Ann. § 40-63-200. The prosecution in making the objection to her qualification provided the statute to Judge Miller noting that it carried civil and criminal sanctions. ROA p. 328, l. 19-25. Although she was granted immunity, Dr. Loring initially invoked her Fifth Amendment and initially refused to testify after receiving advised from personal counsel Bill Godfrey, even after being granted immunity. [Dr. Loring would later testify as a Court Witness].

Mitigation Continues

Claude Tournay

The defense then called **Claude Tournay of the Florida Department of Corrections**. He testified that he had reviewed the sexual offender screening and that in 2004 it was determined that he could not find enough criteria to determine a “paraphilic sexual disorder” or diagnosis. Id ROA p. 357, l. 21-25. He testified that in January 2004, he found sadistic behavior, child molestation abnormal sexual behavior and that Inman was being treated for major depression

⁸Respondent incorporates the procedural history set out in that portion by reference to those arguments.

disorder, recurrent. ROA p. 358. Tounay stated that a April 2004 letter from the Florida Department of Corrections stating that Inman - convicted of rape - was a sexually violent predator would have required the Department of Children and Family Services to send three psychologists to review and examine the inmate and determine whether he was a threat to society. If so , he would have been civilly committed to and institution for crimes which occurred after 1993. ROA p. 360. However, Inman's crime had happened before October 1993. However, as a psychiatry inmate, the department made a referral to Tennessee and arrangements for Inman to continue his treatment for his depression. ROA p. 362-63.

James Aiken

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James Aiken, an expert regarding the assessment of inmate classification and expert in prison management and prison classification, testified that based upon his record review, Inman would be automatically in a "high security status" due to the life without parole sentence he would receive, that crime he was convicted and his cumulative behavior patterns while previously confined. R. Tr.p. 369. He also noted that Inman had some security threat group and gang related issues that concerned Aiken a great deal. ROA p. 369. He noted the presence of a Swastika tattoo, which suggests in the prison setting membership in a Nazi gang and security threat group. ROA p. 371. Because Inman is a "multiple sex offender," Aiken testified that it gave him added concern because gangs and security threat groups hate them "and will kill them because they have such a distaste for them." ROA p. 371-372. This is because he has the tattoo and is a multiple sex offender. ROA p. 372.

Aiken stated that because of these factors the correctional department would have to put Inman in a security envelope of a single cell with no free movement or interaction with other

inmates since they do not know who would put a hit on him. He would have to be moved with a security escort and 23 hour lock up. ROA p. 376. He stated no other inmate could have access to him because it would violate "the duty to protect." ROA p. 377. Aiken stated that Inman's security status would be "SL-3" which is the highest level.

On cross-examination, Aiken added that his security level is also increased by the fact of publicity and that it was a high profile case that would be known within the inmate population that Inman was a multiple sex offender. Aiken also found significant in his prior prison record evidence of self-mutilation and multiple disciplinaries, including attempted suicide and attempted escapes. He noted that some of his disciplinaries included possession of weapons for either to do harm or for his own protection.

Family Member

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The **Appellant's older sister** testified about her relationship with Inman. She stated that she had a fond memory of him playing "pee-wee" football and she was a cheerleader. She described them getting ready for their roles on Saturday mornings and the family routine. ROA p. 388-89. She also testified about in winter going out from their home in the country across the street into a wooded area and sliding along a creek. She stated that one time they were out there with their cousins and Inman fell through a soft piece of ice and he cried all the way home, noting that he cried frequently as a child. ROA p. 390. She described "sibling rivalry" and fights over jeans between Inman and his sisters because he would wear their jeans and leak ink on them. She stated that he had "seizures" where he would daze, his body stiffen and shake and would sometimes be accompanied by a high fever. ROA p. 392-93. She stated this set him apart from others and prompted a lack of friends. She said that the family moved frequently and lived in

Tennessee, Florida, Texas, and North Carolina. ROA p. 393.

She said that Inman loved pets. She felt, however that Inman did not like himself. She stated that at one time Inman had to share a bedroom with his grandfather to whom he was very close and would talk together for hours. The grandfather passed away when he was 16, which was a turning point in his life. ROA p. 395. Afterwards, Inman began staying out late, became more withdrawn and once ran away from home and was found sleeping outside a church. ROA p. 396.

In describing their mother, she said that she suffered from bipolar disorder and schizophrenia. She said that the mother was affected by her medication and would hear things, talk to herself, and would freak out over the smallest thing. ROA p. 396-97.

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The sister described events when he was age three and living in a trailer in Florida. She stated that she started receiving inappropriate presents such as see through nightgowns. Later they moved to another house in Florida and she claimed that her other grandfather, Mr. Inman Sr. would come into the bedroom she shared with the Appellant [she was 5 and he was 3] and the grandfather would blindfold her and tie her hands to the bed and turn her over and she recalled that it was sexual abuse. She described that the grandfather would leave her in the top bunk and go to the bottom bunk. While she did not know what was happening to the Inman, she heard him crying and they both were threatened. Id. She stated that the step-grandfather also messed with her. ROA p. 400. She described a conversation that she once had with Inman when she stated that she had been sexually abused and he stated that he had been abused also. ROA p. 400-401.

Rev. David Hensley

Reverend David Hensley, Inman's pastor, was presented to testify. However, Inman objected to his testimony based upon the priest -penitent privilege which Inman refused to waive.

ROA p. 402-405. Rev. Hensley then only described the fact that he met with Inman the Friday before with his Bible, grape juice, wafer, and poured water over Inman's head. ROA p. 405.

April 20, 2009 Proceedings

On April 20, 2009, the matter was re-convened for the sentencing hearing. At the outset, counsel Godfrey for Dr. Loring returned with a motion requesting that she be released from her out of state subpoena or for alternate relief. **ROA, 446-47, April 20, 2009 Tr.p. 8-9.**⁹ At the hearing, Judge Miller stated that he wanted the defense to consider calling Dr. Loring as a witness in mitigation. He stated that she was ready willing and able to come testify voluntarily. Counsel Bannister stated that he had certain motions and that they were not in a position to call her as a witness.¹⁰ Counsel called Public Defender John Mauldin as a witness on the misconduct claim. Mr. Mauldin testified about the circumstances concerning the Michael Laney case. ROA 510-549, Tr.p. 72-111. It was essentially his position that the Solicitor office had agreed to a life sentence based upon a desire to have a misconduct claim dropped concerning its questioning of an expert witness, Dr. Everington on the issue of mental retardation.¹¹

Mr. Loring

⁹As set forth below in Argument One, Judge Miller had refused to vacate his certification of Dr. Loring as an material out of state witness at proceedings on April 14, 2009. See ROA 1021-1034, April 14, 2009, Tr.p. 1-14.

¹⁰The defendant made a motion to recuse the 13th Circuit Solicitors Office based upon a claimed prosecutorial misconduct based upon the incidents concerning Dr. Loring. ROA 499-501, Tr.p. 61-63, a motion to determine the role of Solicitor Ariail and the Prosecution team, and a motion to suspend proceedings. Solicitor Ariail responded in writing and orally concerning the claim that they were involved in Dr. Loring's potential arrest and included an affidavit from Mr. Geary in Georgia to support the position. ROA 506-07, Tr.p. 68-69. Response to Motion, ROA 1243.

¹¹In its response to the motion, the Solicitor's office presented a different version of the circumstances that lead up to the life sentence. *Response to Renewed Motion for Mistrial*. ROA 1207. The questioning concerning Dr. Everington was whether she had exceeded the scope of her

This was a matter that the state disputed within its questioning. ROA 549-555, Tr.p. 111-117. The record revealed that the objection to Dr. Everington's testimony in Laney was not to her qualification as an expert in mental retardation, but that she was not qualified in S.C. to administer IQ tests and that only a licensed psychologist could do that type of interpretation. ROA 556, Tr. 118. The claimed terms of a proposed agreement were set out in State Exhibit 25. ROA 565-66, Tr.p. 127-128. However, the initial negotiation was not successful and rejected by the state. ROA 566-67, Tr.p. 128-129. It was developed that the Laney motions based upon alleged prosecutorial misconduct were never ruled upon by a judge and were withdrawn after the death notice was withdrawn. Mauldin confirmed that the stated reason for the state's withdrawal was the victim's family concerns and endless litigation on mental health issues..." ROA 578-79, Tr.p. 140-141.

Laney's other lawyer, Troy Tessier also testified concerning the Laney matter. ROA 580-87, Tr.p. 142-149.

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Susan Allen, a juror in the Edens and Holloway case, testified about a dinner the Solicitor's office held for the jurors in the case after the trial was completed. ROA 588-89, Tr.p. 150-151. She stated the issues raised by the office was to seek out what factors influenced them the most in not giving the death penalty. ROA 592-93, Tr.p. 154-155. On cross-examination, the voluntary contact concerning the dinner was pointed out consistent with Judge Hayes instructions to jurors. ROA 595, Tr.p. 157.

Judge Miller again made inquiry of the defense concerning the defense of its intent to call

qualifications as an expert witness - a claim that was ultimately supported by the Board of Psychology. *Exhibit 2 to Response*. ROA. __. The pleading also addressed other collateral issues raised concerning the motions and its contested factual issues.

a social historian, noting this case is going forward. The court was concerned because Dr. Loring is present and ready to go, "but we are not going to set this case up for failure." ROA 603-04, Tr.p. 165-166.

Judge Miller then denied the defense request to call Solicitor Ariail and other prosecutors concerning the raising of an improper issue related to the lack of licensing of Dr. Loring and why the issue was not raised in the earlier trial. ROA 604-05, Tr.p. 166-167.

Desa Ballard, a lawyer who concentrates on legal ethics and professional responsibility, testified that the Solicitor had violated a number of rules of professional responsibility in connection with his earlier examination of Dr. Loring. R. 611, Tr.p. 173.

At the conclusion of the testimony, Judge Miller stated that he would not suspend the proceedings. ROA 633, Tr.p. 195. He further stated that Dr. Loring was going to come and he would not remove them as advocates in the case. ROA 633, Tr.p. 195.

The April 21, 2009 Proceeding

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On Tuesday, April 21, 2009, defense counsel Bannister again advised Judge Miller that the defense was not going to call Dr. Loring as a witness. ROA 639, April 20, Tr. p. 201. Judge Miller stated that he was considering calling Dr. Loring as a "court's witness." ROA 639, Tr. p. 201, ll. 5-6. He stated that his client had pled guilty and asked him to be the sole fact finder in the case. [Defense counsel Bannister concurred with that statement: "That's correct."]. ROA . 639, Tr. p. 201, ll. 11-14. The judge stated that Dr. Loring was the first choice by the defense and "I believe that she can testify without fear." ROA 640, Tr. p. 202, ll. 15-16. After Loring's counsel confirmed that she had gone over the subject matter the prior evening, Judge Miller stated that she had earlier spent up to 9 to 10 hours preparing. Counsel Godfrey stated that she had previously

stated she had reviewed the files 4 to 5 hours, reviewed the file yesterday, has her charts and pictures since they had talked about her testifying as a witness and she had advised him that she felt protected by the court. ROA 641, Tr. p. 203, ll. 7-21.

Counsel Bannister renewed his motion for a mistrial based upon the prosecutorial misconduct claim. ROA 642, Tr. 204. He requested that a life without parole sentence be entered under the 5th Amendment Double Jeopardy Clause. ROA 643, Tr. 205.

The State opposed the motion, citing Fields v. J. Haynes Waters Builders, 376 S.C. 545, 658 S.E.2d 80, 86 (2008), which allowed a court in qualifying an expert witness to look at the statutory requirements for licensing.¹² The State argued that there was no prejudice from the conduct. Dr. Loring is there and able to testify which shows there was no witness intimidation. She was neither threatened nor intimidated. Further, the State noted that this was a bench trial where the trial judge is presumed to be able to differentiate what it feels is improper. ROA 645, Tr. 207.

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Judge Miller initially rejected the double jeopardy motion. He concluded that there was no evidence the State deliberately goaded the defense to make the mistrial motion. ROA 645, Tr. p. 207, ll. 15-19. However, he did not accept the State's position on Fields because there is no question that whether a person is licensed in particular state is a significant factor in determining whether they should be qualified, but when the Solicitor brought up the criminal sanctions, it was improper. ROA 646, Tr. 208. However, the trial judge found it was immediately addressed and resolved with the grant of immunity. ROA 646, Tr. p. 208, ll. 4-7. Judge Miller opined in light of

¹² The State made a written "Response to Renewed Motion for Mistrial and Memorandum" which is incorporated by reference. ROA 1214-1241 "Response").

the administrative order, Baggerly and Fields, that there was no criminal conduct in the witness who arrives solely to testify as an expert witness. ROA 646, Tr. p. 208, ll. 15-18. Relying upon U.S. v. Golding, 168 F.3d 700 (4th Cir. 1999) for a reversal the remarks must be improper (which he found) and such comments or remarks must have prejudicially affected the defendant's substantial rights so as to deprive him of a fair trial.

Judge Miller noted that this was not a jury trial, but a bench trial and the result might have been different. He found that the defendant's rights were not prejudicially affected. Particularly, he found that Dr. Loring was prepared to testify before it occurred and is prepared to testify now according to her attorney. ROA 647, Tr. p. 209, ll. 21-25. Judge Miller stated that in his capacity as fact-finder he is interested in hearing everything that might bear on his decision. He does not find "deliberate prosecutorial misconduct." ROA 648, Tr. 210. Counsel Bannister asserted that had they been provided a jury with the plea, the result would have been different,

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Counsel Bannister next moved for a continuance. He stated that on September 11 when DROA Loring took the 5th, the matters were suspended and he was directed to either fix the problem with DROA Loring or find another social historian. Counsel stated that while he thought it was a red herring until the Supreme Court spoke on the issue, the issue was still decided against them on the licensing issue. The only available expert he asserted he could find was Jan Vogelsang who he sought funding for on January 2 and had less than 4 months to prepare. ROA 651-52, Tr. 213-14. As he asserted at the April 14 hearing, he declared she could not be prepared by April 20. ROA 653, Tr. 215.

Judge Miller noted that there had been discussions throughout that this case was to restart on April 20. ROA 653, Tr. p. 215, ll. 21-25. He stated that according to Ms. Vogelsang's

affidavit she would not be prepared to testify until the first quarter of 2010. ROA 654, Tr. p. 216, ll. 1-13 [It was April 2009 at that time].

Judge Miller stated that Dr. Loring was prepared to testify and had done all her work. He noted that she had been on the case a long time and the court wanted to hear from her. However, he stated that he would not allow the prosecutors to intimidate her. R. 654-55, Tr. 216-17. Judge Miller stated that this case will be finished this week and Vogelsang could be put up. R. 655, Tr. 217.

Counsel Bannister stated he needed a ruling on his continuance and thought he was being told it was denied.

Judge Miller clarified that he would break to let them meet with Dr. Loring since she was present and was prepared to go forward. R. 655, Tr. p. 217, ll. 13-19.

April 22, 2009 Proceeding

On Wednesday April 22, the defense returned to its case in mitigation. R. 656, Tr. 218.

Kenneth McArthur

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Kenneth McArthur, Inman's step-father, testified that he has known Inman since he was four years old. R. 657, Tr. 219. He stated that the September hearing was very stressful for McArthur and his wife, Vera, because of the potential sentence. He stated Vera had been hospitalized in January due to the stress. He stated they love Inman and enjoy having the opportunity to see him in prison. R. 657, Tr. p. 219, ll. 17-24.

At that point, based upon their prior motions, counsel Bannister declared that he was not calling further witnesses. R. 658, Tr. p. 220, ll. 8-12.

The Court Declares Its Intent to Call Dr. Loring

Judge Miller then declared his intent to call Dr. Loring. R. 658, Tr. p. 220, ll. 14-17. He stated that (1) she would aid the fact-finder in the resolution of the case, (2) she was the number one choice for social historian in the case, but the defense has stated it had no contact with her since September, (3) she has been rehabilitated and despite the fact that she refused to testify in September because of her feelings of intimidation (which he ruled was prosecutorial misconduct which did not rise to the level to require reversal or mistrial) which is cured in part by her presence today. "I think it's necessary to put her up to ensure that these claims of due process violations are put to rest." R. 658-59, , Tr. p. 220, l. 14 - p. 221, l. 6.

Defense counsel Bannister objected citing Riddle v. State, 314 S.C. 1, 443 S.E.2d 557 (1994) and SCRE Rule 614. While admitting the right to call a witness was within the court's discretion, he contended it was limited in State v. Anderson, 304 S.C. 551, 406 S.E.2d 152 (1991) to a situation in a criminal case where four prerequisites exist:

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(1) the prosecution must be unwilling to vouch for the veracity or integrity of the witness; (2) a close relationship must exist between the accused and the potential court's witness, e.g., accomplices and family members; (3) there must be evidence that the prospective witness was an eyewitness to the transaction upon which the prosecution is based, gave a sworn statement concerning the pertinent facts, and the statement has been contradicted or it is probable that it will be contradicted; and (4) the testimony the witness is to relate must be material, such that without the testimony a miscarriage of justice would likely result.

R. 659-660, Tr. 221-22. Counsel contended that the prerequisites were not met in this case. R. 660, Tr. p. 222, ll. 15-22.

After the defense renewed its motions, the trial judge reminded the defense that Dr. Loring was here voluntarily. R. 661, Tr. p. 223, l. 13.

Judge Miller noted that the notes to SCRE Rule 614 recognize that it is different that the requirements in State v. Anderson, supra. R. 661, Tr. p. 223, ll. 20-24. Second, the trial judge noted that the defense did not contact Dr. Loring and it was not until January that the Court saws the request for funding of a different expert after three (3) months. R. 662, Tr. p. 224, ll. 1-3. Further, Judge Miller noted that he had not been informed that Ms. Vogelsang would not be prepared to testify for another year from that date. R, 662, Tr. p. 224, ll. 3-8. However, being aware of that, the defense did not re-contact Dr. Loring to see if she could be rehabilitated and if she would testify.

It leads me to the conclusion that counsel for the Defendant is more interested in pursuing the misconduct issue than in presenting a full defense. And as a result the assertion that due process is violated is disingenuous because defense counsel has perpetrated the failure to prepare for the social history.

R. 662, Tr. p. 224, ll. 11-16. At that point, Judge Miller called Dr. Loring.

Dr. Marti Loring - Court Witness

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Upon the questioning by Judge Miller, Dr. Loring initially indicated that it would not be necessary to have Solicitor Ariail removed from the courtroom to make her feel comfortable. R. 663, Tr. p. 225, ll. 9-20. After revealing her educational and employment background, Dr. Loring was qualified as an expert "in the field of social history, trauma, and abuse." R. 664-65, Tr. p. 226, l. 21 - p. 227, l. 11. After some initial questioning, Dr. Loring stated that she was willing to testify and to do her best, noting that she had not received attorney guidance [from the defense team, not her personal lawyer Mr. Godfrey], had not seen Inman nor had interviewed anyone else since the six months. She admitted she had checked on the well being of health of the step-father, mother, and sister, but had no case discussion with them. R. 667, Tr. 229.

Counsel Bannister made an objection as to "how the witness was procured" and the process as a court witness. R. 668, Tr. 230.

Dr. Loring presented a genogram [Court Exhibit 4] and described in narrative form the different types of interaction between the family members and their problems with drugs, alcohol, mental illness, sexual abuse and violence. R. 670-680, Tr. 232-242. Dr. Loring also presented a timeline of Inman's life. [Court Exhibit 5] R. 680-82, Tr. 242-44. Dr. Loring further presented a group of photographs and material suggesting as a child that Inman was "still miserable and crying" (R. 682, Tr. p. 244, ll. 22-25) and had indicators of sexual abuser. R. 683, Tr. p. 245, ll. 2-6. She stated that he had headaches and suffered from head beatings, that he accidentally burned his genitals with spilled bleach without medical attention, that he was firmly spanked as a child, that he had seizures, that he was exposed to violence in 1980 involving a dog fight with a cat, that his leg was burned in 1981 in a motorcycle accident. R. 684-86, Tr. 246-48. He also began drug use including alcohol, huffing gas, marijuana, cocaine, and LSD beginning in 1981. R. 686, Tr. 248.

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Inman was exposed in 1984-1986 to a sexually abusive step-brother who was later convicted as a pedophile. R. 686, Tr. 248. Dr. Loring noted she was unable to locate any pictures of Jerry smiling or happy after age 7. R. 687, Tr. 249. In addition, Dr. Loring found that Inman would play with matches and set fire to his step-brother's mattress, which is a symptom of sexual abuse. R. 687-88, Tr. 249-50. Family members gave him alcohol between 1984-1986.

Dr. Loring described while he was 15, his maternal grandfather suffered a painful and bloody death with throat cancer. R. 688, Tr. 250. She described the closeness between them and apparent guilt Inman felt for his death.

His life in prison was based upon a series of thefts and behaviors and the encouraged use of alcohol lead to the downhill path. R. 689, Tr. 251.

Dr. Loring noted that around 11 or 12, Inman was asking his mother for help, but because of her problems, she could not hear it. After he was caught looking into a neighbor's window, his windows were nailed shut. R. 689-690, Tr. 251-52.

Inman's suicide attempts were again described by her. R. 690, Tr. 252.

Dr. Loring stated Inman was released in 2005 and was out 9 months before the tragedy. He was described as anxious and lost, unable to hold a job or relate to women. R. 690, Tr. 252. However, he was able to mentor his sister's son, who idolized him and was able to get him to stop huffing gas. R. 690-91, Tr. 252-53.

When the Court asked for anything else Dr. Loring might feel was important, counsel Bannister objected based upon "attorney-client" privilege. R. 691, Tr. p. 253, ll. 17-21. Judge Miller directed her to not talk about anything she talked with counsel about. R. 691-92, Tr. p. 253, l. 25 - p. 254, l. 2. A break was then taken and she was allowed to confer with counsel Godfrey. R. 692, Tr. 254.

Dr. Loring then concluded that Inman's early history revealed that he was seen in a "trance-like state" as a child, including the time period it was alleged he was abused as a child. R. 693, Tr. p. 255, ll. 4-18. This history was consistent with his later history of bipolar and having major depression with psychotic features. However, she felt the second half of her conclusions may be interwoven with attorney-client matters. R. 694, Tr. p. 256, ll. 6-14. Counsel Bannister continued his objection to potential disclosure. R. 694-95, Tr. 256-57.

Judge Miller then declared that he was concerned that he was not getting all the

information "because of legal gamesmanship." R. 696, Tr. p. 258, ll. 5-7. He noted she was no longer under "intimidation" and that because of the immunity there was no valid 5th Amendment claim. The defense had made no effort to contact her. Judge Miller repeated that he believed the defense position was disingenuous when the mistrial motion was based upon their reliance on her expertise which they had felt was significant. R. 696-97, Tr. 258-59.

The defense then briefly cross-examined Dr. Loring that it would not be uncommon for new data to become available over seven (7) months. R. 697-98, Tr. 259-60. Dr. Loring stated that she had not reviewed any psychological profile prepared by the government in the case to her recollection. R. 698-99, Tr. 260-61.

Defense counsel Bannister ended his questioning. He then re-affirmed his prior motions. R. 699-700, Tr. p. 261, l. 4 - p. 262, l. 5.

Judge Miller re-affirmed his earlier order denying the prosecutorial misconduct motion. R. 700, Tr. p. 262, ll. 6-23. Importantly, he declared: "The defense counsel now is participating in the limitation of this evidence [of Dr. Loring] that they intended to offer, which contributes to any Constitutional violation that might exist." R. 700, Tr. p. 262, ll. 20-23.

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The prosecution, through Deputy Solicitor Strom, briefly cross-examined Dr. Loring. She confirmed that the genogram and timeline were prepared by her in September for her testimony. R. 701, Tr. 263. Dr. Loring clarified her earlier testimony about Inman's father killing dogs and Jerry giving a neighbor a stray dog to care for. R. 703, Tr. 265. She confirmed that Inman experienced a bad childhood - exposure to violence, sexual abuse, and loss. Dr. Loring admitted that she had reviewed his criminal history including the assaults on females and in prison. R. 706-07, Tr. 268-69. however, she had not reviewed the particular criminal incident in this case. R.

708-09, Tr. 270-71. Dr. Loring was then released. R. 711, Tr. 273.

Counsel Bannister again closed his mitigation case and renewed his prior motions. R. 719, Tr. 281. These included his motion for jury trial sentencing and objection to the trial court calling Dr. Loring as a witness. R. 719-20, Tr. p. 281, l. 8 - p. 282, l. 4.

Closing Arguments and Inman's Request in Sentencing

Closing arguments were then made. R. 720-731, Tr. 282-293 (Solicitor Ariail). Appellant Inman made a personal statement briefly noting his prior history of possibly being molested and abuse is shared with millions, that he had been prison his entire life, that he can't be rehabilitated and had escaped twice. R. 731, Tr. p. 293, ll. 12-22. He declared "in all reality, there's only one viable sentence to impose for someone like me. And I ask that you impose that sentence." R. 731-32, Tr. p. 293-94, l. 1. Counsel Bannister then made his argument plea in mitigation. R. 732-39, Tr. 294-301.

Judge Miller then took a recess. He then made inquiry of Inman concerning his right to testify. Inman declared he did not wish to testify. R. 740-41, Tr. 302-03. He stated he had discussed it with his lawyers earlier today. R. 741, Tr. p. 303, ll. 5-8.

Judge Miller was advised by the defense to consider statutory mitigators #2 ("the murder was committed while the defendant was under the influence of mental or emotional disturbance"), #6 ("the capacity of the defendant to appreciate the criminality of his conduct or to conform his conduct to the requirements of law was substantially impaired"), and #7 ("age or mentality of the defendant at the time of the crime"). R. 742, Tr. p. 304, ll. 3-4.

The Sentencing

At 6:23 p.m., Judge Miller returned to the courtroom. He entered an Order sentencing the

Appellant to death finding the statutory aggravating factors of burglary in the first degree, kidnapping and criminal sexual conduct in the first degree. R. 743-755, Tr. 305-317. Judge Miller further entered a written sentencing order on April 22, 2009. R. 1045-1053. He also sentenced Inman to thirty (3) years consecutive for burglary in the first degree, 30 years consecutive for criminal sexual conduct in the first degree, and no sentence for kidnapping. R. 754-55, Tr. 316-17.

A motion to reconsider and new trial was made by counsel on jj23, 2009. ROA __. Judge Miller denied the motion on July 17, 2009 and filed July 28, 2009. R. 1248.

THE DIRECT APPEAL

A timely appeal was filed on August 4, 2009. In the direct appeal, the Petitioner asserted the following questions presented:

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.
2. The judge committed reversible error at sentencing by refusing to grant a mistrial and recuse the Solicitor's Office from any further involvement in the case, despite finding prosecutorial misconduct, where the Solicitor threatened a key defense witness after the judge granted the defense a continuance to obtain a new expert because of his misconduct.
3. The judge committed reversible error at sentencing by refusing to allow the defense to cross-examine the Solicitor and his Deputy on the issue of prosecutorial misconduct, as the Solicitor's intent was directly relevant to that issue.

Final Brief of Appellant, p. 4.

The South Carolina Supreme Court affirmed the convictions and death sentence on December 28, 2011 in State v Inman (Jerry Buck), 395 S.C. 539, 720 S.E.2d 31 (2011). In its pertinent part to this proceeding, the Court held that: (1) trial court acted within its discretion in

refusing to recuse Solicitor's Office as advocates and declining defendant's request to question Solicitor for purposes of asserting prosecutorial misconduct claim;(2) manner in which State conducted voir dire of defense expert concerning her licensing status and whether she was subject to civil and criminal penalties for practicing social work without a license unequivocally constituted witness intimidation; (3) State's prosecutorial misconduct in intimidating a defense witness did not necessitate declaration of mistrial; and (4) sentence of death was appropriate punishment. A petition for rehearing was denied on February 23, 2012.

The Applicant made a Petition for Writ of Certiorari in the United States Supreme Court. It was docketed on ____ . In the petition, Inman, through counsel Dudek made the following questions presented:

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- I. Whether the South Carolina Supreme Court's holding that an irrebutable presumption of prejudice no longer applied where there is deliberate prosecutorial misconduct, since the trial judge found prosecutorial misconduct in this case, and the South Carolina Supreme Court also found such prosecutorial misconduct based on clear witness intimidation, since changing the law retroactively in this matter was fundamentally unfair and violated Due Process?
 - II. Whether the South Carolina Supreme Court's holding that petitioner did not have a right to call the prosecutors as witnesses during his bench trial to prove intentional prosecutorial misconduct violated petitioner's right to Due Process under the Fourteenth Amendment?
 - III. Whether the South Carolina Supreme Court erred by holding the prosecutorial misconduct and witness intimidation in petitioner's case did not result in a death sentence that violated Due Process rights, because the undisputed intimidation of petitioner's chief mitigation witness, Dr. Marti Loring , had an adverse effect on the ability of the defense to present its case in mitigation as guaranteed by the Eighth Amendment to the United States Constitution?

Inman v. State, petition for writ of certiorari, p. 1. The Respondent , through below-signed counsel made a Brief in Opposition on August 26, 2012. On October 1, 2012, the United States

Supreme Court denied the petition for writ of certiorari. *Inman v. South Carolina*, 11-10798, - U.S. __ (U.S. Oct. 1, 2012).

Respondent attaches and incorporates by reference the following:

DIRECT APPEAL DOCUMENTS

1. Final Brief of Appellant.
2. Final Brief of Respondent.
3. Final Reply Brief of Appellant.
4. State v Inman (Jerry Buck), 395 S.C. 539, 720 S.E.2d 31 (2011).
5. Petition for rehearing by Appellant.
6. *State v. Inman*, Order, (S.C.S.Ct. February 23, 2012) (petition for rehearing denied).
7. Record on appeal

II.

 In his application for post-conviction relief filed June 21, 2012, through his appellate counsel, Robert Dudek, the Applicant raised the following claims:

- I. Ineffective Assistance of Counsel
 - A. Counsel was ineffective for failing to obtain another mitigation expert after Dr. Loring no longer wished to participate because she was intimidated.
 - B. In the alternative, counsel should have continued to prepare with Dr. Loring in the event the judge called the case back to trial as occurred here.¹³

¹³In the motion for a stay filed in the South Carolina Supreme Court dated October 10, 2012, the Applicant asserted that he would raise at a minimum the following grounds:

- I. Whether counsel was ineffective, in derogation of petitioner's right under the

III.

Respondent respectfully submits that the Applicant will be unable to show a Sixth Amendment violation in this case on the specified issues in light of the record in this case.

On September 10, 2008, Dr. Marti Loring, a LCSW licensed clinical social worker and board certified expert in traumatic stress was called to testify. ROA p. 324-325. Evidence was presented that Dr. Loring had done research therapy focused on abuse trauma. She stated that she had a Masters degree from Bryn Mawr College School of Social Work and a PhD Sociology with a major in Social Psychology from Emory University. ROA p. 325. She stated that she had testified in South Carolina before and courts in other states. She stated that she had been previously qualified in areas of abuse, trauma, social histories and forensic interviewing. Id. R., P. 326. She declared that she had never failed to be qualified as an expert in those areas. Id. Dr. Loring was then offered as an expert in the field of trauma, abuse, forensic and therapeutic interviewing and as a social historian in capital sentencing cases. ROA p. 327, ll. 1-3.

Then Solicitor Ariail *voir dired* her on whether as part of her services in this case had she performed services under her licensed clinical social worker status, which she admitted that she

Sixth Amendment to the United States Constitution , by failing to retain another expert to continue to work on petitioner's mitigation or defense case after Dr. Marti Loring was intimidated by the solicitor and the trial judge refused to grant a mistrial?

II. Whether counsel was ineffective , in derogation of petitioner's right under the Sixth Amendment to the United States Constitution, for assuring Dr. Loring continued working on the case after the judge recessed the case following the solicitor intimidating Dr. Loring?

III. Whether counsel was ineffective , in derogation of petitioner's right under the Sixth Amendment to the United States Constitution, by not spending adequate time involving petitioner's family and clergy members in Tennessee especially given the long recess in the case.

Motion, p. 2-3.

did by interviewing Inman and having conversations with him. Id. Tr.p. 327, l. 9-17. She admitted that a fee for those services was being paid to the Center for Mental Health, but denied that she was getting any money for her services. ROA p. 327, ll. 18-25. She declared that she was not licensed in South Carolina. ROA p. 328, ll. 1-3. However, she stated that "custom" is that her license is honored across the country whenever she goes into different states. ROA p. 328, ll. 7-10.

Solicitor Ariail then directed Judge Miller's attention to S.C. Code Ann. § 40-63-200 which concerned the unauthorized practice of social work. ROA p. 328, l. 11-14. He next noted that a person practicing social work within the state must be licensed prior to performing the services, citing specifically S.C. Code Ann. § 40-63-30. ROA p. 328-329. He noted to Judge Miller that it carried both civil and criminal penalties for violation. He stated that based upon that, he would submit that she is "not qualified as an expert in this state to testify or render those services until she gets licensed." ROA p. 328, ll. 19-23. Judge Miller asked that he be provided with a copy of the statute after Solicitor Ariail referred to it. ROA p. 328, l. 25.

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In response to the defense argument about his comments, Solicitor Ariail stated that he was raising the licensing issue for the purpose of voir dire. He noted that whether or not he presented an indictment against her was a totally separate issue. ROA p. 331, ll. 1-2. Judge Miller opined that the intent of the statute, § 40-63-200, was to prevent unlicensed persons from opening an office and practicing social work and treatment. ROA p. 331, l. 3-16. He declared that he distinguished what Dr. Loring has done as a retained expert for the defense from that definition of the statute of § 40-63-20. He overruled the objection and concluded that Dr. Loring can testify. ROA p. 331, ll. 17-21.

After the court determined that Dr. Loring was qualified, [ROA p 331, ll. 3-21], counsel Bannister cited State v. Williams, 485 S.E.2d 99, at 102-103 referencing witness intimidation. He complained that Solicitor Ariail's attempt to make the testimony potentially fit within the criminal statute was an attempt to intimidate the witness and thereby violates the defendant's due process rights. He claimed that this was a substantial governmental interference. Counsel Bannister then declared that he did not believe that she would be able to testify absent some assertion from the Solicitor that he would either grant immunity or have some sort of protection for her for it not to be an issue. The prosecution expressly granted immunity from prosecution for her particular acts related to Mr. Inman's case since the trial judge had concluded that she was qualified as a witness that could testify in the area of social work as to the Inman case. ROA p. 333, ll. 2-23. However, he acknowledged that he did not have authority to grant immunity concerning other acts which might have already occurred. ROA p. 333-335. The Court then inquired of defense counsel Bannister if that was satisfactory, and counsel Bannister initially declared: "yes," but suggested that it was a red herring to start with. ROA p. 333, ll. 25.

After Dr. Loring consulted with her personal counsel [Bill Godfrey], she returned to court and pled the Fifth Amendment, stating that "she felt threatened as a witness in this case, and in other cases in which I've testified in South Carolina at this time." ROA p. 336, ll. 17-24. Judge Miller restated that the Solicitor had granted her immunity so that she would not be prosecuted for your work in this case. ROA p. 337, ll.1-3. She provided the court with a list of prior cases that she had testified in South Carolina and noted that this issue had been raised once before and "it was immediately put to rest." ROA p. 338, ll. 4-7. Dr. Loring, after another break, stated that she had been advised that she had been threatened in regards to her previous cases.

ROA p. 344, ll. 9-10. She stated that her (legal) advice was "that to testify when I'm told that I would be in violation of a criminal statute would affect my professional reputation in other cases and jurisdictions. ROA p. 344, ll. 9-15

On September 11, 2008, defense counsel made a motion for a mistrial based upon the Solicitor's voir dire of Dr. Loring. Counsel Bannister referred to State v. Williams (Brad), 326 S.C. 130, 485 S.E.2d 99 (1997) and the fact that Solicitor Ariail had cited a statute that it was a crime to practice social work without a South Carolina license. ROA p. 411-12. On behalf of Dr. Loring, counsel Bill Godfrey declared that Dr. Loring sees this issue as a major storm and was upset about testifying in this case. ROA p. 431. He stated that she is licensed in Georgia and has been put on notice by the Solicitor that she was violating a criminal statute. Godfrey declared that Dr. Loring was going to take the 5th Amendment. ROA p. 431, ll. 20-21. Judge Miller then questioned how does she invoke this when she has been granted immunity. ROA p. 431-32. He stated that she had testified in other cases and that there was no statute of limitations. "No one is able to assure her that there are not similar laws in [Tennessee and Michigan]" where she had interviewed people. He stated that she has to declare each year if anything of a criminal or quasi-criminal nature comes up and it could affect her license in Georgia. ROA p. 432.

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Judge Miller deferred the decision on how to handle Dr. Loring's refusal to testify. However, he did not rule out Dr. Loring's participation and also stated that if she determines she does not want to participate, he would allow him to show how he was prejudiced. ROA p. 435. The court then adjourned.

On April 20, 2009, the matter was re-convened for the sentencing hearing. At the outset, counsel Godfrey for Dr. Loring returned with a motion requesting that she be released or for

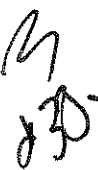
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alternate relief. R. 446-47, April 20, 2009 Tr.p. 8-9. He stated that trial court had previously declined to withdraw its earlier certification that she was a material witness. He described proceedings subsequent to that date in Georgia when the Georgia authorities attempted to enforce the out of state subpoena and Judge Miller intervened. He noted that the Georgia circumstances represented further intimidation of her. He urged that she was not a proper witness any more as she was no longer part of the defense team. R. 451, April 20, 2009 Tr.p. 13. If not able to release her, counsel Godfrey argued in the alternative that the matter be suspended so that he can investigate what happened in Georgia and the circumstances surrounding the circumstances of the threats. R. 452-53, Tr.p. 14-15. Counsel Bannister asserted that the defendant's right to witnesses was again chilled by these acts on the part of the state. Judge Miller, however, questioned how it would be chilled since he had declared that he did not intend to call her as his witness. R. 456-57, Tr.p. 18-19. Solicitor Ariail noted in response that the affidavit of Mr. Geary reflects that the Solicitor's Office had nothing to do with the actions in Atlanta and in fact communicated after the judge's email to have the authorities stand down, when the Atlanta authorities thought Dr. Loring was evading service of the subpoena. R. 460-61, Tr.p. 22-23.

Judge Miller subsequently stated that at the September hearing that noted that he had not completely ruled Dr. Loring out of the case. R. 467, Tr.p. 29. Counsel Bannister stated that absent the September 11, 2008 events, she would have been their witness, but in light of the Solicitor's conduct and the newer events in Georgia, they did not intend to call her as a witness. Whether she is a witness for other purposes was left to the judge. R. 468, Tr.p. 30.

Dr. Loring testified at the motion hearing concerning the events the prior week in Atlanta when she learned that a subpoena was being served at her home. R. 472-73, Tr.p. 34-35. After

getting the paperwork on her return home from writing, she contacted counsel Godfrey since the hearing date on the document in Georgia was missed. She then learned the police had been at her house, but the neighbors explained that she was not home. R. 477-78, Tr.p. 39-40.

She then stated that she had discussions with her counsel and Georgia authorities that she was glad to come to S.C. if the judge wanted her to be here. R. 479, Tr.p. 41, ll. 10-24. She stated she arrived last night to be sure to be here. R. 479-80, Tr.p. 41-42. Upon questioning from counsel Bannister, she stated that she was upset and frightened when she learned about the events in Georgia, did not purposely avoid service of the subpoena and would have been at the Georgia hearing. R. 481, Tr.p. 43. Further, while she found the chain of events alarming, she came prepared for whatever the judge asks with all her equipment and what they had done in her role as mitigation expert. R. 483-84, Tr.p. 45-46.

 Judge Miller questioned her concerning a letter that the Department of Labor Licensing and Regulation had issued dated April 16, 2009. She stated that the letter assuaged her fears before the other activities occurred. R. 495-97, Tr.p. 57-59. [Court Exhibit 3, ROA 1201]. He then asked Dr. Loring to remain. Judge Miller then addressed that he had been contacted by Bill Godfrey the evening of April 16 and advised the police in Georgia had been trying to arrest Dr. Loring. He stated he later called Ben Norris with Georgia law enforcement who advised him that he had been advised to stand down concerning the bench warrant. He then called Mr. Geary with the District Attorneys Office who advised him that he had received a call from S.C. to stand down and the problem was solved. R. 497, Tr.p. 59.

Judge Miller then stated that he wanted the defense to consider calling Dr. Loring as a witness in mitigation. He stated that she was ready willing and able to come testify voluntarily.

Counsel Bannister stated that he had certain motions and that they were not in a position to call her as a witness. Counsel then called a series of witnesses in an attempt to show the solicitors intent in questioning the Dr. Loring. Subsequently, Judge Miller again made inquiry of the defense concerning the defense of its intent to call a social historian, noting this case is going forward. The court was concerned because Dr. Loring is present and ready to go, "but we are not going to set this case up for failure." R. 603-04, Tr.p. 165-166. Judge Miller then denied the defense request to call Solicitor Ariail and other prosecutors concerning the raising of an improper issue related to the lack of licensing of Dr. Loring and why the issue was not raised in the earlier trial. R. 604-05, Tr.p. 166-167.

At the conclusion of the testimony, Judge Miller stated that he would not suspend the proceedings. 633, Tr.p. 195. He further stated that Dr. Loring was going to come and he would not remove them as advocates in the case. R. 633, Tr.p. 195.

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x39 - On Tuesday, April 21, 2009, defense counsel Bannister advised Judge Miller that the defense was not going to call Dr. Loring as a witness. R. 639, April 20, Tr. p. 201. Judge Miller stated that he was considering calling Dr. Loring as a "court's witness." Id. R. 639, Tr. p. 201, ll. 5-6. He stated that his client had pled guilty and asked him to be the sole fact finder in the case. [Defense counsel Bannister concurred with that statement: "That's correct."]. Id. R. 639, Tr. p. 201, ll. 11-14. The judge stated that Dr. Loring was the first choice by the defense and "I believe that she can testify without fear." R. 640, Tr. p. 202, ll. 15-16. After Loring's counsel confirmed that she had gone over the subject matter the prior evening, Judge Miller stated that she had earlier spent up to 9 to 10 hours preparing. Counsel Godfrey stated that she had previously stated she had reviewed the files 4 to 5 hours, reviewed the file yesterday, has her charts and pictures since

they had talked about her testifying as a witness and she had advised him that she felt protected by the court. Id. R. 641, Tr. p. 203, ll. 7-21. Counsel Bannister renewed his motion for a mistrial based upon the prosecutorial misconduct claim. Id. R. 642, Tr. 204. He requested that a life without parole sentence be entered under the 5th Amendment Double Jeopardy Clause. Id. R. 643, Tr. 205.

Subsequently, Dr. Loring testified as a court witness. R. 658, Tr. p. 220, ll. 14-17. After revealing her educational and employment background, Dr. Loring was qualified as an expert "in the field of social history, trauma, and abuse." R. 664-65, Tr. p. 226, l. 21 - p. 227, l. 11. After some initial questioning, Dr. Loring stated that she was willing to testify and to do her best, noting that she had not received attorney guidance [from the defense team, not her personal lawyer Mr. Godfrey], had not seen Inman nor had interviewed anyone else since the six months. She admitted she had checked on the well being of health of the step-father, mother, and sister, but had no case discussion with them. R. 667, Tr. 229.

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Counsel Bannister made an objection as to "how the witness was procured" and the process as a court witness. R. 668, Tr. 230.

Dr. Loring presented a genogram [Court Exhibit 4] and described in narrative form the different types of interaction between the family members and their problems with drugs, alcohol, mental illness, sexual abuse and violence. R. 670-680, Tr. 232-242. Dr. Loring also presented a timeline of Inman's life. [Court Exhibit 5] R. 680-82, Tr. 242-44. Dr. Loring further presented a group of photographs and material suggesting as a child that Inman was "still miserable and crying" (R. 682, Tr. p. 244, ll. 22-25) and had indicators of sexual abuser. R. 683, Tr. p. 245, ll. 2-6. She stated that he had headaches and suffered from head beatings, that he accidentally

burned his genitals with spilled bleach without medical attention, that he was firmly spanked as a child, that he had seizures, that he was exposed to violence in 1980 involving a dog fight with a cat, that his leg was burned in 1981 in a motorcycle accident. R. 684-86, Tr. 246-48. He also began drug use including alcohol, huffing gas, marijuana, cocaine, and LSD beginning in 1981. R. 686, Tr. 248.

Inman was exposed in 1984-1986 to a sexually abusive step-brother who was later convicted as a pedophile. R. 686, Tr. 248. Dr. Loring noted she was unable to locate any pictures of Jerry smiling or happy after age 7. R. 687, Tr. 249. In addition, Dr. Loring found that Inman would play with matches and set fire to his step-brother's mattress, which is a symptom of sexual abuse. R. 687-88, Tr. 249-50. Family members gave him alcohol between 1984-1986.

Dr. Loring described while he was 15, his maternal grandfather suffered a painful and bloody death with throat cancer. R. 688, Tr. 250. She described the closeness between them and apparent guilt Inman felt for his death. His life in prison was based upon a series of thefts and behaviors and the encouraged use of alcohol lead to the downhill path. R. 689, Tr. 251.

Dr. Loring noted that around 11 or 12, Inman was asking his mother for help, but because of her problems, she could not hear it. After he was caught looking into a neighbor's window, his windows were nailed shut. R. 689-690, Tr. 251-52. Inman's suicide attempts were again described by her. R. 690, Tr. 252.

Dr. Loring stated Inman was released in 2005 and was out 9 months before the tragedy. He was described as anxious and lost, unable to hold a job or relate to women. R. 690, Tr. 252. However, he was able to mentor his sister's son, who idolized him and was able to get him to stop huffing gas. R. 690-91, Tr. 252-53.

When the Court asked for anything else Dr. Loring might feel was important, counsel Bannister objected based upon "attorney-client" privilege. R. 691, Tr. p. 253, ll. 17-21. Judge Miller directed her to not talk about anything she talked with counsel about. R. 691-92, Tr. p. 253, l. 25 - p. 254, l. 2. A break was then taken and she was allowed to confer with counsel Godfrey. R. 692, Tr. 254. Dr. Loring then concluded that Inman's early history revealed that he was seen in a "trance-like state" as a child, including the time period it was alleged he was abused as a child. R. 693, Tr. p. 255, ll. 4-18. This history was consistent with his later history of bipolar and having major depression with psychotic features. However, she felt the second half of her conclusions may be interwoven with attorney-client matters. R. 694, Tr. p. 256, ll. 6-14. Counsel Bannister continued his objection to potential disclosure. R. 694-95, Tr. 256-57.

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Judge Miller then declared that he was concerned that he was not getting all the information "because of legal gamesmanship." R. 696, Tr. p. 258, ll. 5-7. He noted she was no longer under "intimidation" and that because of the immunity there was no valid 5th Amendment claim. The defense had made no effort to contact her. Judge Miller repeated that he believed the defense position was disingenuous when the mistrial motion was based upon their reliance on her expertise which they had felt was significant. R. 696-97, Tr. 258-59.

The defense then briefly cross-examined Dr. Loring that it would not be uncommon for new data to become available over seven (7) months. R. 697-98, Tr. 259-60. Dr. Loring stated that she had not reviewed any psychological profile prepared by the government in the case to her recollection. R. 698-99, Tr. 260-61. Defense counsel Bannister ended his questioning. He then re-affirmed his prior motions. R. 699-700, Tr. p. 261, l. 4 - p. 262, l. 5.

Judge Miller re-affirmed his earlier order denying the prosecutorial misconduct motion.

R. 700, Tr. p. 262, ll. 6-23. Importantly, he declared: "The defense counsel now is participating in the limitation of this evidence [of Dr. Loring] that they intended to offer, which contributes to any Constitutional violation that might exist." R. 700, Tr. p. 262, ll. 20-23.

The Sixth Amendment to the Constitution secures to all criminal defendants "the right to the effective assistance of counsel." Strickland v. Washington, 466 U.S. 668, 686, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984) (citation omitted). A prisoner seeking collateral relief from his conviction or sentence under Strickland "must demonstrate both that counsel's performance was deficient, and that the defense was thereby prejudiced." Tice v. Johnson, 647 F.3d 87, 102 (4th Cir.2011). In view of the latitude customarily afforded criminal defense lawyers in formulating strategy, deficient performance will not be adjudged unless, "in light of all the circumstances, the identified acts or omissions were outside the wide range of professionally competent assistance." Strickland, 466 U.S. at 690, 104 S.Ct. 2052. We are thereby constrained to "indulge a strong presumption" that counsel performed reasonably. *Id.* at 689, 104 S.Ct. 2052.

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243.
In the event that the presumption of reasonable performance is successfully rebutted, relief remains unavailable "if the error had no effect on the judgment." Strickland, 466 U.S. at 691, 104 S.Ct. 2052. The defendant must therefore demonstrate "a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. A reasonable probability is a probability sufficient to undermine confidence in the outcome." *Id.* at 694, 104 S.Ct. 2052. The analysis "requires the court deciding the ineffectiveness claim to 'consider the totality of the evidence before the judge or jury.' " Elmore v. Ozmint, 661 F.3d 783, 858 (4th Cir.2011) (quoting Strickland at 695, 104 S.Ct. 2052). In evaluating the evidence, however, "[w]e are not bound ... to view the facts in the light most favorable to the prosecution,"

Tice, 647 F.3d at 111, and the requisite prejudice may be established short of showing that adequate performance “would have resulted ultimately in the defendant's acquittal,” *id.* (quoting Kyles v. Whitley, 514 U.S. 419, 434, 115 S.Ct. 1555, 131 L.Ed.2d 490 (1995)). As dictated by Kyles and Tice, then, Inman may prevail on the prejudice prong though he be unable to show that competent counsel would have secured for him a life sentence, rather than death. Under the discrete circumstances presented in this case, Inman will likely fail in his burden of presenting a reasonable probability that Judge Miller would have sentenced Inman to life rather than death. In determining that a new sentencing hearing was not warranted based upon the Dr. Loring issue, the Supreme Court concluded:

Here, the judge correctly considered that Dr. Loring did not have a South Carolina social worker's license merely as a factor in her qualifications as an expert witness. Having found Dr. Loring qualified as an expert witness, the judge properly called and questioned her as a court's witness. Because Dr. Loring testified, Inman cannot claim he was prejudiced as his counsel declined the opportunity to question Dr. Loring. Williams, 326 S.C. at 135, 485 S.E.2d at 102 (recognizing that governmental intimidation of a witness can be deemed harmless error where the witness nonetheless testifies).

Furthermore, any testimony that was potentially excluded was arguably cumulative to that of Dr. Price, who testified in detail regarding Inman's childhood, his family, his mental health disorders, and his criminal history. Finally, a review of the judge's oral and written orders establishes that he thoroughly considered all mitigating 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. See 16C C.J.S. Constitutional Law § 1644 (Supp.2011) (“The touchstone of due process analysis in cases of alleged prosecutorial misconduct is the fairness of the trial, and not the culpability of the prosecutor.”). Accordingly, we find the judge did not abuse his discretion in declining to grant a mistrial.

Inman, *supra*. Further, the Supreme Court concluded that the death sentence was proportionate.

The Respondent submits that the Applicant cannot satisfy either requirement of the Strickland test. However, the allegation of ineffective assistance of counsel may raise a questions of fact that

cannot be conclusively refuted by the record. The Respondent requests an evidentiary hearing to fully resolve this issue. *See Sharper v. State*, 279 S.C. 264, 305 S.E.2d 247 (1983).

V. CONCLUSION

Each and every allegation in the Application, not hereinabove either expressly admitted, denied, qualified or explained is hereby denied.

WHEREFORE, Respondent submits that the Application for Post-Conviction Relief should be dismissed. In the alternative, that the Court should direct the Applicant to timely serve and file a Amended Application for Post-Conviction Relief specifying all grounds for relief with particularity pursuant to Rule 12(e) within sixty(60) days of the service of this Return and/or after appointment of new counsel, consistent with the policy of *In Re Stays*, 321 S.C. 544, 471 S.E.2d 140 (1996) and S.C. Code § 17-27-160.

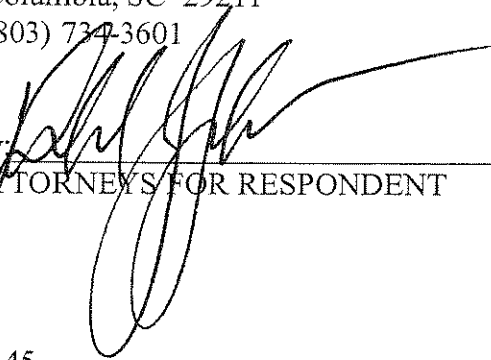
Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

DONALD J. ZELENKA
Senior Assistant Deputy Attorney General
(Counsel of Record)

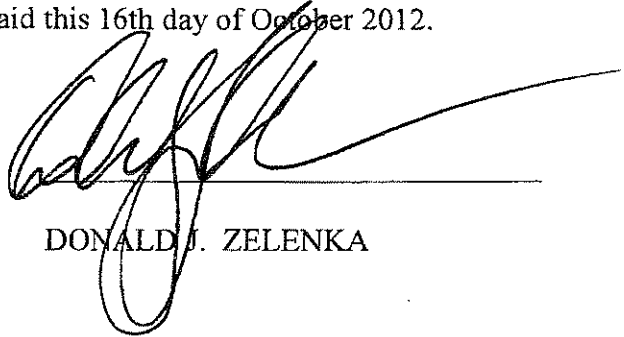
P. O. Box 11549
Columbia, SC 29211
(803) 734-3601

By 
ATTORNEYS FOR RESPONDENT

October 16, 2012

CERTIFICATE OF SERVICE

I, Donald J. Zelenka, hereby certify that I have served the Return to Application for Post-Conviction Relief in the foregoing action on Robert M. Dudek, Chief Appellate Defender at the South Carolina Office of Indigent Defense, P. O. Box 11330, Columbia, S.C. 29211 by depositing in the InterAgency mail, postage prepaid this 16th day of October 2012.

A handwritten signature in black ink, appearing to read 'Donald J. Zelenka', is written over a horizontal line. The signature is stylized with a large, looping 'D' and a long, sweeping horizontal stroke extending to the right.

DONALD J. ZELENKA

THE STATE OF SOUTH CAROLINA
COUNTY OF PICKENS

CLERK OF COURT
PICKENS COUNTY
SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS
THIRTEENTH JUDICIAL CIRCUIT

Jerry Inmon

Applicant

Case No. 2012-CP-39-918

vs.

**First Amended Application for Post-
Conviction Relief**

State of South Carolina

Respondent

The applicant, Jerry Inmon,¹ amends his application for post-conviction relief as follows:²

- 1) Mr. Inmon is confined at the Lieber Correctional Institution.
- 2) The Honorable Edward W. Miller, presiding judge of the Court of General Session for Pickens County, by special assignment of the Supreme Court, imposed the sentences.
- 3) There were not any co-defendants.
- 4) The State indicted Mr. Inmon for first-degree burglary (2006-GS-39-2222), first-degree criminal sexual conduct (2006-GS-39-2223), kidnapping (2006-GS-39-2224), and murder (2006-GS-39-2225).

5) On April 22, 2009, the Honorable Edward W. Miller sentenced Mr. Inmon to death for murder, thirty years' imprisonment for first-degree burglary, and thirty years' imprisonment for first-degree criminal sexual conduct. The sentences are consecutive. Pursuant to S.C. Code § 16-3-1910, Judge Miller did not impose a sentence for kidnapping.

¹ The respondent's last name is correctly spelled "Inmon." His last name is spelled "Inman" in prior proceedings and prior court documents in this case.

² This pleading is based on SCRCPP Form 5, revised 3/2003, found on the South Carolina Judicial Department Website. Mr. Inmon reserves the right to amend his application as provided by law.

6) The sentences were imposed following a guilty plea, entered on August 19, 2008.

7) Mr. Inmon appealed to the Supreme Courts of South Carolina and the United States.

8) On December 28, 2011, the South Carolina Supreme Court affirmed Mr. Inmon's convictions and sentences. *State v. Inman*, 395 S.C. 539, 720 S.E.2d 31 (2011). On October 1, 2012, the Supreme Court of the United States denied Mr. Inmon's petition for a writ of *certiorari*. *Inman v. South Carolina*, 133 S. Ct. 219 (2012).

9) Not applicable because Mr. Inmon appealed.

10) Statement of grounds for relief:

(a) Mr. Inmon was denied the right to effective assistance of counsel—guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution and by Article I, §§ 3 and 14 of the South Carolina Constitution—during the guilt-or-innocence phase of his capital trial.

(b) Mr. Inmon was denied the right to effective assistance of counsel—guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution and by Article I, §§ 3 and 14 of the South Carolina Constitution—during the sentencing phase of his capital trial.

(c) Mr. Inmon was denied the right to effective assistance of counsel—guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution and by Article I, §§ 3 and 14 of the South Carolina Constitution—during the appeal of his capital trial.

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

(e) Mr. Inmon's death sentence was obtained in violation of the Fifth, Sixth, Eighth, and Fourteenth Amendments to the United States Constitution.

(f) The cumulative effect of all of counsels' failures entitle Mr. Inmon to the relief sought because he was also prejudiced by the synergistic impact of the constitutional failures.

Applicable case law: *Hill v. Lockhart*, 474 U.S. 52 (1985) (*Strickland* standard applies to guilty plea challenges based on ineffective assistance of counsel); *Pauling v. State*, 331 S.C. 606, 503 S.E.2d 468 (1998) (Counsel ineffective in burglary and criminal sexual conduct case for failing to call triage nurse as witness); *Thomas v. State*, 308 S.C. 123, 417 S.E.2d 531 (1992) (Ineffective for failing to interview witnesses who could have contradicted state's evidence); *Ingle v. State*, 25416 (2002) (Ineffective for failing to interview a witness before calling the witness to testify); *Frett v. State*, 298 S.C. 54, 378 S.E.2d 249 (1988) (Ineffectiveness so pervasive that showing of prejudice unnecessary); *State v. King*, 155 S.E. 409, 158 S.C. 251 (1930); *Strickland v. Washington*, 466 U.S. at 668, 695 ("In making this [prejudice] determination, a court hearing an ineffectiveness claim must consider the totality of the evidence before the judge or jury") (emphasis added); *Wiggins v. Smith*, 123 S.Ct. 2527, 2535-37 (2003) (holding trial counsel's failure to investigate and present mitigation evidence required new trial where counsel's failure to investigate was unreasonable under "prevailing professional norms," as measured in part by the ABA Standards); *Williams v. Taylor*, 529 U.S. at 397 (in assessing prejudice flowing from deficient performance, reviewing court must consider "the totality of the available mitigation evidence – both that adduced at trial, and the evidence adduced in the habeas proceeding"); *State v. Johnson*, 334 S.C. 78, 93, 512 S.E.2d 795, 803 (1999) (citations omitted) ("cumulative error doctrine provides relief to a party when a combination of errors that are insignificant by themselves have the effect of preventing a party from receiving a fair trial and it requires the cumulative effect of the errors to affect the outcome of the trial").

Ineffective assistance of appellate counsel where trial counsel well-preserved

constitutional and legal issues at trial: *Southerland v. State*, 337 S.C. 610, 524 S.E.2d 833 (1999) (requiring new sentencing trial where appellate counsel failed to raise on appeal a preserved and meritorious issue); *Evitts v. Lucey*, 469 U.S. 387, 105 S.Ct. 830, 83 L.Ed.2d 821 (1985) (to be effective appellate counsel must give assistance of such quality as to make appellate proceedings fair)); and see *Strickland v. Washington*, 466 U.S. 668, 685, 696, 104 S.Ct. 2052, 2063, 2069, 80 L.Ed.2d 674, 692, 699 (1984). *Ring v. Arizona*, 536 U.S. 584 (2002), (holding that the Sixth Amendment requires a jury to find the aggravating factors necessary for imposing the death penalty); and, *Hurst v. Florida*, 577 U.S. ____ (slip op. at 9) (2016), (overruling the holdings in *Spaziano v. Florida*, 468 U.S. 447 (1984) and *Hildwin v. Florida*, 490 U.S. 638, 640–641 (1989) reversing the holding that "the Sixth Amendment does *not* require that the specific findings authorizing the imposition of the sentence of death be made by the jury.").

11) Statement of facts that support each of the grounds set forth in paragraph 10:

(a) Trial counsel was ineffective for advising Mr. Inmon to plead guilty and appeal the trial court judge denying his request to be sentenced by a jury when then existing state law did not allow jury sentencing following a guilty plea in a capital case.

(b) Trial counsel was ineffective during the sentencing phase for:

(1) Failing to obtain another mitigation expert witness after Dr. Marti Loring would not continue in Mr. Inmon's case because she was intimidated by the prosecutor who threatened to have her arrested if she testified, and Mr. Inmon was prejudiced by the same.

(2) In the alternative to (11)(b)(1), failing to continue to prepare with Dr. Loring in the event the trial judge reconvened the trial, as in fact occurred, and Mr. Inmon was prejudiced by the same.

(3) In the alternative to 11(b)(1) and 11(b)(2), counsel is informed and believes that trial counsel did obtain another mitigation expert witness but failed to prepare and present that witness to testify and render an expert opinion, and Mr. Inmon was prejudiced by counsel's deficient performance.

(4) Failing to investigate, develop, and/or present mitigation evidence that was available to trial counsel at the time of the sentencing hearing, including but not necessarily limited to social history information and adaptability to incarceration, and Mr. Inmon was prejudiced by the same.

(5) Developing information through experts retained by the defense that Mr. Inmon's sexual misconduct was the result of a rare medical condition that was treatable and controllable with a common drug, and failing to advise the Court, sitting in decision of what punishment to mete out to Mr. Inmon, of this extraordinarily powerful mitigation evidence that was and is a treatable medical condition Mr. Inmon, and Mr. Inmon was prejudiced by counsels' failures.

(c) Appellate counsel was ineffective for:

(1) Not appealing the trial court judge denying Mr. Inmon his request to plead guilty and have his sentence determined by a jury when that right is protected by the Fifth, Sixth, Eighth, and Fourteenth Amendments to the United States Constitution and trial counsel had preserved that issue for appellate review.

(2) Not appealing Mr. Inmon's motion to continue his sentencing hearing so that he would have sufficient time to obtain another mitigation expert witness after Dr. Marti Loring who refused to participate in Mr. Inmon's case because she was intimidated by the prosecutor.

(d) S.C. Code Ann. § 16-3-20, as written by the General Assembly and construed by the South Carolina Supreme Court, denied Mr. Inmon 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.

(e) The capital sentencing scheme in South Carolina violates the Constitution because its methods for the imposition and review of capital punishment suffers the same infirmities as the statute rejected as unconstitutional by the United States Supreme Court in *Furman v. Georgia*, 408 U.S. 238 (1972) because:

(1) South Carolina's capital sentencing statute, as written by the General Assembly and construed by the South Carolina Supreme Court, does not perform the constitutionally mandated narrowing function.

(2) South Carolina's sentencing system permits discrimination on the basis of race.

(3) The South Carolina Supreme Court consistently fails to fulfill its statutory and constitutional obligation to conduct meaningful proportionality review in capital cases.

(4) The death penalty is unconstitutional because it is unreliable, arbitrary, and lacks penological purpose.

12) Prior to his application for post-conviction relief, Mr. Inmon has not filed any other petitions or applications other than the appeals to the Supreme Courts of South Carolina and the United States as described in paragraph 8.

13) See paragraph 12.

14) None of the grounds set forth in paragraphs 10 and 11 have been presented to this

or any other state or federal court.

15) Not applicable.

16) The grounds set forth in paragraph 10 rely on facts beyond those set forth in the record that was before previous courts.

17) Mr. Inmon was represented by counsel during his guilty plea, sentencing hearing, and appeal.

18) Names and addresses of prior counsel:

(a) During guilty plea and sentencing hearing:

James W. Bannister, Esquire
Bannister, Wyatt & Stalvey, LLC
PO Box 10007
Greenville, SC 29603

Symmes W. Culbertson, Esquire
701 Crecent Ave. Greenville SC
Greenville, SC 29603

John W. DeJong, Esquire
214 E. Main St., Ste. B240
Pickens, SC 29671

(b) On appeal:

Robert M. Dudek, Esquire
S.C. Commission on Indigent Defense
PO Box 11589
Columbia, SC 29211

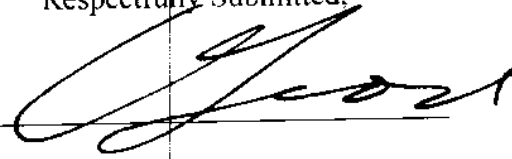
Joseph L. Savitz, III, Esquire
1825 St. Julian Place
Unit 15-D
Columbia, SC 29204

19) This Court should vacate Mr. Inmon's convictions and sentences and order a new trial. In the alternative, this Court should vacate Mr. Inmon's sentences and order a new sentencing hearing.

20) Mr. Inmon is not under a sentence from any other court that he has not challenged.

Respectfully Submitted,

By



Diana Holt
Diana Holt, LLC
Post Office Box 6454
Columbia, South Carolina 29260-6454
Phone: 803-782-1663
Email: DianaHolt@utexas.edu

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

April 11, 2016

THE STATE OF SOUTH CAROLINA

2016 APR 13 PM 3 00

THE COURT OF COMMON PLEAS
THIRTEENTH JUDICIAL CIRCUIT

COUNTY OF PICKENS

CLERK OF COURT
PICKENS COUNTY
SOUTH CAROLINA
Applicant

Case No. 2012-CP-39-918

Jerry Inmon

vs.

**First Amended Application for Post-
Conviction Relief**

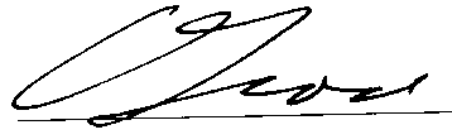
State of South Carolina

Respondent

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

J. Anthony Mabry, Esquire
S.C. Attorney General's Office
PO Box 11549
Columbia, SC 29211

By



E. Charles Grose, Jr.
The Grose Law Firm, LLC
404 Main Street
Greenwood, SC 29646
(864) 538-4466

4/11, 2016
Greenwood, South Carolina

2016 MAY 12 PM 12 29

STATE OF SOUTH CAROLINA
COUNTY OF PICKENS

CLERK OF COURT
PICKENS COUNTY
SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

Jerry Buck Inman, #5226,
a/k/a Jerry Buck Inmon,

Respondent,

v.

State of South Carolina,

Applicant.

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

**MOTION FOR *IN CAMERA* INSPECTION
OF DISCOVERY MATERIALS ASSERTED
TO BE PRIVILEGED OR REDACTED IN
DISCOVERY PRODUCTION
(Rule 26, SCRPC)**

Respondent, by and through the undersigned attorneys, pursuant to Rule 26, SCRPC, hereby moves for an *in camera* inspection by this Honorable Court of discovery materials withheld by Applicant from Respondent under claims of privilege or redacted by Applicant in his discovery responses to Respondent.

This is a capital post-conviction relief (PCR) action in which the SCRPC are applicable. Respondent has previously served Applicant with Interrogatories and Requests for Production of Documents and Things. Applicant has served Respondent with Responses to those Interrogatories and Requests for Production of Documents and Things; however, Applicant has withheld from production items it has designated as subject to some claim of privilege, or redacted material from produced documents under a claim of privilege and produced a privilege log (See attached Privilege Log).¹

Applicant has filed an amended application for PCR relief alleging the following grounds:

Ground 10(a) 11(a) Mr. Inmon was denied the right to effective assistance of counsel—guaranteed by the Sixth And Fourteenth Amendments to the United States Constitution

¹ Applicant's privilege log is inadvertently labeled "Privilege Log for Columbia Harbison, LLC." The attached privilege log is in fact Applicant's privilege log in this case.

and by Article I, Sections 3 and 14 of the South Carolina Constitution—during the guilt-or-innocence phase of his capital trial.

Supporting facts: Trial counsel was ineffective for advising Mr. Inmon to plead guilty and appeal the trial court judge denying his request to be sentenced by a jury when then existing state law did not allow jury sentencing following a guilty plea in a capital case.

Ground 10(b)11(b) Mr. Inmon was denied the right to effective assistance of counsel—guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution and by Article I, Sections 3 and 14 of the South Carolina Constitution—during the sentencing phase of his capital trial.

Supporting facts: Trial counsel was ineffective during the sentencing phase for:

- (1) Failing to obtain another mitigation expert witness after Dr. Marti Loring would not continue in Mr. Inmon's case because she was intimidated by the prosecutor who threatened to have her arrested if she testified, and Mr. Inmon was prejudiced by the same.
- (2) In the alternative to (1), failing to continue to prepare with Dr. Loring in the event the trial judge reconvened the trial, as in fact occurred, and Mr. Inmon was prejudiced by the same.
- (3) In the alternative to (1) and (2), counsel is informed and believes that trial counsel did obtain another mitigation expert witness but failed to prepare and present that witness to testify and render an expert opinion, and Mr. Inmon was prejudiced by counsel's deficient performance.
- (4) Failing to investigate, develop, and/or present mitigation evidence that was available to trial counsel at the time of the sentencing hearing, including but not necessarily limited to social history information and adaptability to incarceration, and Mr. Inmon was prejudiced by the same.
- (5) Developing information through experts retained by then defense that Mr. Inmon's sexual misconduct was the result of a rare medical condition that was treatable and controllable with a common drug and failing to advise the Court, sitting in decision of what punishment to mete out to Mr. Inmon, of this extraordinarily powerful mitigation evidence that was and is a treatable medical condition Mr. Inmon, and Mr. Inmon was prejudiced by counsel's failures.

Ground 10(c)11(c) Mr. Inmon was denied the right to effective assistance of counsel—guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution and by Article I, Sections 3 and 14 of the South Carolina Constitution—during the appeal of his capital trial.

Supporting facts: Appellate counsel was ineffective for:

- (1) Not appealing the trial court judge denying Mr. Inmon his request to plead guilty and have his sentence determined by a jury when that right is protected by the Fifth, Sixth, Eighth, and Fourteenth Amendments to the United States Constitution and trial counsel had preserved that issue for appellate review.
- (2) No appealing Mr. Inmon's motion to continue his sentencing hearing so that he would have sufficient time to obtain another mitigation expert witness after Dr. Marti Loring who refused to participate in Mr. Inmon's case because she was intimidated by the prosecutor.

Ground 10(d)11(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.

Supporting facts: S.C. Code Ann. Section 16-3-20, as written by the General Assembly and construed by the South Carolina Supreme Court, denied Mr. Inmon his right to have the jury determine the existence of aggravating circumstances, consider statutory and non-statutory mitigating circumstances, and determine whether a death sentence should be imposed.

Ground 10(e)11(e) Mr. Inmon's death sentence was obtained in violation of the Fifth, Sixth, Eighth, and Fourteenth Amendments to the United States Constitution.

Supporting Facts: The capital sentencing scheme in South Carolina violates the Constitution because its methods for the imposition and review of capital punishment suffers the same infirmities as the statute rejected as unconstitutional by the United States Supreme Court in *Furman v. Georgia*, 408 U.S. 238 (1972) because:

- (1) South Carolina's capital sentencing statute, as written by the General Assembly and construed by the South Carolina Supreme Court, does not perform the constitutionally mandated narrowing function.
- (2) South Carolina's sentencing system permits discrimination on the basis of race.
- (3) The South Carolina Supreme Court consistency fails to fulfill its statutory and constitutional obligation to conduct a meaningful proportionality review in capital cases.
- (4) The death penalty is unconstitutional because it is unreliable, arbitrary, and lacks penalogical purpose.

(Amended Application).

Based on the nature of this action, the allegations of Applicant's amended PCR application, and on Applicant's discovery responses and privilege log [attached], Respondent is informed and believes the matters withheld under an assertion or claim of privilege are discoverable, and hereby moves for this Honorable Court to Order the Applicant to submit the materials he asserts to be privileged under seal to this Court, and for this Honorable Court to conduct an *in camera* inspection of discovery materials withheld from Respondent under claims of privilege or redacted by Applicant in his discovery responses, to determine whether any privilege applies or does not apply and whether the materials are discoverable or should be produced to Respondent. Rule 26, SCRPC.

Because Respondent has previously filed Motions to Compel Discovery; this Court has

orally ordered production of discovery, and Applicant has withheld from production and/or redacted documents and things under a claim of privilege along with filing a privilege log. Respondent is moving at this time for an *in camera* inspection by this Court of those documents and things withheld or redacted under a claim of privilege, for a determination of whether any privilege applies or not given the nature of the withheld material and the allegations of the amended application. Rule 26, SCRPC. To the extent this Court determines any of these material submitted under seal are not protected by any claimed privilege, Respondent moves this Honorable Court to Order disclosure of those materials to Respondent by Applicant. Rule 16, SCRPC.

RESPONDENT SO MOVES.

Respectfully submitted,

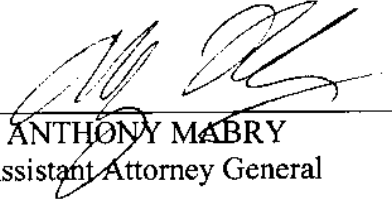
ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

DONALD J. ZELENKA
Senior Assistant Deputy Attorney General

J. ANTHONY MABRY
Assistant Attorney General
S.C. Bar No. 11973
Post Office Box 11549
Columbia, SC 29211
(803) 734-6305

By:


J. ANTHONY MABRY
Assistant Attorney General

May 9, 2016

Document Bates Number	Date	Author	Recipients	Description
128A 27-36	7/12/2007	Bannister (?)	Legal Team	Team Agendas and notes
42-113	Various	Unknown	File	Interview and Hearing Notes and prep.
128-149	Various	Various	File	Hearing notes and planning
156-204	Various	Various	Various: File, team, and experts	Attorney notes, Ex Parte Funding matters, communications with experts. Interview notes of same and client's family.
216-248	Various	Jbannister ("JB"), his paralegal ("CA"), and unknown.	File, experts, and team.	Communications with experts, paralegal and team re: interview notes and funding matters. Atty and expert billing statements.
252	4/23/2008	CA	SCCOID	Email re: <i>ex parte</i> funding.
255-259	4/22/2008	JB, CA	Experts	Billing and Request to perform assessment.
262-264	4/15/2008	CA, JB	Expert	Fax and Email.

2016 MAY 12 PM 12 29

CLERK OF COURT

PICKENS COUNTY
SOUTH CAROLINA

555

269-271	4/1/2008	JA	Loring, Aiken, Dr, Maddox (aka Donna S-Watts)	Letters with discovery discs.
313-322	3/1/2008	Expert and OID	JB and File	Funding and billing
326	3/4/2008	CA	OID	Ex Parte matters
328-332	3/14/2011	Graybill	Davis, Wilson	Emails re: discussions with Frankel
340-343	2/1/2008	JB, CA, OID	OID, Expert	Funding order and bill.
354-355	2/1/2008	CA, Expert	OID	E-mail and Billing statement
361	1/8/2008	Expert	JB	Book and Visitation with client
363-364	1/18/2008	JB	CoCounsel Symmes Culbertson ("SC") and John deJong ("JD")	E-mails re: Harbison, City, and Frankel (contains duplicates)
468-490	Fall 2007	JB, OID	OID, File, Judge	Funding orders and bills and receipts.

498-503	Fall 2007			
505	9/12/2007	JB	Judge	Cover letter re: ex parte funding orders
508-516	Fall 2007	JB	Judge, co-counsel, experts	Funding matters and payments.
523-536	Fall 2007	JB, CA, OID	Various: File, team, and experts, Judge	Funding.
539-543	Summer 2007	JB, SC, and Chris Scalzo	JB, SC	Legal Memo, Team communications.
569-570	1/20/2011	Graybill	Waldrop, Wilson, Davis	E-mails and enclosed correspondence from Duvall Spruill dated 1/19/2011
590-595	5/3/2007	JB	Legal Team	Meeting, check list
597-607	4/19/2007	JB, CG,	Various legal team members.	Family interviews, Team meetings, Agendas.
611-613	4/2/2007	JB, JD	JB, SC	Meeting agenda.

615-616	4/2/2007	JD, J Maldin	JB, Judge John Hayes	counsel comms and funding memo

[REDACTED]

[REDACTED]

Case No.: 12-CV-0800-JFA

Privilege Log for Columbia Harbison, LLC

[REDACTED]

Case No.: 12-CV-0800-JFA

Privilege Log for Columbia Harbison, LLC

[REDACTED]

Case No.: 12-CV-0800-JFA

Privilege Log for Columbia Harbison, LLC

[REDACTED]

Case No.: 12-CV-0800-JFA

Privilege Log for Columbia Harbison, LLC

Protection
A/C W/P
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Privilege Log for Columbia Harbison, LLC

A/C W/P

[REDACTED]

Case No.: 12-CV-0800-JFA

Privilege Log for Columbia Harbison, LLC

[REDACTED]

Case No.: 12-CV-0800-JFA

Privilege Log for Columbia Harbison, LLC

Privilege Log for Columbia Harbison, LLC

Privilege Log for Columbia Harbison, LLC

Privilege Log for Columbia Harbison, LLC

[REDACTED]

Case No.: 12-CV-0800-JFA

Privilege Log for Columbia Harbison, LLC

[REDACTED]

Case No.: 12-CV-0800-JFA

Privilege Log for Columbia Harbison, LLC

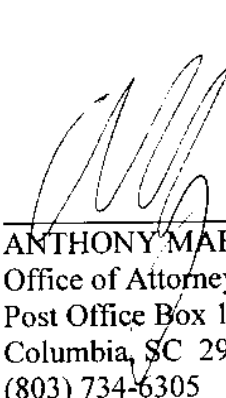
CERTIFICATE OF SERVICE

I, **Anthony Mabry**, certify that I have served Respondent's **Motion for *In Camera* Inspection of discovery Materials Asserted to be Privileged or Redacted in Discovery Production (Rule 26, SCRCP)** by depositing one copy to his counsel of record in the United States mail, postage prepaid, addressed as follows:

Diana L. Holt, Esquire
Diana L. Holt, LLC
P. O. Box 6454
Columbia, SC 29260-6454

E. Charles Grose, Jr., Esquire
The Grose Law Firm
404 Main Street
Greenwood, SC 29646

This 9th day of May, 2016.



ANTHONY MABRY
Office of Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-6305

Attorney for Respondent

CLERK OF COURT
PICKENS COUNTY
SOUTH CAROLINA

2016 MAY 12 PM 12 30

STATE OF SOUTH CAROLINA

COUNTY OF PICKENS

2016 MAY 12 PM 12:29

IN THE COURT OF COMMON PLEAS

JUDICIAL CIRCUIT

CLERK OF COURT

PICKENS COUNTY

SOUTH CAROLINA

CASE NO.: 2012-CP-39-918MOTION AND ORDER INFORMATION
FORM AND COVERSHEETJerry Buck Inman, #5226
Plaintiff,)vs.
State of South Carolina
Defendant.)

Plaintiff's Attorney:

E. Charles Cross, Jr., Bar No. 66063Address: 404 Main St, Greenwood SC 29646Phone: (864) 538-4466 Fax: (864) 538-4405

E-mail: _____ Other: _____

Defendant's Attorney:

Anthony Mabry, Bar No. 11973Address: P.O. Box 11549, Columbia SC 29211Phone: (803) 734-6305 Fax: (803) 734-4035E-mail: amabry@scag.gov Other: _____

- ☐ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)
- ☒ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)
- ☐ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)

SECTION I: Hearing Information

Nature of Motion: _____

Estimated Time Needed: _____

Court Reporter Needed: ☐ YES/ ☐ NO

SECTION II: Motion/Order Type

☒ Written motion attached☐ Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.

Signature of Attorney for ☐ Plaintiff / ☒ Defendant

Date submitted

May 9, 2016

SECTION III: Motion Fee

☐ PAID - AMOUNT: \$ _____☒ EXEMPT:

(check reason)

☐ Rule to Show Cause in Child or Spousal Support☐ Domestic Abuse or Abuse and Neglect☐ Indigent Status ☒ State Agency v. Indigent Party☐ Sexually Violent Predator Act ☐ Post-Conviction Relief☐ Motion for Stay in Bankruptcy☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP)☐ Proposed order submitted at request of the court; or,

reduced to writing from motion made in open court per judge's instructions

Name of Court Reporter: _____

☐ Other: _____

JUDGE'S SECTION

☐ Motion Fee to be paid upon filing of the attached order.☐ Other: _____

JUDGE CODE _____

Date: _____, 20____

CLERK'S VERIFICATION

Collected by: _____

Date Filed: _____, 20____

☐ MOTION FEE COLLECTED: \$ _____☐ CONTESTED - AMOUNT DUE: \$ _____

SCCA 233 (11/2003)

STATE OF SOUTH CAROLINA
COUNTY OF PICKENS

Jerry Buck Inman, #5226,
a/k/a Jerry Buck Inmon,

Respondent,
v.
State of South Carolina,

Applicant.

CLERK OF COURT
PICKENS COUNTY
SOUTH CAROLINA

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

RETURN TO AMENDED APPLICATION
FOR POST-CONVICTION RELIEF
AND MOTION TO DISMISS

Respondent, by and through the undersigned counsel, hereby makes a Return to the Amended Application of capital PCR Applicant Jerry Buck Inman (aka “Inmon”) filed April 13, 2016.

PROCEDURAL HISTORY¹

Capital PCR applicant Jerry Buck Inman (“Inman”)² was indicted in November 2006 by the Pickens County grand jury for the crimes of murder, kidnapping, criminal sexual conduct in the first degree [CSC 1st], and burglary in the first degree [burglary 1st] (Ind. #s 2006-GS-39-2225, 2224, 2223, & 2222). The circumstances of the crimes involve the May 26, 2006 murder of Tiffany Souers, a Clemson University coed.

The State timely noticed Inman of its intent to seek the death penalty for the murder of Souers on August 22, 2006 pursuant to S.C. Code Ann. Section 16-3-26 (1976). Inman was appointed three (3) capital defense attorneys to represent him: John DeJong, Sims Culbertson,

¹ A more detailed procedural history is set forth in Respondent’s Return to the original PCR application. For the purposes of this Return, a more concise procedural history is all that is necessary.
² Applicant is also referred to as Jerry Buck Inmon. Because Applicant was referred to in all previous proceedings as Jerry Buck Inman, Respondent will refer to Applicant by the last name Inman.

and Jim Bannister, Esquires. On March 13, 2007, the Honorable Edward W. Miller, Circuit Court Judge, was assigned by Order of the South Carolina Supreme Court to preside over this capital case. On August 19, 2008, a hearing concerning Inman's competency to stand trial was held, and Inman was determined to be competent to stand trial.

On August 19, 2008, Inman entered guilty pleas to the indicted charges: murder, kidnapping, CSC 1st, and burglary 1st. Prior to his entry of his guilty pleas, a competency hearing was held after which Judge Miller again determined Inman was competent to stand trial or plead guilty. During the guilty plea, the Solicitor gave a factual basis for the entry of the guilty pleas which Inman agreed was correct. Judge Miller accepted the guilty pleas after determining they were freely, voluntarily, and knowingly entered by Inman. Sentencing was deferred until September 8, 2011.

Sentencing was conducted on September 8-11, 2008, and again from April 20, 2009 to April 22, 2009. On April 22, 2009, Judge Miller issued his sentence by reading his written sentencing order into the record. Judge Miller found the State had proven beyond a reasonable doubt three (3) aggravating circumstances: (1) the murder of Tiffany Souers was committed during the commission of a burglary in the 1st degree; (2) the murder of Souers was committed during the commission of criminal sexual conduct; and (3) the murder of Souers was committed during the commission of a kidnapping. After considering the evidence in aggravation and mitigation, Judge Miller sentenced Inman to death for the murder of Tiffany Souers. Judge Miller sentenced Inman to thirty (30) years for burglary 1st degree, and 30 years for CSC 1st. All sentences were ordered to run consecutively. Inman was not sentenced on the kidnapping indictment pursuant to S.C. Code Ann. Section 16-3-910 (2003).

On April 23, 2009, a Motion to Reconsider and for a New Trial was made by Inman. Judge Miller denied the Motion by Order dated July 17, 2009 and filed July 28, 2009.

Inman appealed his guilty plea convictions and sentences, including his death sentence, to the South Carolina Supreme Court. On direct appeal, Inman raised the following issues:

1. Whether Inman's guilty plea should be vacated because it constituted an invalid conditional guilty plea?
2. Whether the trial judge abused his discretion by declining to recuse the Solicitor's office as advocates and refusing to allow defense counsel to question the Solicitor and members of his staff on the claim of intentional prosecutorial misconduct?
3. Whether the Solicitor's questioning of Dr. Loring constituted witness intimidation and, in turn, prosecutorial misconduct?
4. Whether a mistrial was warranted after the Solicitor's actions questioning Dr. Loring constituted prosecutorial misconduct?

On December 28, 2011, the South Carolina Supreme Court affirmed Inman's guilty plea convictions and sentences including his death sentence. State v. Inman, 395 S.C. 539, 720 S.E.2d 31 (2011). In its published Opinion, the South Carolina Supreme Court held: (1) Inman's guilty plea was not a conditional guilty plea therefore it was valid and should not be vacated; (2) the trial judge did not abuse his discretion in declining to recuse the Solicitor's office and refusing to allow defense counsel to question the Solicitor and members of his staff on the claim of intentional prosecutorial misconduct; (3) the Solicitor's questioning of Dr. Loring did constitute witness intimidation and prosecutorial misconduct as found by the trial judge; and (4) the trial judge did not err in declining to grant a mistrial as Inman did not establish prejudice to warrant such a severe remedy; (a) as this was a bench sentencing; (b) the trial judge qualified Dr. Loring as an expert, (c) the trial judge properly called and questioned her as a court's witness; (d) Dr. Loring testified and Inman's counsel declined the opportunity to question Dr. Loring; (e) any testimony that was potentially excluded was cumulative to that of Dr. Price who testified in detail regarding Inman's childhood, his family, his mental health disorders, and his criminal history; (f) finally, a review of the judge's oral and written orders established that the trial judge

thoroughly considered all mitigating evidence. Based on all of the above, even though there was prosecutorial misconduct, Inman's sentence of death was not imposed in violation of his due process rights. State v. Inman, 395 S.C. 539, 720 S.E.2d 31 (2011). The Supreme Court also conducted its proportionality review and found the sentence was not the result of passion, prejudice, or any other arbitrary factor, and the judge's finding of three (3) statutory aggravating circumstances for the murder were supported by the evidence. Furthermore, a review of prior cases established that the death sentence in this case was proportionate to that in similar cases and was neither excessive nor disproportionate to the crime. Id.

Inman filed Petition for Writ of Certiorari in the United States Supreme Court. The United States Supreme Court denied certiorari.

Inman then filed the present post-conviction relief (PCR) action on June 21, 2012 through appellate counsel, Robert Dudek. Inman filed his only amended PCR application on April 13, 2016 through PCR counsel Diana Holt and Charles Grose, Esquires.

RESPONDENT'S STATEMENT OF FACTS

Tiffany Marie Souers was a rising junior engineering student at Clemson University. Tiffany lived in an off-campus apartment complex called the Reserve in Central, South Carolina. She lived in apartment 118-CC, in Pickens County, with her two (2) room-mates.

On May 25, 2006, Tiffany was staying in the apartment by herself, as her roommates were gone for various reasons. Sometime during the day of May 25th, the applicant, Jerry Buck Inman ("Inman"), drove by the apartment unit and saw Tiffany on the outside porch on the side of her apartment. Inman was not from South Carolina.

That evening, Tiffany, accompanied by two (2) of her friends, Erica Cooler and Anna Janiec, went to a restaurant known as *Sine Qua Non* where their friend Emily Raines was

working. Around 11:00 p.m., Tiffany returned home when Erica dropped her off, and Tiffany went into her apartment. At 11:20 p.m., she answered a text message from her friend, Travis Braznell, but did not respond to a later text from Travis at 12:52 a.m.

By Inman's own admission, around 1:00 a.m., on May 26th, 2006, during the nighttime and while completely dark, Inman climbed over the porch rail to Tiffany's apartment where he had seen Tiffany standing earlier in the day. He then unlawfully, and without her consent or knowledge, opened the patio door to her apartment and entered her residence. After burglarizing her apartment, Inman then went into Tiffany's room where she was asleep.

Inman woke Tiffany and covered her mouth with his hand, and a struggle ensued. Inman eventually bound her hands and began to look for her pocketbook and wallet, including her driver's license, car keys, ATM card, and other items of value. During this time, Inman was questioning Tiffany about the location of these items. After locating these items, Inman sexually assaulted [raped] Tiffany. Inman then murdered Tiffany by tightening a bikini bathing suit top around her neck until he strangled her to death, i.e. asphyxiated her. Inman, under cover of darkness, then left Tiffany's apartment the same way he entered.

Inman then drove his 1990 Chevrolet Blazer truck to the Sun Trust Bank at 1051 Tiger Boulevard in Clemson, South Carolina, and attempted to use Tiffany's ATM card four (4) different times at 3:22 a.m., 3:29 a.m., 3:31 a.m., and 3:32 a.m. All attempts failed because he entered the wrong PIN number. Inman then drove to Wachovia Bank at 955 Tiger Boulevard, Clemson, South Carolina, where he attempted to use Tiffany's ATM card on two (2) occasions, 3:37 a.m., and 3:38 a.m. Those attempts failed, also, because the wrong PIN number was used. Photographs were obtained from these ATM machines showing Inman, whose face and head are covered with bandanas, attempting to use the machines at the times listed. Also captured in

these photographs was a portion of a truck. The first photo captured a portion of the grill of the truck. The next photo captured the hood and the windshield.³

Inman then drove to his home in the State of Tennessee the morning of May 26, 2006, discarding the items he had stolen from Tiffany's apartment as he drove. Tiffany's driver's license that Inman discarded was found by Mr. James Lindsay on Highway 76 between Clemson and Anderson.

On May 26, 2006, at approximately 1:30 p.m., Tiffany's body was found by one (1) of her roommates who was returning keys to the unit for use of someone who would be subleasing during the summer. Tiffany's body was found partially clad on the floor of her bedroom. Police were notified and the Central Police Department responded.

The South Carolina Law Enforcement Division (SLED) responded including with its forensic team to process the crime scene for evidence. Of particular evidentiary importance, SLED removed a large section of carpet from Tiffany's bedroom, which was taken to SLED's forensics laboratory for further testing. An unknown male's DNA was eventually recovered from a sperm fragment found on this carpet.

Tiffany's body was transported to Greenville Memorial Hospital where an autopsy was conducted. It was determined Tiffany's death was a homicide resulting from asphyxia due to ligature strangulation. The bikini top had been twisted so tight around Tiffany's neck the blood flow to her brain was cut off killing her. It was also determined Tiffany's hands and wrists bore signs that were consistent with her being restrained. Finally, it was determined Tiffany had suffered traumatic sexual intercourse. A sexual assault kit was used and vaginal swabs were forwarded to SLED.

³ The truck's body style was eventually identified by Mr. Donald Floyd, the senior project engineer at General Motors, as either a Chevrolet Blazer or a GMC Jimmy with a model year between 1982 and 1994.

The SLED Forensic Laboratory processed the carpet from Tiffany's bedroom and found two areas of semen stain. From these areas, a DNA profile was developed. The SLED Laboratory also processed the vaginal swabs collected at Tiffany's autopsy. Semen was found there as well. A DNA profile was developed from this semen as well. The DNA profile from the carpet matched that from the vaginal swabs taken at the autopsy, i.e. it was the same person. The DNA profile was entered into the CODIS national database.

On June 5, 2006, SLED received a response from CODIS that a match had been found to the DNA profile submitted. There was a match to two (2) profiles in the data base, one (1) submitted by the State of North Carolina and one (1) submitted by the State of Florida. Both of these matches belonged to the same person, applicant Jerry Buck Inman, who had previously served prison sentences in both North Carolina and Florida.

SLED immediately began a nationwide information search to locate Jerry Inman. It was determined he was currently living in Dandridge, Tennessee. The Tennessee Bureau of Investigation ("TBI") was notified and requested to locate and arrest Inman. Warrants for Inman's arrest had, at that time, been secured by SLED based upon the DNA match and the CODIS hit.

Chief Deputy G.W. "Bud" McCoig of the Jefferson County Sheriff's Office and TBI Agent Mike Hannon began their efforts to locate Inman around 4:30 in the afternoon on June the 6th, 2006. They split up with McCoig watching Inman's parents' home and Hannon watching Inman's sister's residence. Inman was spotted returning to his parents' home shortly after 11:30 p.m. Upon seeing Chief Deputy McCoig's vehicle, Inman drove away for about half-a-mile when he was stopped at approximately 11:45 p.m., still on June 6, 2006. Inman was arrested.

At 11:47 p.m., McCoig advised Inman verbally of his Miranda rights as they sat in McCoig's vehicle. Inman was then briefly interviewed by McCoig. Inman admitted to the

crimes of murder, criminal sexual conduct, burglary, and kidnapping of Tiffany Souers in Pickens County on May 26, 2006. Inman was then transported to the Jefferson County Sheriff's Department where Inman and McCoig met with TBI Agent Hannon for the purpose of obtaining a written statement. At 12:30 a.m., on June 7, 2006, Agent Hannon advised Inman of his Miranda rights by using a written form, and Inman signed the rights form and waived his rights and agreed to give a statement to Agent Hannon. The statement was witnessed by both Chief Deputy McCoig and Agent Hannon. Inman's statement to the two (2) police officers was as follows:

I went to South Carolina about two (2) weeks ago. I don't remember the exact date. I was just driving. I ended up somewhere around Clemson. I did not know the victim. I just saw her on the balcony of her apartment early in the evening. I drove around for a while until I thought she was asleep. I parked behind her apartment. Her apartment was on the bottom floor.

I climbed over the rail. The door heading to her apartment was unlocked. I entered the apartment and found her bedroom. I found the victim asleep in her bed - - in her bedroom. I woke the victim. She was startled. I tied her hands behind her. I did not go there to kill her. I don't want to talk about the sex part, but I did have sex with her.

I went and found - - no, excuse me. I used an item I found in her room to tie her up. I did not have anything - - I knew the victim could recognize me. When I knew the victim was dead, I went out the same way I came in. When I left her apartment, I drove back to 1712 Junior Williams Road in Dandridge.

Before I left her apartment, I took some things from her apartment. I took two credit cards. I tried to use one of the cards at a bank. I was not able to use the card, so I threw it away somewhere along the interstate on my way home. I did not know the name on the card. I know the girl in the apartment's name was Tiffany Souers. I saw it on the news here in Tennessee.

The clothes I wore while I was in Tiffany's apartment are in my car. I wore the shoes I have on now. I did not take any other item, except the credit cards. I knew Tiffany was dead because she stopped struggling. I held my hand over her mouth. I strangled her with a bathing suit top, the top of a bathing suit.

Inman would not sign the statement that he gave.

Thereafter, SLED Agents Jeff Kindley and Gene Donohue arrived at the Jefferson County Sheriff's Office for the purpose of interviewing and obtaining a statement from Inman concerning the murder of Tiffany Souers. Inman was again advised of his Miranda rights and

signed a Waiver of Rights form. Agent Donohue and Agent Kindley then took a statement from Inman. In this statement, Inman again admitted to the murder, kidnapping, burglary, and criminal sexual conduct of Tiffany Souers on May 16, 2006 in Central, S.C. in Pickens County. The statement was as follows:

I live with my cousin, Derrick Adams, in Tennessee. I was not adjusting well to being out of jail. So I decided to get away. I started driving my car through Chattanooga, Georgia, North Carolina, and South Carolina. I ended up around Clemson about two weeks ago. I had run out of money so I was looking for something to rob.

I drove around some apartment complexes. I parked in the back of one of the apartment complexes and got out to try some doors. The first one I tried was open. I went in the back door after I hopped over the rail. No lights were on and I went in. I went in to the living room and then turned right into the bedroom.

After that, I went into a bedroom and a girl was sleeping there. I put my hand over her mouth and woke her up. She started fighting me and we wrestled. I tied her up with a piece of clothing behind her back. I asked her for her purse and she took her wallet out. I got her credit card and asked her for her PIN and she told me, but I forgot it. After that, I had sex with her. And then I killed her. I took her bed sheets, her wallet, her car keys, and went out the back door. I put some bandannas over my face and went to the ATM to get some money, but couldn't get any.

I then left and went back to Tennessee. I had seen a girl on the apartment balcony where I went in earlier in the day. But when I went back at 1:00 a.m. - - or 1:30 a.m., I don't think any - - I didn't think anyone was there. I didn't mean for anyone to get hurt. I was just looking for some money. [End of Statement].

Inman refused to sign this statement as well.

Thereafter, Inman was returned to Pickens County, S.C. for processing. Deputy Tony Robinson of the Pickens County Sheriff's Office obtained DNA samples from Inman for the purpose of DNA analysis. These samples were submitted to the SLED forensic laboratory. A DNA profile was developed from this sample, and it was determined that this DNA profile matched the DNA profiles developed from the vaginal swab of Tiffany Souers taken at autopsy and the carpet removed from Tiffany Souers apartment the morning of her murder. The probability of randomly selecting an unrelated individual having a DNA profile matching the semen on these items is approximately 1 in 240 quadrillion.

On August 19, 2008, Inman pleaded guilty to murder, burglary in the 1st degree, criminal sexual conduct, and kidnapping. (R. 912-64). At his guilty plea hearing, Inman admitted he murdered Tiffany Souers, burglarized her apartment, kidnapped her, and raped her. (R. 912-64). He also admitted the facts recited by the Solicitor, which are set forth above, were true. (R. 912-64).

The Evidence in Aggravation

In the sentencing phase, the State called Suzanne Clavel, who was raped by applicant Inman just after midnight on December 14th, 1987. Ms. Clavel lived in an apartment in Tampa, Florida and had gone to bed around 11:00 p.m. on December 13th. She was awakened approximately one (1) hour later by Inman in her bedroom pointing a gun at her head. Inman told Clavel to “shut up” and ordered her to tie up her roommate with telephone cords Inman had with him, i.e. pre-cut telephone cords. She complied and tied up her roommate’s hands and feet. Inman at gunpoint then tied Clavel’s hands behind her back. Inman then raped her vaginally, anally, and vaginally again. The sexual assault lasted approximately twenty (20) minutes. Clavel’s roommate witnessed the entire assault. Inman then stole money from Clavel and her roommate and Clavel’s car keys. When Inman left, he told Clavel if she called the police he would come back and kill her.

Inman was apprehended two (2) years later, in 1989, and pled guilty to the burglary of Clavel’s apartment and her kidnapping and rape, and the kidnapping of her roommate and theft of the roommate’s car. He was sentenced to thirty (30) years in the Florida Department of Corrections. He was released in 2005.

Inman was convicted of 2nd degree criminal sexual assault which occurred on January 10, 1988, of which Inman was convicted on September 26, 1988. That offense and conviction

occurred in North Carolina. This sexual assault conviction was for a sexual assault on a male inmate in the county jail. Inman received a twenty (20) year sentence for that offense.

Inman was also charged with attempted escape from prison on February 5, 1991. He was convicted of that offense and received one (1) year in prison on April 8, 1991.

Approximately nine (9) months after his release from prison in 2005, on May 22, 2006, Inman burglarized the home of Jessica Gann. Ms. Gann lived in Sevierville, Tennessee. Ms. Gann woke up in her own bed with someone on top of her with a knife to her throat. It was Inman. He tied her hands behind her back. Ms. Gann's small daughter was crying during the incident. Inman attempted to rape Ms. Gann from the rear. Inman then turned her over and while holding a knife to her neck raped Ms. Gann. He then took her to the bathroom and made her clean herself with shampoo twice. Inman then left the victim's residence. Ms. Gann saw Inman on the news approximately two (2) weeks later. When interviewed by police about this incident, Inman confessed to the burglary and rape of Ms. Gann [including the rape occurring in the presence of her child] and placing them both in the bathroom after the rape before he fled.

On May 23, 2006, in Rainsville, Alabama, Inman burglarized the home of Beth Bates Patterson, an employee of the Department of Agriculture. Inman cut a hole in a vent in her residence' floor and entered her residence while she was gone. While in the residence he found a bank bag in a piano seat that contained cash that belonged to Ms. Patterson's church. When Ms. Patterson came home, Inman snuck up behind her and covered her mouth and placed a knife to her throat. He then tied her hands and feet and placed her on her bed in her bedroom. He started pulling her pants down and was going to rape her until she told him she was having her menstrual period. Inman checked to see if she was telling the truth, and when he discovered she was having her period, he placed her in a closet still bound, and placed a chair against the closet to lock her in. He then stole her car and the money belonging to her church and abandoned her

car nearby where he had left his car. Inman confessed to this crime after he was arrested for Souers' murder. Inman admitted his intent was to sexually assault Ms. Patterson when he broke into her residence. His confession was corroborated by Ms. Patterson's testimony in the sentencing proceeding. She later identified Inman after seeing him on CNN wanted for the Souers' murder.

Inman had numerous disciplinary violations while serving his prison sentences in Florida and North Carolina including assaults and possession of weapons. Inman also has a Nazi tattoo on him indicating he is a member of a security threat group.

At his sentencing proceeding, Inman admitted he had escaped from prison two (2) different times in the past. Inman also told Judge Miller that he could not be rehabilitated. Inman also indicated to Judge Miller the appropriate sentence for the murder of Tiffany Souers was the death penalty.

AMENDED PCR GROUNDS

Ground 10(a) 11(a) Mr. Inmon was denied the right to effective assistance of counsel—guaranteed by the Sixth And Fourteenth Amendments to the United States Constitution and by Article I, Sections 3 and 14 of the South Carolina Constitution—during the guilt-or-innocence phase of his capital trial.

Supporting facts: Trial counsel was ineffective for advising Mr. Inmon to plead guilty and appeal the trial court judge denying his request to be sentenced by a jury when then existing state law did not allow jury sentencing following a guilty plea in a capital case.

Ground 10(b) 11(b) Mr. Inmon was denied the right to effective assistance of counsel—guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution and by Article I, Sections 3 and 14 of the South Carolina Constitution—during the sentencing phase of his capital trial.

Supporting facts: Trial counsel was ineffective during the sentencing phase for:

- (1) Failing to obtain another mitigation expert witness after Dr. Marti Loring would not continue in Mr. Inmon's case because she was intimidated by the prosecutor who threatened to have her arrested if she testified, and Mr. Inmon was prejudiced by the same.

- (2) In the alternative to (1), failing to continue to prepare with Dr. Loring in the event the trial judge reconvened the trial, as in fact occurred, and Mr. Inmon was prejudiced by the same.
- (3) In the alternative to (1) and (2), counsel is informed and believes that trial counsel did obtain another mitigation expert witness but failed to prepare and present that witness to testify and render an expert opinion, and Mr. Inmon was prejudiced by counsel's deficient performance.
- (4) Failing to investigate, develop, and/or present mitigation evidence that was available to trial counsel at the time of the sentencing hearing, including but not necessarily limited to social history information and adaptability to incarceration, and Mr. Inmon was prejudiced by the same.
- (5) Developing information through experts retained by then defense that Mr. Inmon's sexual misconduct was the result of a rare medical condition that was treatable and controllable with a common drug and failing to advise the Court, sitting in decision of what punishment to mete out to Mr. Inmon, of this extraordinarily powerful mitigation evidence that was and is a treatable medical condition Mr. Inmon, and Mr. Inmon was prejudiced by counsel's failures.

Ground 10(c)11(c) Mr. Inmon was denied the right to effective assistance of counsel—guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution and by Article I, Sections 3 and 14 of the South Carolina Constitution—during the appeal of his capital trial.

Supporting facts: Appellate counsel was ineffective for:

- (1) Not appealing the trial court judge denying Mr. Inmon his request to plead guilty and have his sentence determined by a jury when that right is protected by the Fifth, Sixth, Eighth, and Fourteenth Amendments to the United States Constitution and trial counsel had preserved that issue for appellate review.
- (2) No appealing Mr. Inmon's motion to continue his sentencing hearing so that he would have sufficient time to obtain another mitigation expert witness after Dr. Marti Loring who refused to participate in Mr. Inmon's case because she was intimidated by the prosecutor.

Ground 10(d)11(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.

Supporting facts: S.C. Code Ann. Section 16-3-20, as written by the General Assembly and construed by the South Carolina Supreme Court, denied Mr. Inmon his right to have the jury determine the existence of aggravating circumstances, consider statutory and non-statutory mitigating circumstances, and determine whether a death sentence should be imposed.

Ground 10(e)11(e) Mr. Inmon's death sentence was obtained in violation of the Fifth, Sixth, Eighth, and Fourteenth Amendments to the United States Constitution.

Supporting Facts: The capital sentencing scheme in South Carolina violates the Constitution because its methods for the imposition and review of capital punishment suffers the same infirmities as the statute rejected as unconstitutional by the United States Supreme Court in *Furman v. Georgia*, 408 U.S. 238 (1972) because:

- (1) South Carolina's capital sentencing statute, as written by the General Assembly and construed by the South Carolina Supreme Court, does not perform the constitutionally mandated narrowing function.
- (2) South Carolina's sentencing system permits discrimination on the basis of race.
- (3) The South Carolina Supreme Court consistency fails to fulfill its statutory and constitutional obligation to conduct a meaningful proportionality review in capital cases.
- (4) The death penalty is unconstitutional because it is unreliable, arbitrary, and lacks penological purpose.

Standard of Review

In a PCR action, the applicant has the burden of proving his allegations by a preponderance of the evidence. Rule 71.1(e), SCRPC; Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where ineffective assistance of counsel is alleged as a ground for relief, the applicant must prove "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064 (1984); Butler, *supra*.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Butler, *supra*. An applicant must overcome this presumption to prevail on PCR. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Second, counsel's deficient performance must have prejudiced the applicant, such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117, 385 S.E.2d at 625, *citing* Strickland.

“Surmounting Strickland’s high bar is never an easy task[.]” Premo v. Moore, 131 S.Ct. 733 (2011) *citing* Harrington v. Richter, 131 S.Ct. 770 (2011), *quoting* Padilla v. Kentucky, 130 S.Ct. 1473 (2010). “It is ‘all too tempting’ to ‘second-guess counsel’s assistance after conviction or adverse sentence.’” Harrington v. Richter, 131 S.Ct. 770 (2011), *citations omitted*. “The question is whether an attorney’s representation amounted to incompetence under ‘prevailing professional norms,’ not whether it deviated from best practices or most common custom.” *Id.*; Strickland, 466 U.S. at 690.

In the context of a guilty plea, the applicant also must establish deficient performance and prejudice. Hill v. Lockhart, 474 U.S. 52, 59 (1985). In the context of a guilty plea, the applicant also must establish prejudice by proving “counsel’s constitutionally-ineffective performance affected the outcome of the plea process.” Hill v. Lockhart, 474 U.S. 52, 59 (1985). The applicant must show, but for counsel’s ineffective assistance, there is a reasonable probability he would not have pled guilty but would have proceeded to trial. Hill v. Lockhart, 474 U.S. 52, 59 (1985).

In the context of sentencing phase issues, the applicant must show deficient performance and prejudice. In the context of sentencing phase issues, the applicant must also prove deficient performance as defined above. Strickland; Harrington.

To show prejudice the applicant must show that “there is a reasonable probability that ... the sentencer--including an appellate court, to the extent it independently reweighs the evidence--would have concluded that the balance of aggravating and mitigating circumstances did not warrant death.” Strickland, 466 U.S. at 695; *see also* Wiggins, 539 U.S. at 537; Jones v. State, 332 S.C. 329, 344-45, 504 S.E.2d 822, 829-30 (1998). “A reasonable probability is a probability sufficient to undermine confidence in the outcome.” Jones, 504 S.E.2d at 823-824.

The United States Supreme Court has made clear the burden is *not on the State* to show the lack of prejudice, but **the burden is on the applicant to show prejudice**. Wong v. Belmontes, 130 S.Ct. 383 (2009), *citing Strickland*. The applicant must prove had counsel acted competently there is a reasonable probability a different sentence would have resulted. *Id.*; Wiggins v. Smith, 539 U.S. 510, 535, 536 (2003); *see Terry v. State*, 394 S.C. 62, 714 S.E.2d 326 (2011). Inman **pled guilty** and was **sentenced by Judge Miller** not a jury of 12 individuals. Therefore, the appropriate standard for prejudice in this case is whether considering the new mitigation evidence presented at PCR, along with the original mitigation evidence, along with the evidence in aggravation produced at the sentencing hearing, and the aggravating evidence that would likely come in with the new mitigation evidence, is there a reasonable probability *Judge Miller* would have returned with a different sentence. Sears v. Upton, 130 S.Ct. 3259 (2010); Wong v. Belmontes. Such a showing “requires a substantial, not just conceivable, likelihood of a different result.” Cullen v. Pinholster, 131 S.Ct. 1388, 1403 (2011), *citing Harrington*, 131 S.Ct. at 791 (2011).

RESPONDENT’S RESPONSE TO THE ALLEGATIONS OF THE AMENDED APPLICATION

Ground 10(a) 11(a) Mr. Inmon was denied the right to effective assistance of counsel—guaranteed by the Sixth And Fourteenth Amendments to the United States Constitution and by Article I. Sections 3 and 14 of the South Carolina Constitution—during the guilt-or-innocence phase of his capital trial.

Supporting facts: Trial counsel was ineffective for advising Mr. Inmon to plead guilty and appeal the trial court judge denying his request to be sentenced by a jury when then existing state law did not allow jury sentencing following a guilty plea in a capital case.

Respondent denies the allegation of this ground and requires strict proof thereof.

Further, Applicant will not be able to meet his burden of proof to prove deficient performance or resulting prejudice. Strickland v. Washington; Hill v. Lockhart.

Additionally, the record shows Applicant Inman wished to enter a plea of guilty, and Applicant wanted the Court to impose the death penalty as he felt that was the appropriate punishment for his crime. The record also shows it was Applicant's decision to enter a plea of guilty, and Applicant understood that there were no conditional guilty pleas in South Carolina, and he could not plead guilty and preserve issues related to the guilty plea if he pled guilty. State v. Inman, 395 S.C. 539, 720 S.E.2d 31 (2011). As a result, Applicant cannot show deficient performance or resulting prejudice. Strickland; Hill.

Ground 10(b)11(b) Mr. Inmon was denied the right to effective assistance of counsel—guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution and by Article I, Sections 3 and 14 of the South Carolina Constitution—during the sentencing phase of his capital trial.

Supporting facts: Trial counsel was ineffective during the sentencing phase for:

- (1) Failing to obtain another mitigation expert witness after Dr. Marti Loring would not continue in Mr. Inmon's case because she was intimidated by the prosecutor who threatened to have her arrested if she testified, and Mr. Inmon was prejudiced by the same.
- (2) In the alternative to (1), failing to continue to prepare with Dr. Loring in the event the trial judge reconvened the trial, as in fact occurred, and Mr. Inmon was prejudiced by the same.
- (3) In the alternative to (1) and (2), counsel is informed and believes that trial counsel did obtain another mitigation expert witness but failed to prepare and present that witness to testify and render an expert opinion, and Mr. Inmon was prejudiced by counsel's deficient performance.
- (4) Failing to investigate, develop, and/or present mitigation evidence that was available to trial counsel at the time of the sentencing hearing, including but not necessarily limited to social history information and adaptability to incarceration, and Mr. Inmon was prejudiced by the same.
- (5) Developing information through experts retained by then defense that Mr. Inmon's sexual misconduct was the result of a rare medical condition that was treatable and controllable with a common drug and failing to advise the Court, sitting in decision of what punishment to mete out to Mr. Inmon, of this extraordinarily powerful mitigation evidence that was and is a treatable medical condition Mr. Inmon, and Mr. Inmon was prejudiced by counsel's failures.

Respondent denies the allegations of this ground, including subparts, and requires strict proof thereof.

Further, Applicant will not be able meet his burden of proof to prove deficient performance or resulting prejudice. Strickland v. Washington; Hill v. Lockhart; Wiggins v. Smith.

Furthermore, Applicant cannot show resulting prejudice on this record, i.e. but for counsel's alleged deficient performance there is a reasonable probability Judge Miller would have returned with a different sentence. Wong v. Belmontes; State v. Inman, 395 S.C. 539, 720 S.E.2d 31 (2011). The evidence in aggravation was overwhelming. Judge Miller found the State had proven beyond a reasonable doubt three (3) aggravating circumstances: (1) the murder of Tiffany Souers was committed during the commission of a burglary in the 1st degree; (2) the murder of Souers was committed during the commission of criminal sexual conduct; and (3) the murder of Souers was committed during the commission of a kidnapping. There is no question Inman is the individual who murdered Tiffany Souers as he pled guilty to murder, he confessed to the murder on numerous occasions and to different officers, and his DNA was found at the crime-scene and in Souers' vaginal swabs.

Tiffany Marie Souers was a rising junior engineering student at Clemson University with her whole life before her. Tiffany lived in an off-campus apartment complex called the Reserve in Central, South Carolina. She lived in apartment 118-CC, in Pickens County, with her two (2) room-mates.

On May 25, 2006, Tiffany was staying in the apartment by herself, as her roommates were gone. Sometime during the day of May 25th, the applicant, Inman, drove by her apartment unit and saw Tiffany on the outside porch on the side of her apartment. Inman was not from South Carolina.

That evening, Tiffany, accompanied by two (2) friends, Erica Cooler and Anna Janiec, went to a restaurant where their friend Emily Raines was working. Around 11:00 p.m., Tiffany

returned home when Erica dropped her off, and Tiffany went into her apartment. At 11:20 p.m., she answered a text message from her friend, Travis Braznell, but did not respond to a later text from Travis at 12:52 a.m.

By Inman's own admission, around 1:00 a.m., on May 26th, 2006, during the nighttime and while completely dark, Inman climbed over the porch rail to Tiffany's apartment where he had seen Tiffany standing earlier in the day. He then unlawfully, and without her consent or knowledge, opened the patio door to her apartment and entered her residence. After burglarizing her apartment, Inman then went into Tiffany's room where she was asleep.

Inman woke Tiffany and covered her mouth with his hand, and a struggle ensued. Inman eventually bound her hands and began to look for her pocketbook and wallet, including her driver's license, car keys, ATM card, and other items of value. During this time, Inman was questioning Tiffany about the location of these items. After locating these items, Inman sexually assaulted [raped] Tiffany. Inman then murdered Tiffany by tightening a bikini bathing suit top around her neck until he strangled her to death, i.e. asphyxiated her. Inman, under cover of darkness, then left Tiffany's apartment the same way he entered.

Inman then drove his 1990 Chevrolet Blazer truck to the Sun Trust Bank at 1051 Tiger Boulevard in Clemson, S.C., and attempted to use Tiffany's ATM card four (4) different times at 3:22 a.m., 3:29 a.m., 3:31 a.m., and 3:32 a.m. All attempts failed because he entered the wrong PIN number. Inman then drove to Wachovia Bank at 955 Tiger Boulevard, Clemson, S.C., where he attempted to use Tiffany's ATM card on two (2) occasions, 3:37 a.m., and 3:38 a.m. Those attempts failed, also, because the wrong PIN number was used. Photographs were obtained from these ATM machines showing Inman, whose face and head are covered with bandannas, attempting to use the machines at the times listed. Also captured in these

photographs was a portion of a truck. The first photo captured a portion of the grill of the truck. The next photo captured the hood and the windshield.⁴

Inman then drove to his home in the State of Tennessee the morning of May 26, 2006, discarding the items he had stolen from Tiffany's apartment as he drove. Tiffany's driver's license that Inman discarded was found by Mr. James Lindsay on Highway 76 between Clemson and Anderson.

On May 26, 2006, at approximately 1:30 p.m., Tiffany's body was found by one (1) of her roommates who was returning keys to the unit for use of someone who would be subleasing during the summer. Tiffany's body was found partially clad on the floor of her bedroom. She was nude from her shoulders down to her feet with her top pushed up over her breasts. Police were notified and the Central Police Department responded.

SLED responded including with its forensic team to process the crime scene for evidence. Of particular evidentiary importance, SLED removed a large section of carpet from Tiffany's bedroom, which was taken to SLED's forensics laboratory for further testing. An unknown male's DNA was eventually recovered from a sperm fragment found on this carpet.

Tiffany's body was transported to Greenville Memorial Hospital where an autopsy was conducted. It was determined Tiffany's death was a homicide resulting from asphyxia due to ligature strangulation. The bikini top had been twisted so tight around Tiffany's neck the blood flow to her brain was cut off killing her. It was also determined Tiffany's hands and wrists bore signs that were consistent with her being restrained. Finally, it was determined Tiffany had suffered traumatic sexual intercourse. A sexual assault kit was used and vaginal swabs were forwarded to SLED.

⁴ The truck's body style was eventually identified by Mr. Donald Floyd, the senior project engineer at General Motors, as either a Chevrolet Blazer or a GMC Jimmy with a model year between 1982 and 1994.

The SLED Forensic Laboratory processed the carpet from Tiffany's bedroom and found two (2) areas of semen stain. From these areas, a DNA profile was developed. The SLED Laboratory also processed the vaginal swabs collected at Tiffany's autopsy. Semen was found there as well. A DNA profile was developed from this semen as well. The DNA profile from the carpet matched that from the vaginal swabs taken at the autopsy, i.e. it was the same person. The DNA profile was entered into the CODIS national database.

On June 5, 2006, SLED received a response from CODIS that a match had been found to the DNA profile submitted. There was a match to two (2) profiles in the data base, one (1) submitted by the State of North Carolina and one (1) submitted by the State of Florida. Both of these matches belonged to the same person, applicant Jerry Buck Inman, who had previously served prison sentences in both North Carolina and Florida.

SLED immediately began a nationwide information search to locate Inman. It was determined he was currently living in Dandridge, Tennessee. The Tennessee Bureau of Investigation ("TBI") was notified and requested to locate and arrest Inman. Warrants for Inman's arrest had, at that time, been secured by SLED based upon the DNA match and the CODIS hit.

Chief Deputy G.W. "Bud" McCoig of the Jefferson County Sheriff's Office and TBI Agent Mike Hannon began their efforts to locate Inman around 4:30 in the afternoon on June the 6th, 2006. They split up with McCoig watching Inman's parents' home and Hannon watching Inman's sister's residence. Inman was spotted returning to his parents' home shortly after 11:30 p.m. Upon seeing Chief Deputy McCoig's vehicle, Inman drove away for about half-a-mile when he was stopped at approximately 11:45 p.m., still on June 6, 2006. Inman was arrested.

At 11:47 p.m., McCoig advised Inman verbally of his Miranda rights as they sat in McCoig's vehicle. Inman was then briefly interviewed by McCoig. Inman admitted to the

crimes of murder, criminal sexual conduct, burglary, and kidnapping of Tiffany Souers in Pickens County on May 26, 2006. Inman was then transported to the Jefferson County Sheriff's Office where Inman and McCoig met with TBI Agent Hannon for the purpose of obtaining a written statement. At 12:30 a.m., on June 7, 2006, Agent Hannon advised Inman of his Miranda rights by using a written form, and Inman signed the rights form and waived his rights and agreed to give a statement to Agent Hannon. The statement was witnessed by both Chief Deputy McCoig and Agent Hannon. Inman's statement to the two (2) police officers was as follows:

I went to South Carolina about two (2) weeks ago. I don't remember the exact date. I was just driving. I ended up somewhere around Clemson. I did not know the victim. I just saw her on the balcony of her apartment early in the evening. I drove around for a while until I thought she was asleep. I parked behind her apartment. Her apartment was on the bottom floor.

I climbed over the rail. The door heading to her apartment was unlocked. I entered the apartment and found her bedroom. I found the victim asleep in her bed - - in her bedroom. I woke the victim. She was startled. I tied her hands behind her. I did not go there to kill her. I don't want to talk about the sex part, but I did have sex with her.

I went and found - - no, excuse me. I used an item I found in her room to tie her up. I did not have anything - - I knew the victim could recognize me. When I knew the victim was dead, I went out the same way I came in. When I left her apartment, I drove back to 1712 Junior Williams Road in Dandridge.

Before I left her apartment, I took some things from her apartment. I took two credit cards. I tried to use one of the cards at a bank. I was not able to use the card, so I threw it away somewhere along the interstate on my way home. I did not know the name on the card. I know the girl in the apartment's name was Tiffany Souers. I saw it on the news here in Tennessee.

The clothes I wore while I was in Tiffany's apartment are in my car. I wore the shoes I have on now. I did not take any other item, except the credit cards. I knew Tiffany was dead because she stopped struggling. I held my hand over her mouth. I strangled her with a bathing suit top, the top of a bathing suit.

Inman would not sign the statement that he gave.

Thereafter, SLED Agents Jeff Kindley and Gene Donohue arrived at the Jefferson County Sheriff's Office for the purpose of interviewing and obtaining a statement from Inman concerning the murder of Tiffany Souers. Inman was again advised of his Miranda rights and

signed a Waiver of Rights form. Agents Donohue and Kindley then took a statement from Inman. Inman again admitted to the murder, kidnapping, burglary, and criminal sexual conduct of Tiffany Souers on May 16, 2006 in Central, S.C. in Pickens County. The statement was as follows:

I live with my cousin, Derrick Adams, in Tennessee. I was not adjusting well to being out of jail. So I decided to get away. I started driving my car through Chattanooga, Georgia, North Carolina, and South Carolina. I ended up around Clemson about two weeks ago. I had run out of money so I was looking for something to rob.

I drove around some apartment complexes. I parked in the back of one of the apartment complexes and got out to try some doors. The first one I tried was open. I went in the back door after I hopped over the rail. No lights were on and I went in. I went in to the living room and then turned right into the bedroom.

After that, I went into a bedroom and a girl was sleeping there. I put my hand over her mouth and woke her up. She started fighting me and we wrestled. I tied her up with a piece of clothing behind her back. I asked her for her purse and she took her wallet out. I got her credit card and asked her for her PIN and she told me, but I forgot it. After that, I had sex with her. And then I killed her. I took her bed sheets, her wallet, her car keys, and went out the back door. I put some bandannas over my face and went to the ATM to get some money, but couldn't get any.

I then left and went back to Tennessee. I had seen a girl on the apartment balcony where I went in earlier in the day. But when I went back at 1:00 a.m. - - or 1:30 a.m., I don't think any - - I didn't think anyone was there. I didn't mean for anyone to get hurt. I was just looking for some money. [End of Statement].

Inman refused to sign this statement as well.

Thereafter, Inman was returned to Pickens County, S.C. for processing. Deputy Tony Robinson of the Pickens County Sheriff's Office obtained DNA samples from Inman for the purpose of DNA analysis. These samples were submitted to the SLED forensic laboratory. A DNA profile was developed from this sample, and it was determined that this DNA profile matched the DNA profiles developed from the vaginal swab of Tiffany Souers taken at autopsy and the carpet removed from Tiffany Souers apartment the morning of her murder. The probability of randomly selecting an unrelated individual having a DNA profile matching the semen on these items is approximately 1 in 240 quadrillion.

On August 19, 2008, Inman pleaded guilty to murder, burglary in the 1st degree, criminal sexual conduct, and kidnapping. (R. 912-64). At his guilty plea hearing, Inman admitted he murdered Tiffany Souers, burglarized her apartment, kidnapped her, and raped her. (R. 912-64). He also admitted the facts recited by the Solicitor, which are set forth above, were true. (R. 912-64).

The Other Evidence in Aggravation

In the sentencing phase, the State called Suzanne Clavel, who was raped by applicant Inman just after midnight on December 14th, 1987. Ms. Clavel lived in an apartment in Tampa, Florida and had gone to bed around 11:00 p.m. on December 13th. She was awakened approximately one (1) hour later by Inman in her bedroom pointing a gun at her head. Inman told Clavel to “shut up” and ordered her to tie up her roommate with telephone cords Inman had with him, i.e. pre-cut telephone cords. She complied and tied up her roommate’s hands and feet. Inman at gunpoint then tied Clavel’s hands behind her back. Inman then raped her vaginally, anally, and vaginally again. The sexual assault lasted approximately twenty (20) minutes. Clavel’s roommate witnessed the entire assault. Inman then stole money from Clavel and her roommate and Clavel’s car keys. When Inman left, he told Clavel if she called the police he would come back and kill her.

Inman was apprehended two (2) years later, in 1989, and pled guilty to the burglary of Clavel’s apartment and her kidnapping and rape, and the kidnapping of her roommate and theft of the roommate’s car. He was sentenced to thirty (30) years in the Florida Department of Corrections. He was released in 2005.

Inman was convicted of 2nd degree criminal sexual assault which occurred on January 10, 1988, of which Inman was convicted on September 26, 1988. That offense and conviction

occurred in North Carolina. This sexual assault conviction was for a sexual assault on a male inmate in the county jail. Inman received a twenty (20) year sentence for that offense.

Inman was also charged with attempted escape from prison on February 5, 1991. He was convicted of that offense and received one (1) year in prison on April 8, 1991.

Approximately nine (9) months after his release from prison in 2005, on May 22, 2006, Inman burglarized the home of Jessica Gann. Ms. Gann lived in Sevierville, Tennessee. Ms. Gann woke up in her own bed with someone on top of her with a knife to her throat. It was Inman. He tied her hands behind her back. Ms. Gann's small daughter was crying during the incident. Inman attempted to rape Ms. Gann from the rear. Inman then turned her over and while holding a knife to her neck raped Ms. Gann. He then took her to the bathroom and made her clean herself with shampoo twice. Inman then left the victim's residence. Ms. Gann saw Inman on the news approximately two (2) weeks later. When interviewed by police about this incident, Inman confessed to the burglary and rape of Ms. Gann [including the rape occurring in the presence of her child] and placing them both in the bathroom after the rape before he fled.

On May 23, 2006, in Rainsville, Alabama, Inman burglarized the home of Beth Bates Patterson, an employee of the Department of Agriculture. Inman cut a hole in a vent in her residence' floor and entered her residence while she was gone. While in the residence, he found a bank bag in a piano seat that contained cash that belonged to Ms. Patterson's church. When Ms. Patterson came home, Inman snuck up behind her and covered her mouth and placed a knife to her throat. He then tied her hands and feet and placed her on her bed in her bedroom. He started pulling her pants down and was going to rape her until she told him she was having her menstrual period. Inman checked to see if she was telling the truth, and when he discovered she was having her period, he placed her in a closet still bound, and placed a chair against the closet to lock her in. He then stole her car and the money belonging to her church and abandoned her

car nearby where he had left his car. She later identified Inman after seeing him on CNN wanted for the Souers' murder. Inman confessed to this crime after he was arrested for Souers' murder. Inman admitted his intent was to sexually assault Ms. Patterson when he broke into her residence. His confession was corroborated by Ms. Patterson's testimony in the sentencing proceeding.

Inman had numerous disciplinary violations while serving his prison sentences in Florida and North Carolina including assaults and possession of weapons. Inman also has a Nazi tattoo on him indicating he is a member of a security threat group.

At his sentencing proceeding, Inman admitted he had escaped from prison two (2) different times in the past. The State established Inman was not adaptable to prison. Inman also told Judge Miller that he could not be rehabilitated. Inman also indicated to Judge Miller the appropriate sentence for the murder of Tiffany Souers was the death penalty.

The Mitigation Evidence

Dr. David Price, an expert in forensic psychology, clinical psychology and neuropsychology, testified about an evaluation of Inman. He testified that in his opinion that at the time of the crime, a factor in the commission of the crime, Inman was under the influence of mental and emotional disturbance, and that his capacity to conform his conduct to the requirements of law was substantially impaired. ROA p. 258. He stated that he had reviewed 15 three to four inch thick notebooks which included records about his family, his incarceration, newspapers, and his mental health treatment records of over 3,000 pages. He confirmed Inman was the subject of mental health treatment for the 19 years he was incarcerated. ROA p. 259. He opined that Inman had a number of mood disorders, including dysthymia (sustained or intermittent depression for over 2 years), major depressive disorder - recurrent type, major depressive disorder - with psychotic features, bipolar disorder and psycho-rhythmic

disorder. ROA p. 260. He noted that Inman had prior diagnosis of personality disorders, including schizoid personality disorder and he opined that he could also be diagnosed with dissociative identity disorder and sexual paraphilia. ROA p. 260. He noted the presence in the records of multiple suicide attempts, suicide ideation and withdrawal. ROA p. 261. He rated him of the Global Assessment of Functioning with a 30 as someone with serious impairment with the ability to communicate and with judgment and profound impairment in overall ability to function. Id. Dr. Price stated the schizoid personality disorder was illustrated by the fact he was an introvert with intermittent relationships within his family.

In the social history, Dr. Price noted that Inman had a genetic predisposition for the mental disorders because his mother had paranoid schizophrenia and father was an alcoholic. ROA p. 265. He stated Inman was raised in a turbulent and unstable environment, began using drugs at age 10, ran away at age 13, living on the streets at 15 and in jail at 17. Id. He noted that this disorder is often associated with depression.

Concerning dissociative identity disorder, he stated that Inman was not very forthcoming about his illness. However, Dr. Price learned that in discussion with treatment providers and his pastor, Inman will assume a different effect and response which is like changing from one identity to another. He stated that the primary identity is a passive-dependent and depressed person that has difficulty with guilt. ROA p. 268-269. He stated that the evidence of depression, self-mutilation by tattooing and suicidal ideation supports the diagnosis. ROA p. 269. Also that he traveled in his series of sexual assaults is consistent. ROA p. 269.

Dr. Price described Inman as a serial rapist. He felt it "astounded" him that he was not similarly diagnosed in Florida. He felt the Rapid Risk Assessment for Sexual Offender Recidivism (RRASOR) suggested that he clearly met that criteria. ROA p. 271-272.

Dr. Price found that Inman had significant records for being sexually abused, physically abused, living in an unstable environment with a mother with periods of anger who they thought was depressed. ROA p. 272-273. Dr. Price felt that Inman had one stable relationship - his maternal grandfather who died when he was young. He was abandoned by his father who had sexually abused him and began to act out of conflict at age 10 with drugs, failing school, and the winding up on the street. ROA p. 273. In reviewing Inman's crimes, he found similarity from victim's crimes with Inman's own experiences where his sister was also subject to bondage when she was tied up and the rapes tended to follow a certain pattern - hand tied, kneeling down, lean forward over the bed in an awkward position, suggesting that he was acting out what had happened to him. ROA p. 275. This was part of his "compulsive rape." ROA p. 275. He stated that Inman felt 'shame and loathing about this rape and murder." ROA p. 276. This similar feeling was consistent throughout his records, noting that he had attempted suicide on 7 occasions (six while incarcerated). Id. Dr. Price described the various ways he attempted to kill himself including slit wrist, cutting his jugular vein, swallowing barbed-wire, and trying to starve himself. ROA p. 27.

Dr. Price stated that Inman's statement that "I killed a 20 year old college student with everything to live for – I deserve to get the death penalty" statement is consistent with Inman's history and also reflected in his unhappiness and hopelessness while in prison. ROA p. 280-81.

Dr. Price opined that he is a national expert in malingering. He felt that Inman was not malingering based upon his extensive psychiatric history. He noted that Inman instead minimizes the problems and is protective of his parents failings in raising him. ROA p. 283. He felt that Inman had tried to hinder Price's effort to get a life sentence. ROA p. 283. He noted that Inman had talents in being a tattoo artist and had carpentry skills.

Concerning his interaction in prison, Dr. Price found that Inman grew up in prison and was afraid about being released. Particularly, he had stated that after release he had planned to work

for a year or two give the money to his mother and then commit suicide. ROA p. 284. Dr.

Price concurred with a North Carolina doctor that Inman was a lost soul who would continue to be lost based upon his bad genetic loading with the history of a paranoid schizophrenic mother and alcoholic father. He had been physically and sexually abused and abandoned by his father in the unstable environment. He began getting into trouble at age 10 with drug use, by 13 he was running away and on the streets. Inman had a long history of mood disorder and his family had never been able to teach him to develop normal heterosexual relationships. He had a schizoid personality disorder, developed a dissociative identity disorder and developed sexual paraphilia. ROA, p. 285.

On cross-examination, Dr. Price conceded that he did not bring the 15 notebooks with him that he reviewed to prepare his opinion and testimony. ROA p. 304-305. He stated that he received the material from counsel Bannister's office. Importantly, he admitted that he was influenced by every document he read. Id. At that point, Solicitor Ariail renewed his request to see all the notebooks that Dr. Price reviewed. ROA p. 306. During the questioning, Dr. Price confirmed that as to child abuse, sometimes Inman would report it happened and other times he would not report it. ROA p. 307-308. He admitted that the history showed the Inman had the ability to make choices inasmuch as he did not kill the victim in Florida, said he would not harm the child in Tennessee, did not kill the North Carolina inmate, but did kill Souers. ROA p. 308-09. Concerning death, Dr. Price stated that Inman did not want to die, but thought that the death penalty was the appropriate penalty and that he was remorseful for it, thinking of himself as "scum." ROA p. 311.

⁶See also, ROA p. 299, Defense exhibit 11.

The defense then called Claude Tournay of the Florida Department of Corrections. He testified that he had reviewed the sexual offender screening and that in 2004 it was determined that he could not find enough criteria to determine a "paraphilic sexual disorder" or diagnosis. *Id* ROA p. 357, 1. 21-25. He testified that in January 2004, he found sadistic behavior, child molestation abnormal sexual behavior and that Inman was being treated for major depression disorder, recurrent. ROA p. 358. Tounay stated that a April 2004 letter from the Florida Department of Corrections stating that Inman - convicted of rape - was a sexually violent predator would have required the Department of Children and Family Services to send three psychologists to review and examine the inmate and determine whether he was a threat to society. If so, he would have been civilly committed to an institution for crimes which occurred after 1993. ROA p. 360. However, Inman's crime had happened before October 1993. However, as a psychiatry inmate, the department made a referral to Tennessee and arrangements for Inman to continue his treatment for his depression. ROA p. 362-63.

James Aiken, an expert regarding the assessment of inmate classification and expert in prison management and prison classification, testified that based upon his record review, Inman would be automatically in a "high security status" due to the life without parole sentence he would receive, that crime he was convicted and his cumulative behavior patterns while previously confined. R. p. 369. He also noted that Inman had some security threat group and gang related issues that concerned Aileen a great deal. ROA p. 369. He noted the presence of a Swastika tattoo, which suggests in the prison setting membership in a Nazi gang and security threat group. ROA p. 371. Because Inman is a "multiple sex offender... Aiken testified that it gave him added concern because gangs and security threat groups hate them" and will kill them because they have

such a distaste for them." ROA p. 371-372. This is because he has the tattoo and is a multiple sex offender. ROAp. 372.

Aiken stated that because of these factors the correctional department would have to put Inman in a security envelope of a single cell with no free movement or interaction with other inmates since they do not know who would put a hit on him. He would have to be moved with a security escort and 23 hour lock up. ROA p. 376. He stated no other inmate could have access to him because it would violate "the duty to protect." ROA p. 377. Aiken stated that Inman's security status would be "SL-3" which is the highest level.

On cross-examination, Aiken added that his security level is also increased by the fact of publicity and that it was a high profile case that would be known within the inmate population that Inman was a multiple sex offender. Aiken also found significant in his prior prison record evidence of self-mutilation and multiple disciplinaries, including attempted suicide and attempted escapes. He noted that some of his disciplinaries included possession of weapons for either to do harm or for his own protection.

The Applicant's older sister testified about her relationship with Inman. She stated that she had a fond memory of him playing "pee-wee" football and she was a cheerleader. She described them getting ready for their roles on Saturday mornings and the family routine. ROA p. 388-89. She also testified about in winter going out from their home in the country across the street into a wooded area and sliding along a creek. She stated that one time they were out there with their cousins and Inman fell through a soft piece of ice and he cried all the way home, noting that he cried frequently as a child. ROA p. 390. She described "sibling rivalry" and fights over jeans between Inman and his sisters because he would wear their jeans and leak ink on them. She stated that he had "seizures" where he would gaze, his body stiffen and shake and

would sometimes be accompanied by a high fever. ROA p. 392-93. She stated this set him apart from others and prompted a lack of friends. She said that the family moved frequently and lived in Tennessee, Florida, and North Carolina. ROA p. 393.

She said that Inman loved pets. She felt, however that Inman did not like himself. She stated that at one time Inman had to share a bedroom with his grandfather to whom he was very close and would talk together for hours. The grandfather passed away when he was 16, which was a turning point in his life. ROA p. 395. Afterwards, Inman began staying out late, became more withdrawn and once ran away from home and was found sleeping outside a church. ROA p. 396.

In describing their mother, she said that she suffered from bipolar disorder and schizophrenia. She said that the mother was affected by her medication and would hear things, talk to herself, and would freak out over the smallest thing. ROA p. 396-97.

The sister described events when he was age three and living in a trailer in Florida. She stated that she started receiving inappropriate presents such as see through nightgowns. Later they moved to another house in Florida and she claimed that her other grandfather, Mr. Inman Sr. would come into the bedroom she shared with the Applicant [she was 5 and he was 3] and the grandfather would blindfold her and tie her hands to the bed and turn her over and she recalled that it was sexual abuse. She described that the grandfather would leave her in the top bunk and go to the bottom bunk. While she did not know what was happening to Inman, she heard him crying and they both were threatened. Id. She stated that the step-grandfather also messed with her. ROA p. 400. She described a conversation that she once had with Inman when she stated that she had been sexually abused and he stated that he had been abused also. ROA p. 400-01.

Reverend David Hensley, Inman 's pastor, was presented to testify. However, Inman objected to his testimony based upon the priest-penitent privilege which Inman refused to waive.

ROA p. 402-405. Rev. Hensley then only described the fact that he met with Inman the Friday before with his Bible, grape juice, wafer, and poured water over Inman's head. ROA p. 405.

Kenneth McArthur, Inman's step-father, testified that he has known Inman since he was four years old. R. 657, Tr. 219. He stated that the September hearing was very stressful for McArthur and his wife, Vera, because of the potential sentence. He stated Vera had been hospitalized in January due to the stress. He stated they love Inman and enjoy having the opportunity to see him in prison. R. 657, Tr. p. 219, 11. 17-24.

Dr. Marti Loring was qualified as an expert "in the field of social history, trauma, and abuse." R. 664-65, Tr. p. 226, 1. 21 - p. 227, 1. 11. Dr. Loring presented a genogram [Court Exhibit 4] and described in narrative form the different types of interaction between the family members and their problems *with* drugs, alcohol, mental illness, sexual abuse and violence. R. 670-680, Tr. 232-242. Dr. Loring also presented a timeline of Inman's life. [Court Exhibit 5] R. 680-82, Tr. 242-44. Dr. Loring further presented a group of photographs and material suggesting as a child that Inman was "still miserable and crying" (R. 682, Tr. p. 244, 11. 22-25) and had indicators of sexual abuse. R. 683, Tr. p. 245, 11. 2-6. She stated that he had headaches and suffered from head beatings, that he accidentally burned his genitals with spilled bleach without medical attention, that he was firmly spanked as a child, that he had seizures, that he was exposed to violence in 1980 involving a dog fight with a cat, that his leg was burned in 1981 in a motorcycle accident. R. 684-86, Tr. 246-48. He also began drug use including alcohol, huffing gas, marijuana, cocaine, and LSD beginning in 1981. R. 686, Tr. 248.

Inman was exposed in 1984-1986 to a sexually abusive step-brother who was later convicted as a pedophile. R. 686, Tr. 248. Dr. Loring noted she was unable to locate any pictures of Jerry smiling or happy after age 7. R. 687, Tr. 249. In addition, Dr. Loring found that Inman

would play with matches and set fire to his step-brother's mattress, which is a symptom of sexual abuse. R. 687-88, Tr. 249-50. Family members gave him alcohol between 1984-1986.

Dr. Loring described while he was 15, his maternal grandfather suffered a painful and bloody death with throat cancer. R. 688, Tr. 250. She described the closeness between them and apparent guilt Inman felt for his death.

His life in prison was based upon a series of thefts and behaviors and the encouraged use of alcohol led to the downhill path. R. 689, Tr. 251.

Dr. Loring noted that around 11 or 12, Inman was asking his mother for help, but because of her problems, she could not hear it. After he was caught looking into a neighbor's window, his windows were nailed shut. R. 689-690, Tr. 251-52.

Inman's suicide attempts were again described by her. R. 690, Tr. 252. Dr. Loring stated Inman was released in 2005 and was out 9 months before the tragedy. He was described as anxious and lost, unable to hold a job or relate to women. R. 690, Tr. 252. However, he was able to mentor his sister's son, who idolized him and was able to get him to stop huffing gas. R. 690-91, Tr. 252-53.

When the Court asked for anything else Dr. Loring might feel was important, counsel Bannister objected based upon "attorney-client" privilege. R. 691, Tr. p. 253, ll. 17-21. Judge Miller directed her to not talk about anything she talked with counsel about. R. 691-92, Tr. p. 253, l. 25 - p. 254, l. 2. A break was then taken and she was allowed to confer with counsel Godfrey. R. 692, Tr. 254.

Dr. Loring then concluded that Inman's early history revealed that he was seen in a "trance-like state" as a child, including the time period it was alleged he was abused as a child. R. 693, Tr. p. 255, ll. 4-18. This history was consistent with his later history of bipolar and having

major depression with psychotic features.

She confirmed that the genogram and timeline were prepared by her in September for her testimony. R. 701, Tr. 263. Dr. Loring clarified her earlier testimony about Inman's father killing dogs and Jerry giving a neighbor a stray dog to care for. R. 703, Tr. 265. She confirmed that Inman experienced a bad childhood - exposure to violence, sexual abuse, and loss. Dr. Loring admitted that she had reviewed his criminal history including the assaults on females and in prison. R. 706- 07, Tr. 268-69. However, she had not reviewed the particular criminal incident in this case. R. 708-09, Tr. 270-71.

As a result, considering the evidence in aggravation, the evidence in mitigation received at Inman's sentencing hearing, and the new mitigation evidence Inman offers at his PCR proceeding, if any, along with any additional aggravating evidence that comes in with the new mitigation, there is no reasonable probability Judge Miller would have returned with a different sentence. Wiggins v. Smith; Wong v. Belmontes; Sears v. Upton, 130 S.Ct. 3259 (2010). This ground has no merit and must be dismissed with prejudice.

Ground 10(c)11(c) Mr. Inmon was denied the right to effective assistance of counsel—guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution and by Article I, Sections 3 and 14 of the South Carolina Constitution—during the appeal of his capital trial.

Supporting facts: Appellate counsel was ineffective for:

- (1) Not appealing the trial court judge denying Mr. Inmon his request to plead guilty and have his sentence determined by a jury when that right is protected by the Fifth, Sixth, Eighth, and Fourteenth Amendments to the United States Constitution and trial counsel had preserved that issue for appellate review.
- (2) Not appealing Mr. Inmon's motion to continue his sentencing hearing so that he would have sufficient time to obtain another mitigation expert witness after Dr. Marti Loring who refused to participate in Mr. Inmon's case because she was intimidated by the prosecutor.

Respondent denies the allegations of this ground, including subparts, and requires strict proof thereof.

Further, Applicant will not be able to prove deficient performance or resulting prejudice. Strickland v. Washington; Jones v. Barnes; State v. Thrift.

A PCR applicant has the burden of proving appellate counsel's performance was deficient. Anderson v. State, 354 S.C. 431, 581 S.E.2d 834 (2003). To obtain relief a PCR applicant must show that appellate counsel's performance was (1) deficient; and (2) prejudice resulted from the appellate counsel's deficiency. Southerland v. State, 337 S.C. 610, 524 S.E.2d 833 (1999). In other words, the applicant is required to demonstrate "that his counsel was objectively unreasonable in failing" to identify, argue and present significant and obvious issues on appeal, and "a reasonable probability that, but for his counsel's unreasonable failure . . . , he would have prevailed on his appeal." Smith v. Robbins, 528 U.S. 259, 285 (2000) (citation omitted).⁵ Although recognizing that "[n]otwithstanding Barnes, it is still possible to bring a Strickland claim based on counsel's failure to raise a particular claim" on direct appeal, the Supreme Court has recently reiterated that "it [will be] difficult to demonstrate that counsel was incompetent." Robbins, 528 U.S. at 288. "Generally, only when ignored issues are clearly stronger than those presented, will the presumption of effective assistance of counsel be overcome." Id. (quoting Gray v. Greer, 800 F.2d 644, 646 (C.A.7 1986)); see also Bell v. Jarvis, 236 F.3d 149, 164 (4th Cir. 2000) (*en banc*).

Appellate counsel is also not ineffective for failing to file a "kitchen sink" brief. Smith v. Stewart, 140 F.3d 1267, 1274, n.4 (9th Cir. 1988); see also Thrift v. State, 302 S.C. 535, 397 S.E.2d 523 (1990); Jones v. Barnes, *supra*, (appellate counsel may make a reasonable strategic decision not to appeal every non-frivolous argument requested by the defendant, and noting the

⁵ See also Smith v. South Carolina, 882 F.2d 895, 899 (4th Cir. 1989) (counsel's failure to raise a weak constitutional claim may constitute an acceptable strategic decision designed "to avoid diverting the appellate court's attention from what [counsel] felt were stronger claims").

“importance of winnowing out weaker arguments on appeal and focusing on one central issue if possible”). It is clear appellate counsel’s representation will not be deemed ineffective if he makes an informed decision based on reasonable professional judgment not to pursue a particular issue on appeal. Griffin v. Aiken, 775 F.2d 1226 (4th Cir. 1985). Further, under the two part test of Strickland, *supra*, a defendant must show not only that counsel’s performance was deficient, but that this deficiency prejudiced him Smith v. Robbins, *supra*; Jones v. Barnes, *supra*; Thrift v. State, *supra*.

Applicant pled guilty and his guilty plea was determined by the South Carolina Supreme Court to be unconditional and not involuntary. State v. Inman, *supra*. As a result, the issue Applicant alleges in subpart (1) above that appellate counsel should have raised on appeal was not preserved for appellate review. South Carolina is an issue preservation state. I’On, L.L.C. v. Town of Mt. Pleasant, 338 S.C. 406, 422, 526 S.E.2d 716, 724-25 (2000). An issue that is not preserved below will not be considered on appeal. State v. Powers, 331 S.C. 37, 501 S.E.2d 116 (1998); State v. Varvil, 338 S.C. 335, 526 S.E.2d 248 (Ct. App. 2000). There are no conditional guilty pleas in South Carolina state courts. Rivers v. Strickland, 264 S.C. 121, 213 S.E.2d 97 (1975); State v. Passaro, 567 S.E.2d 862, 866 (S.C. 2002)(A free and voluntary guilty plea acts as a waiver of all non-jurisdictional defects and defenses.); State v. Oleary, 393 S.E.2d 186, 187 (S.C. 1990)(impermissible for a defendant to preserve constitutional issues while entertaining a guilty plea; the trial court may not accept the plea on such terms). Appellate counsel cannot be deficient, nor can the applicant show prejudice, from appellate counsel not raising an issue that was not preserved for appellate review. Lee v. Davis, 328 F.3d 896, 901-02 (7th Cir. 2003); Aparicio v. Artuz, 269 F.3d 78, 96 (2d Cir. 2001); Jackson v. Duggar, 931 F.2d 712 (11th Cir. 1991) (appellate counsel not ineffective for failing to appeal issue not preserved for review); Kitt

v. Clarke, 931 F.2d 1246 (8th Cir. 1991) (similar); *see* Burton v. Renico, 391 F.3d 764, 777 (6th Cir. 2004) (similar); *see also* Albrecht v. Horn, 485 F.3d 103, 138 (3rd Cir. 2007). The appellate courts of South Carolina would not consider such an issue. State v. Powers, 331 S.C. 37, 501 S.E.2d 116 (1998). As a result, there is no merit to this issue of ineffective assistance of appellate counsel.

Further, there is no merit to the underlying issue Applicant alleges appellate counsel should have raised in subpart (1). State v. Crisp, 362 S.C. 412, 608 S.E.2d 429 (2005); State v. Downs, 361 S.C. 141, 146, 604 S.E.2d 377, 380 (2004). *See also* Lewis v. Wheeler, 609 F.3d 291, 309 (4th Cir. 2010); Nunley v. Bowersox, 784 F.3d 468, 472 (8th Cir. 2015); State v. Nunley, 341 S.W.3d 611, 620 (Mo. 2011); Leon v. State, 797 N.E.2d 743, 750 (Ind. 2003); Byrom v. State, 927 So.2d 709, 728 (Miss. 2006); Mack v. State, 75 P.3d 803, 806 (2003); Colwell v. State, 59 P.3d 463, 474 (Nev. 2002); People v. Alton, 788 N.E.2d 55, 60-61 (Ill. 2003); State v. Ketterer, 855 N.E.2 48, 69 (Ohio 2006); Thacker v. State, 100 P.3d 1052 (OK 2004). As a result, there could be no ineffective assistance of appellate counsel. Jones v. Barnes.

As to subpart (2), there is no merit to this ground. Appellate counsel is not required to file a kitchen sink brief. State v. Thrift. Counsel informed the court his new mitigation investigator would not be available for approximately another year. Dr. Loring, the original social historian, was present and willing to testify as a social historian. She was called as a court's witness and testified to Inman's deprived life, childhood abuse, and mental health issues, and she testified to his family background. Dr. Randy Price had testified extensively regarding Inman's social history and background and his mental illnesses. Inman's sister testified similarly. No prejudice was shown from the failure to grant a continuance. *See* State v. Inman, *supra*. As a result, appellate counsel was not deficient nor can Applicant show prejudice from

the failure to appeal the denial of the continuance motion. State v. Williams, 321 S.C. 455, 469 S.E.2d 49 (1996)(the denial of a motion for continuance is within the sound discretion of a trial judge, and his ruling will not be disturbed absent an abuse of discretion, resulting in prejudice to the defendant); State v. Dingle, 279 S.C. 278, 306 S.E.2d 223 (1983)(defendant must establish prejudice for denial of continuance); State v. Motley, 251 S.C. 568, 164 S.E.2d 569 (1968)(in absence of showing of prejudice by defendant, in cannot be said that the trial court abused its discretion in denying a motion for continuance); State v. Babb, 299 S.C. 451, 385 S.E.2d 827 (1989) State v. Lytchfield, 230 S.C. 405, 95 S.E.2d 857 (1957)(reversals for a trial judge's denial of a motion for continuance "are about as rare as the proverbial hen's teeth.") Jones v. Barnes. This ground has no merit and must be dismissed with prejudice.

Ground 10(d)11(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. Supporting facts: S.C. Code Ann. Section 16-3-20, as written by the General Assembly and construed by the South Carolina Supreme Court, denied Mr. Inmon his right to have the jury determine the existence of aggravating circumstances, consider statutory and non-statutory mitigating circumstances, and determine whether a death sentence should be imposed.

This is a ground that could have been raised at trial or on direct appeal; and therefore, is not cognizable in post-conviction relief. Roscoe v. State, 345 S.C. at 20, 546 S.E.2d at 419 ("In PCR cases, a defendant asserting a constitutional violation must frame the issue as one of ineffective assistance of counsel."); Drayton v. Evatt, 312 S.C. 4, 430 S.E.2d 517 (1993) (issues that could have been raised at trial or on direct appeal cannot be raised in a PCR application absent a claim of ineffective assistance of counsel) (citing S.C. Code Ann. § 17-27-20(b)); Hyman v. State, 278 S.C. 501, 299 S.E.2d 330 (1983); Peeler v. State, 277 S.C. 70, 283 S.E.2d 826 (1981). As a result, it also fails to state a claim upon which relief may be granted by this Court. Rule 12(b)(6), SCRCP. This ground must be dismissed with prejudice.

Further, Respondent denies the allegations of this ground and requires strict proof thereof. Further, there is no merit to this ground. State v. Crisp, 362 S.C. 412, 608 S.E.2d 429 (2005); State v. Downs, 361 S.C. 141, 146, 604 S.E.2d 377, 380 (2004). *See also* Lewis v. Wheeler, 609 F.3d 291, 309 (4th Cir. 2010); Nunley v. Bowersox, 784 F.3d 468, 472 (8th Cir. 2015); State v. Nunley, 341 S.W.3d 611, 620 (Mo. 2011); Leon v. State, 797 N.E.2d 743, 750 (Ind. 2003); Byrom v. State, 927 So.2d 709, 728 (Miss. 2006); Mack v. State, 75 P.3d 803, 806 (2003); Colwell v. State, 59 P.3d 463, 474 (Nev. 2002); People v. Alton, 788 N.E.2d 55, 60-61 (Ill. 2003); State v. Ketterer, 855 N.E.2 48, 69 (Ohio 2006); Thacker v. State, 100 P.3d 1052 (OK 2004). Applicant entered a knowing, voluntary, and intelligent guilty plea that was unconditional and was not involuntary. State v. Inman, *supra*. As a result, Inman waived and abandoned a jury determination of his guilt or innocence, the existence of statutory aggravating circumstances, statutory and non-statutory mitigating circumstances, and the appropriate sentence. As a result, this ground must be dismissed with prejudice.

Ground 10(e)11(e) Mr. Inmon's death sentence was obtained in violation of the Fifth, Sixth, Eighth, and Fourteenth Amendments to the United States Constitution.

Supporting Facts: The capital sentencing scheme in South Carolina violates the Constitution because its methods for the imposition and review of capital punishment suffers the same infirmities as the statute rejected as unconstitutional by the United States Supreme Court in Furman v. Georgia, 408 U.S. 238 (1972) because:

- (1) South Carolina's capital sentencing statute, as written by the General Assembly and construed by the South Carolina Supreme Court, does not perform the constitutionally mandated narrowing function.
- (2) South Carolina's sentencing system permits discrimination on the basis of race.
- (3) The South Carolina Supreme Court consistently fails to fulfill its statutory and constitutional obligation to conduct a meaningful proportionality review in capital cases.
- (4) The death penalty is unconstitutional because it is unreliable, arbitrary, and lacks penological purpose.

This entire ground is not cognizable in post-conviction relief as it could have been raised on direct appeal. Roscoe v. State, 345 S.C. at 20, 546 S.E.2d at 419 (“In PCR cases, a defendant asserting a constitutional violation must frame the issue as one of ineffective assistance of counsel.”); Drayton v. Evatt, 312 S.C. 4, 430 S.E.2d 517 (1993) (issues that could have been raised at trial or on direct appeal cannot be raised in a PCR application absent a claim of ineffective assistance of counsel) (*citing* S.C. Code Ann. § 17-27-20(b)); Hyman v. State, 278 S.C. 501, 299 S.E.2d 330 (1983); Peeler v. State, 277 S.C. 70, 283 S.E.2d 826 (1981). As a result, this ground also fails to state a claim upon which relief may be granted by this Court. Rule 12(b)(6), SCRPC. This ground must be dismissed with prejudice.

As to the ground itself, Respondent denies this entire ground, including subparts, and requires strict proof thereof.

Further, as to subpart (1), there is no merit to this ground. Kansas v. Marsh, 548 U.S. 163 (2006); Bylstone v. Pennsylvania, 494 U.S. 299 (1990); Gregg v. Georgia, 428 U.S. 153, 206-07 (1976). *See also* Proffit v. Florida, 428 U.S. 242 (1976); *compare* Woodson v. North Carolina, 428 U.S. 280 (1976); Roberts v. Louisiana, 428 U.S. 325 (1976); Roberts v. Louisiana, 431 U.S. 633 (1977); Sumner v. Goodman, 483 U.S. 66 (1987). *See* Zant v. Stephens, 462 U.S. 862 (1983); Woodson v. North Carolina, 428 U.S. 280 (1976)(plurality opinion); Bylstone v. Pennsylvania, 494 U.S. 299 (1990); Johnson v. Texas, 509 U.S. 350 (1993); Lockett v. Ohio, 438 U.S. 586 (1978); Tenard v. Dretke, 542 U.S. 274 (2004). *See* S.C. Code Ann. Section 16-3-10 & 16-3-20, 16-3-25, 16-3-26, & 16-3-28.

Further, as to subpart (2), there is no merit to this ground. *See* S.C. Code Ann. Section 16-3-10 & 16-3-20, 16-3-25, 16-3-26, & 16-3-28.

Further, as to subpart (3), there is no merit to this ground. State v. Copeland, 278 S.C. 572, 591 S.E.2d 63 (1975); State v. Dickerson, 395 S.C. 101, 716 S.E.2d 895 (2011), *Pleicones, C.J., concurring in result*; State v. Inman, 395 S.C. 539, 720 S.E.2d 31 (2011). See S.C. Code Ann. Section 16-3-20 & 16-3-25.

Further, as to subpart (4), there is no merit to this ground. See S.C. Code Ann. Section 16-3-10 & 16-3-20, 16-3-25, 16-3-26, & 16-3-28.

CONCLUSION

Respondent denies each and every allegation of Applicant's First Amended Application and requires strict proof thereof. Having fully answered Applicant's First Amended Application for Post-Conviction Relief, Respondent also moves this Honorable Court to dismiss the allegations of Grounds 10(d)/11(d) and 10(e)/11(e) as they are not cognizable in this setting, and fail to state a claim upon which relief may be granted by the PCR Court. Rule 12(b)(6), SCRCP. As to the remaining grounds, Respondent requests this Court convene an evidentiary hearing into this matter.

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

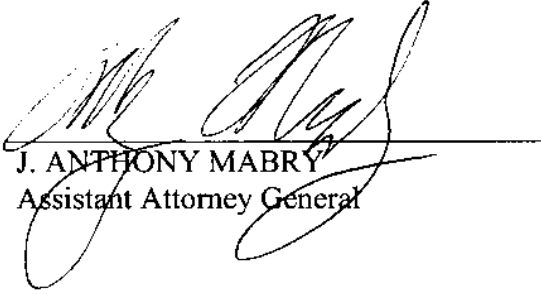
DONALD J. ZELENKA
Senior Assistant Deputy Attorney General

J. ANTHONY MABRY
Assistant Attorney General

S.C. Bar No. 11973
Post Office Box 11549

Columbia, SC 29211
(803) 734-6305

By:



J. ANTHONY MABRY
Assistant Attorney General

May 11, 2016

STATE OF SOUTH CAROLINA

COUNTY OF Pickens

IN THE COURT OF COMMON PLEAS

Thirteenth JUDICIAL CIRCUIT

2016 MAY 16 AM 10 45

CASE NO.: 2012-CP-39-918

PICKENS COUNTY

SOUTH CAROLINA

Jerry Buck Inman, #5226

Plaintiff,

vs.

State of South Carolina

Defendant.

**MOTION AND ORDER INFORMATION
FORM AND COVERSHEET**

Plaintiff's Attorney:

E. Charles Grose, Jr., Bar No. _____

Address: _____

Phone: _____ Fax: _____

E-mail: _____ Other: _____

Defendant's Attorney:

Anthony Mabry, Bar No. 11973

Address: _____

P.O. Box 11549, Columbia, SC 29211

Phone: (803) 734-6305 Fax: (803) 734-4035

E-mail: amabry@scag.gov Other: _____

- ☐ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)
☒ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)
☐ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)

SECTION I: Hearing Information

Nature of Motion: _____

Estimated Time Needed: _____

Court Reporter Needed: ☐ YES / ☐ NO

SECTION II: Motion/Order Type

☒ Written motion attached

☐ Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.

Signature of Attorney for _____

☐ Plaintiff / ☒ Defendant

May 11, 2016

Date submitted

SECTION III: Motion Fee

☐ PAID - AMOUNT: \$ _____

☒ EXEMPT:

(check reason)

☐ Rule to Show Cause in Child or Spousal Support

☐ Domestic Abuse or Abuse and Neglect

☐ Indigent Status ☒ State Agency v. Indigent Party

☐ Sexually Violent Predator Act ☐ Post-Conviction Relief

☐ Motion for Stay in Bankruptcy

☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRPC)

☐ Proposed order submitted at request of the court; or,
reduced to writing from motion made in open court per judge's instructions

Name of Court Reporter: _____

☐ Other: _____

JUDGE'S SECTION

☐ Motion Fee to be paid upon filing of the attached order.

☐ Other: _____

JUDGE CODE _____

Date: _____

CLERK'S VERIFICATION

Collected by: _____ Date Filed: _____

☐ MOTION FEE COLLECTED: \$ _____

☐ CONTESTED - AMOUNT DUE: \$ _____

STATE OF SOUTH CAROLINA)
COUNTY OF PICKENS)

IN THE COURT OF COMMON PLEAS

Jerry Buck Inman, #5226,)
a/k/a Jerry Buck Inmon,)

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

Respondent,)

v.)

State of South Carolina,)

Applicant.)

MOTION FOR SUMMARY JUDGMENT OR
IN THE ALTERNATIVE TO DISMISS
(Rules 12(b)(6) & 56, SCRCP).

FILED
2016 JUL 7 PM 3 23
CLERK OF COURT
SOUTH CAROLINA

2016 JUL 7 PM 3 23

Respondent, by and through undersigned counsel, hereby moves for summary judgment (Rule 56, SCRCP) or in the alternative to dismiss for failure to state a claim upon which relief can be granted (Rule 12(b)(6), SCRCP) on the following grounds of Applicant's Amended PCR Application:

Ground 10(e)11(e) Mr. Inmon was denied the right to effective assistance of counsel—guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution and by Article I, Sections 3 and 14 of the South Carolina Constitution—during the appeal of his capital trial.

Supporting facts: Appellate counsel was ineffective for:

Not appealing the trial court judge denying Mr. Inmon his request to plead guilty and have his sentence determined by a jury when that right is protected by the Fifth, Sixth, Eighth, and Fourteenth Amendments to the United States Constitution and trial counsel had preserved that issue for appellate review.

Ground 10(d)11(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.

Supporting facts: S.C. Code Ann. Section 16-3-20, as written by the General Assembly and construed by the South Carolina Supreme Court, denied Mr. Inmon his right to have the jury determine the existence of aggravating circumstances, consider statutory and non-statutory mitigating circumstances, and determine whether a death sentence should be imposed.

Ground 10(e)11(e) Mr. Inmon's death sentence was obtained in violation of the Fifth, Sixth, Eighth, and Fourteenth Amendments to the United States Constitution.

Supporting Facts: The capital sentencing scheme in South Carolina violates the Constitution because its methods for the imposition and review of capital punishment suffers the same infirmities as the statute rejected as unconstitutional by the United States Supreme Court in *Furman v. Georgia*, 408 U.S. 238 (1972) because:

- (1) South Carolina's capital sentencing statute, as written by the General Assembly and construed by the South Carolina Supreme Court, does not perform the constitutionally mandated narrowing function.

- (2) South Carolina's sentencing system permits discrimination on the basis of race.
- (3) The South Carolina Supreme Court consistency fails to fulfill its statutory and constitutional obligation to conduct a meaningful proportionality review in capital cases.
- (4) The death penalty is unconstitutional because it is unreliable, arbitrary, and lacks penological purpose.

ABBREVIATED PROCEDURAL HISTORY¹

PCR applicant Jerry Buck Inman ("Inman")² was indicted in November 2006 by the Pickens County grand jury for the crimes of murder, kidnapping, criminal sexual conduct in the first degree, and burglary in the first degree (Ind. #s 2006-GS-39-2225, 2224, 2223, & 2222). The crimes involve the May 26, 2006 murder of Tiffany Souers, a Clemson University coed.

The State noticed its intent to seek the death penalty for Souers' murder on August 22, 2006. See S.C. Code Ann. Section 16-3-26. Inman was appointed 3 attorneys to represent him: John DeJong, Sims Culbertson, and Jim Bannister. On March 13, 2007, Circuit Court Judge Edward W. Miller was assigned by the S.C. Supreme Court to preside over this capital case. On August 19, 2008, a hearing concerning Inman's competency to stand trial was held, and he was determined to be competent to stand trial.

On August 19, 2008, Inman entered guilty pleas to the indicted charges: murder, kidnapping, CSC 1st, and burglary 1st. Prior to his entry of his pleas, a competency hearing was held after which Judge Miller again determined Inman was competent to stand trial or plead guilty. During the guilty plea, the Solicitor gave a factual basis for the entry of the guilty pleas which Inman agreed was correct. Judge Miller accepted the guilty pleas after determining they were freely, voluntarily, and knowingly entered by Inman. Sentencing was deferred until September 8, 2011.

Sentencing was conducted on September 8-11, 2008, and again from April 20- 22, 2009. On April 22, 2009, Judge Miller issued his sentence by reading his written sentencing order into the

¹ A more detailed procedural history is set forth in Respondent's Return to the Amended PCR application. For this Motion, a more concise procedural history is all that is necessary.

² Applicant is also referred to as Jerry Buck Inmon. Because he was referred to in all previous proceedings as Jerry Buck Inman, Respondent will refer to Applicant by the last name Inman.

record. Judge Miller found the State proved beyond a reasonable doubt 3 aggravating circumstances: (1) the murder of Tiffany Souers was committed during the commission of a burglary in the 1st degree; (2) the murder of Souers was committed during the commission of criminal sexual conduct; and (3) the murder was committed during the commission of a kidnapping. After considering the evidence in aggravation and mitigation, Judge Miller sentenced Inman to death for Souers' murder. Judge Miller sentenced Inman to 30 years for burglary 1st, and 30 years for CSC 1st. The sentences were ordered to run consecutively. Inman was not sentenced for kidnapping pursuant to S.C. Code Ann. Section 16-3-910 (2003). On April 23, 2009, a Motion to Reconsider and for a New Trial was made by Inman. Judge Miller denied the Motion by Order dated July 17, 2009 and filed July 28, 2009.

Inman appealed his guilty plea convictions and sentences, including his death sentence, to the S.C. Supreme Court. Inman was represented by Joseph L. Savitz and Robert M. Dudek, Esquires, of the S.C. Office of Appellate Defense. Inman raised the following issues:

1. Whether Inman's guilty plea should be vacated because it constituted an invalid conditional guilty plea?
2. Whether the trial judge abused his discretion by declining to recuse the Solicitor's office as advocates and refusing to allow defense counsel to question the Solicitor and members of his staff on the claim of intentional prosecutorial misconduct?
3. Whether the Solicitor's questioning of Dr. Loring constituted witness intimidation and, in turn, prosecutorial misconduct?
4. Whether a mistrial was warranted after the Solicitor's actions questioning Dr. Loring constituted prosecutorial misconduct?

On December 28, 2011, the Supreme Court affirmed Inman's guilty plea convictions and sentences including his death sentence. State v. Inman, 395 S.C. 539, 720 S.E.2d 31 (2011). In its published Opinion, the Court held: (1) Inman's guilty plea was not a conditional guilty plea therefore it was valid and should not be vacated; (2) the trial judge did not abuse his discretion in declining to recuse

the Solicitor's office and refusing to allow defense counsel to question the Solicitor and members of his staff on the claim of intentional prosecutorial misconduct; (3) the Solicitor's questioning of Dr. Loring did constitute witness intimidation and prosecutorial misconduct as found by the trial judge; and (4) the trial judge did not err in declining to grant a mistrial as Inman did not establish prejudice to warrant such a severe remedy; (a) as this was a bench sentencing; (b) the trial judge qualified Dr. Loring as an expert, (c) the trial judge properly called and questioned her as a court's witness; (d) Dr. Loring testified and Inman's counsel declined the opportunity to question Dr. Loring; (e) any testimony that was potentially excluded was cumulative to that of Dr. Price who testified in detail regarding Inman's childhood, his family, his mental health disorders, and his criminal history; (f) finally, a review of the judge's oral and written orders established that the trial judge thoroughly considered all mitigating evidence. Based on all of the above, even though there was prosecutorial misconduct, Inman's sentence of death was not imposed in violation of his due process rights. State v. Inman, 395 S.C. 539, 720 S.E.2d 31 (2011). The Court also conducted its proportionality review and found the sentence was not the result of passion, prejudice, or any other arbitrary factor, and the judge's finding of 3 aggravating circumstances for the murder were supported by the evidence. Further, a review of prior cases established the death sentence in this case was proportionate to that in similar cases and was neither excessive nor disproportionate to the crime. Id. Inman filed Petition for Writ of Certiorari in the United States Supreme Court, which was denied.

Inman then filed the present post-conviction relief (PCR) action on June 21, 2012 through appellate counsel, Robert Dudek. Inman filed his only amended PCR application on April 13, 2016 through PCR counsel Diana Holt and Charles Grose, Esquires.

Abbreviated Statement of Facts

Tiffany Marie Souers was a rising junior at Clemson University who lived in an off-campus apartment complex in Central, S.C. in Pickens County. On May 25, 2006, Tiffany was staying in

the apartment by herself, as her roommates were gone. Sometime during the day of May 25th, applicant Inman drove by the apartment and saw Tiffany on the outside porch of her apartment. Inman was not from South Carolina. That evening, Tiffany, accompanied by 2 friends, went to a restaurant. Around 11:00 p.m., Tiffany returned home. At 11:20 p.m., she answered a text message from a friend but did not respond to a later text at 12:52 a.m.

By Inman's own admission, around 1:00 a.m., on May 26th, 2006, during the nighttime, Inman climbed over the porch rail to Tiffany's apartment where he had seen Tiffany earlier in the day. He then unlawfully, and without her consent or knowledge, opened the patio door to her apartment and entered her residence. After burglarizing her apartment, Inman then went into Tiffany's room where she was asleep. Inman woke Tiffany and covered her mouth with his hand, and a struggle ensued. Inman eventually bound her hands and began to look for her pocketbook and wallet, including her driver's license, car keys, ATM card, and other items of value. During this time, Inman was questioning Tiffany about the location of these items. After locating these items, Inman sexually assaulted [raped] Tiffany. Inman then murdered Tiffany by tightening a bikini bathing suit top around her neck until he strangled her to death [asphyxiated her]. Inman, under cover of darkness, then left Tiffany's apartment the same way he entered.

Inman then drove his 1990 Chevrolet Blazer truck to the Sun Trust Bank in Clemson and attempted to use Tiffany's ATM card 4 different times at 3:22 a.m., 3:29 a.m., 3:31 a.m., and 3:32 a.m. All attempts failed because he entered the wrong PIN number. Inman then drove to Wachovia Bank in Clemson, where he attempted to use Tiffany's ATM card on 2 occasions, 3:37 a.m., and 3:38 a.m. Those attempts failed, also, for the same reason. Photographs were obtained from these ATM machines showing Inman, whose face and head are covered with bandanas, attempting to use the

machines at the times listed. Also captured in these photos was a portion of a truck, i.e. a portion of the grill and the hood and the windshield.³

Inman then drove to his home in the State of Tennessee the morning of May 26, 2006, discarding the items he had stolen from Tiffany's apartment as he drove. Tiffany's driver's license was later found by James Lindsay on Highway 76 between Clemson and Anderson.

On May 26, 2006, at approximately 1:30 p.m., Tiffany's body was found by 1 of her roommates. Tiffany's body was found partially clad on the floor of her bedroom. Police were notified and the Central Police Department responded. The South Carolina Law Enforcement Division (SLED) responded including with its forensic team to process the crime scene for evidence. Of particular evidentiary importance, SLED removed a large section of carpet from Tiffany's bedroom, which was taken to SLED's forensics laboratory for further testing. An unknown male's DNA was eventually recovered from a sperm fragment found on this carpet.

Tiffany's body was transported to Greenville Memorial Hospital where an autopsy determined Tiffany's death was a homicide resulting from asphyxia due to ligature strangulation. The bikini top had been twisted so tight around Tiffany's neck the blood flow to her brain was cut off killing her. It was also determined Tiffany's hands and wrists bore signs consistent with her being restrained. Finally, it was determined Tiffany had suffered traumatic sexual intercourse. A sexual assault kit was used and vaginal swabs were forwarded to SLED.

The SLED Forensic Laboratory processed the carpet from Tiffany's bedroom and found 2 areas of semen stain. From these areas, a DNA profile was developed. The SLED Laboratory also processed the vaginal swabs collected at Tiffany's autopsy. Semen was found there as well. A DNA profile was developed from this semen as well. The DNA profile from the carpet matched that from

³ The truck's body style was eventually identified by Donald Floyd, the senior project engineer at General Motors, as either a Chevrolet Blazer or a GMC Jimmy with a model year between 1982 and 1994.

the vaginal swabs taken at the autopsy, i.e. it was the same person. The DNA profile was entered into the CODIS national database.

On June 5, 2006, SLED received a response from CODIS that a match had been found to the DNA profile submitted. There was a match to 2 profiles in the data base, 1 submitted by the State of North Carolina and 1 submitted by the State of Florida. Both of these matches belonged to the same person, applicant Inman, who previously served prison sentences in both North Carolina and Florida.

SLED immediately began a nationwide information search to locate Inman. It was determined he was currently living in Dandridge, Tennessee. The Tennessee Bureau of Investigation ("TBI") was notified and requested to locate and arrest Inman. Warrants for Inman's arrest had, at that time, been secured by SLED based upon the DNA match and the CODIS hit.

Chief Deputy G.W. "Bud" McCoig of the Jefferson County Sheriff's Office and TBI Agent Mike Hannon began their efforts to locate Inman around 4:30 in the afternoon on June 6th, 2006. They split up with McCoig watching Inman's parents' home and Hannon watching Inman's sister's home. Inman was spotted returning to his parents' home shortly after 11:30 p.m. Upon seeing Deputy McCoig's vehicle, Inman drove away for about half-a-mile when he was stopped at approximately 11:45 p.m., still on June 6th. Inman was arrested.

At 11:47 p.m., McCoig advised Inman of his Miranda rights in McCoig's vehicle. Inman was then briefly interviewed by McCoig. Inman admitted to the crimes of murder, criminal sexual conduct, burglary, and kidnapping of Tiffany Souers in Pickens County on May 26th. Inman was then transported to the Jefferson Sheriff's Dept. where Inman and McCoig met with TBI Agent Hannon for the purpose of obtaining a written statement. At 12:30 a.m., on June 7, 2006, Agent Hannon advised Inman of his Miranda rights by using a written form, and Inman signed the form, waived his rights, and agreed to give a statement. The statement was witnessed by Deputy McCoig and Agent Hannon. Inman's statement to the 2 officers was as follows:

I went to South Carolina about two (2) weeks ago. I don't remember the exact date.

I was just driving. I ended up somewhere around Clemson. I did not know the victim. I just saw her on the balcony of her apartment early in the evening. I drove around for a while until I thought she was asleep. I parked behind her apartment. Her apartment was on the bottom floor.

I climbed over the rail. The door heading to her apartment was unlocked. I entered the apartment and found her bedroom. I found the victim asleep in her bed - - in her bedroom. I woke the victim. She was startled. I tied her hands behind her. I did not go there to kill her. I don't want to talk about the sex part, but I did have sex with her.

I went and found - - no, excuse me. I used an item I found in her room to tie her up. I did not have anything - - I knew the victim could recognize me. When I knew the victim was dead, I went out the same way I came in. When I left her apartment, I drove back to 1712 Junior Williams Road in Dandridge.

Before I left her apartment, I took some things from her apartment. I took two credit cards. I tried to use one of the cards at a bank. I was not able to use the card, so I threw it away somewhere along the interstate on my way home. I did not know the name on the card. I know the girl in the apartment's name was Tiffany Souers. I saw it on the news here in Tennessee.

The clothes I wore while I was in Tiffany's apartment are in my car. I wore the shoes I have on now. I did not take any other item, except the credit cards. I knew Tiffany was dead because she stopped struggling. I held my hand over her mouth. I strangled her with a bathing suit top, the top of a bathing suit.

Thereafter, SLED Agents Jeff Kindley and Gene Donohue arrived at the Jefferson Sheriff's Office for the purpose of interviewing and obtaining a statement from Inman concerning Souers' murder. Inman was again advised of his Miranda rights and signed a Waiver of Rights. Agents Donohue and Kindley then took a statement from Inman. Inman again admitted to the murder, kidnapping, burglary, and criminal sexual conduct of Tiffany Souers on May 16th in Central, S.C. in Pickens County. The statement was as follows:

I live with my cousin, Derrick Adams, in Tennessee. I was not adjusting well to being out of jail. So I decided to get away. I started driving my car through Chattanooga, Georgia, North Carolina, and South Carolina. I ended up around Clemson about two weeks ago. I had run out of money so I was looking for something to rob.

I drove around some apartment complexes. I parked in the back of one of the apartment complexes and got out to try some doors. The first one I tried was open. I went in the back door after I hopped over the rail. No lights were on and I went in. I went in to the living room and then turned right into the bedroom.

After that, I went into a bedroom and a girl was sleeping there. I put my hand over her mouth and woke her up. She started fighting me and we wrestled. I tied her up with a piece of clothing behind her back. I asked her for her purse and she took her wallet out. I got her credit card and asked her for her PIN and she told me, but I forgot it.

After that, I had sex with her. And then I killed her. I took her bed sheets, her wallet, her car keys, and went out the back door. I put some bandannas over my face and went to the ATM to get some money, but couldn't get any.

I then left and went back to Tennessee. I had seen a girl on the apartment balcony where I went in earlier in the day. But when I went back at 1:00 a.m. - - or 1:30 a.m., I don't think any - - I didn't think anyone was there. I didn't mean for anyone to get hurt. I was just looking for some money. [End of Statement].

Thereafter, Inman was returned to Pickens County, S.C. for processing. Deputy Tony Robinson of the Pickens Sheriff's Office obtained DNA samples from Inman for the purpose of DNA analysis. These samples were submitted to SLED's laboratory. A DNA profile was developed from this sample matched the DNA profiles developed from the vaginal swab of Tiffany Souers taken at autopsy and the carpet removed from Souers' apartment the morning of her murder. The probability of randomly selecting an unrelated individual having a DNA profile matching the semen on these items is approximately 1 in 240 quadrillion.

On August 19, 2008, Inman pleaded guilty to murder, burglary 1st degree, CSC, and kidnapping. (R. 912-64). At his guilty plea hearing, Inman admitted he murdered Tiffany Souers, burglarized her apartment, kidnapped her, and raped her. (R. 912-64). He also admitted the facts recited by the Solicitor, which are set forth above, were true. (R. 912-64).

The Evidence in Aggravation

In the sentencing phase, the State called Suzanne Clavel, who was raped by Inman just after midnight on December 14th, 1987. Ms. Clavel lived in an apartment in Tampa, Florida and had gone to bed around 11:00 p.m. on December 13th. She was awakened approximately 1 hour later by Inman in her bedroom pointing a gun at her head. Inman told Clavel to "shut up" and ordered her to tie up her roommate with pre-cut telephone cords Inman had with him. She complied and tied her roommate's hands and feet. Inman at gunpoint then tied Clavel's hands behind her back. Inman then raped her vaginally, anally, and vaginally again. The sexual assault lasted about 20 minutes. Clavel's roommate witnessed the entire assault. Inman then stole money from Clavel and her roommate and Clavel's car keys. When Inman left, he told Clavel if she called the police he would

come back and kill her. Inman was apprehended 2 years later, in 1989, and pled guilty to the burglary of Clavel's apartment and her kidnapping and rape, and the kidnapping of her roommate and theft of the roommate's car. He was sentenced 30 years in the Florida prison system. He was released in 2005.

Inman was convicted of 2nd degree criminal sexual assault which occurred on January 10, 1988, of which Inman was convicted on September 26, 1988. That offense and conviction occurred in North Carolina. This sexual assault conviction was for a sexual assault on a male inmate in the county jail. Inman received 20 year sentence for that offense. Inman was also charged with attempted escape from prison on February 5, 1991. He was convicted of that offense and received 1 year in prison on April 8, 1991.

Approximately 9 months after his release from prison in 2005, on May 22, 2006, Inman burglarized the home of Jessica Gann in Sevierville, Tenn. Ms. Gann woke up in her own bed with someone on top of her with a knife to her throat. It was Inman. He tied her hands behind her back. Gann's small daughter was crying during the incident. Inman attempted to rape Gann from the rear. Inman then turned her over and while holding a knife to her neck raped her. He then took her to the bathroom and made her clean herself with shampoo twice. Inman then left the residence. Gann saw Inman on the news about 2 weeks later. When interviewed by police about this incident, Inman confessed to the burglary and rape of Gann [including the rape occurring in the presence of her child] and placing them both in the bathroom after the rape before he fled.

On May 23, 2006, in Rainsville, Alabama, Inman burglarized the home of Beth Bates Patterson, an employee of the Department of Agriculture. Inman cut a hole in a vent in her residence' floor and entered her home while she was gone. While in the residence he found a bank bag in a piano seat that contained cash belonging to Ms. Patterson's church. When Patterson came home, Inman snuck up behind her and covered her mouth and placed a knife to her throat. He then tied her hands and feet and placed her on her bed in her bedroom. He started pulling her pants down

and was going to rape her until she told him she was having her menstrual period. Inman checked to see if she was telling the truth, and when he discovered she was having her period, he placed her in a closet still bound, and placed a chair against the closet to lock her in. He then stole her car and the money belonging to her church and abandoned her car nearby where he had left his car. Inman confessed to this crime after he was arrested for Souers' murder. Inman admitted his intent was to sexually assault Patterson when he broke into her home. His confession was corroborated by Patterson's testimony in the sentencing proceeding. She later identified Inman after seeing him on CNN wanted for the Souers' murder.

Inman had numerous disciplinary violations while serving his prison sentences in Florida and North Carolina including assaults and possession of weapons. Inman also has a Nazi tattoo on him indicating he is a member of a security threat group.

At his sentencing proceeding, Inman admitted he had escaped from prison 2 different times in the past. Inman also told Judge Miller he could not be rehabilitated. Inman also indicated to the Judge the appropriate sentence for the murder of Souers was the death penalty.

Ground 10(c)11(c) Mr. Inmon was denied the right to effective assistance of counsel—guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution and by Article I, Sections 3 and 14 of the South Carolina Constitution—during the appeal of his capital trial.

Supporting facts: Appellate counsel was ineffective for:

- (1) Not appealing the trial court judge denying Mr. Inmon his request to plead guilty and have his sentence determined by a jury when that right is protected by the Fifth, Sixth, Eighth, and Fourteenth Amendments to the United States Constitution and trial counsel had preserved that issue for appellate review.

Respondent is entitled to summary judgment as to this ground or in the alternative to dismissal because this ground fails to state a claim upon which relief may be granted.

A PCR applicant has the burden of proving appellate counsel's performance was deficient. Anderson v. State, 354 S.C. 431, 581 S.E.2d 834 (2003). To obtain relief a PCR applicant must

show that appellate counsel's performance was (1) deficient; and (2) prejudice resulted from the appellate counsel's deficiency. Southerland v. State, 337 S.C. 610, 524 S.E.2d 833 (1999). In other words, the applicant is required to demonstrate "that his counsel was objectively unreasonable in failing" to identify, argue and present significant and obvious issues on appeal, and "a reasonable probability that, but for his counsel's unreasonable failure . . . , he would have prevailed on his appeal." Smith v. Robbins, 528 U.S. 259, 285 (2000) (citation omitted).⁴ Although recognizing that "[n]otwithstanding Barnes, it is still possible to bring a Strickland claim based on counsel's failure to raise a particular claim" on direct appeal, the Supreme Court has recently reiterated that "it [will be] difficult to demonstrate that counsel was incompetent." Robbins, 528 U.S. at 288. "Generally, only when ignored issues are clearly stronger than those presented, will the presumption of effective assistance of counsel be overcome." Id. (quoting Gray v. Greer, 800 F.2d 644, 646 (C.A.7 1986)); see also Bell v. Jarvis, 236 F.3d 149, 164 (4th Cir. 2000) (*en banc*).

Appellate counsel is also not ineffective for failing to file a "kitchen sink" brief. Smith v. Stewart, 140 F.3d 1267, 1274, n.4 (9th Cir. 1988); see also Thrift v. State, 302 S.C. 535, 397 S.E.2d 523 (1990); Jones v. Barnes, *supra*, (appellate counsel may make a reasonable strategic decision not to appeal every non-frivolous argument requested by the defendant, and noting the "importance of winnowing out weaker arguments on appeal and focusing on one central issue if possible"). It is clear appellate counsel's representation will not be deemed ineffective if he makes an informed decision based on reasonable professional judgment not to pursue a particular issue on appeal. Griffin v. Aiken, 775 F.2d 1226 (4th Cir. 1985). Further, under the two part test of Strickland, *supra*, a defendant must show not only that counsel's performance was deficient, but that this deficiency prejudiced him Smith v. Robbins, *supra*; Barnes, *supra*; Thrift, *supra*.

⁴ See also Smith v. South Carolina, 882 F.2d 895, 899 (4th Cir. 1989) (counsel's failure to raise a weak constitutional claim may constitute an acceptable strategic decision designed "to avoid diverting the appellate court's attention from what [counsel] felt were stronger claims").

Applicant pled guilty and his guilty plea was determined by the South Carolina Supreme Court to be unconditional and not involuntary. State v. Inman, *supra*. As a result, the issue Applicant alleges in subpart (1) above that appellate counsel should have raised on appeal was not preserved for appellate review. See State v. Evans, 371 S.C. 27, 637 S.E.2d 313 (2006) (recognizing error preservation requirements after State v. Torrence, 305 S.C. 45, 406 S.E.2d 315 (1991)). South Carolina is an issue preservation state. I'On, L.L.C. v. Town of Mt. Pleasant, 338 S.C. 406, 422, 526 S.E.2d 716, 724-25 (2000). An issue that is not preserved below will not be considered on appeal. State v. Powers, 331 S.C. 37, 501 S.E.2d 116 (1998); State v. Varvil, 338 S.C. 335, 526 S.E.2d 248 (Ct. App. 2000). There are no conditional guilty pleas in South Carolina state courts. Rivers v. Strickland, 264 S.C. 121, 213 S.E.2d 97 (1975); State v. Passaro, 567 S.E.2d 862, 866 (S.C. 2002)(A free and voluntary guilty plea acts as a waiver of all non-jurisdictional defects and defenses.); State v. Oleary, 393 S.E.2d 186, 187 (S.C. 1990)(impermissible for a defendant to preserve constitutional issues while entertaining a guilty plea; the trial court may not accept the plea on such terms).

Appellate counsel cannot be deficient, nor can the applicant show prejudice, from appellate counsel not raising an issue that was not preserved for appellate review.⁵ Lee v. Davis, 328 F.3d 896,

⁵ Respondent recognizes that the Supreme Court in its opinions stated the following concerning whether the Applicant could have preserved the issue in the appeal:

Turning to the facts of the instant case, we find that Inman's guilty plea was unconditional. Significantly, Inman never attempted to reserve the right to challenge or deny the merits of his guilt. Any condition that he sought to attach to the plea involved an 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. Under the mandatory appeal procedures in capital cases,¹⁴ 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 (concluding appellant's capital guilty plea was unconditional where he never attempted to reserve the right to later deny his guilt, but instead sought to reserve the right to present evidence that he committed the crime while mentally ill, an issue that involved post-sentencing treatment).

14. See S.C.Code Ann. § 16-3-25(A) (2003) ("Whenever the death penalty is imposed, and upon the judgment becoming final in the trial court, the

901-02 (7th Cir. 2003); Aparicio v. Artuz, 269 F.3d 78, 96 (2d Cir. 2001); Jackson v. Duggar, 931 F.2d 712 (11th Cir. 1991) (appellate counsel not ineffective for failing to appeal issue not preserved for review); Kitt v. Clarke, 931 F.2d 1246 (8th Cir. 1991) (similar); see Burton v. Renico, 391 F.3d 764, 777 (6th Cir. 2004) (similar); see also Albrecht v. Horn, 485 F.3d 103, 138 (3rd Cir. 2007). The appellate courts of South Carolina would not consider such an issue. State v. Powers, 331 S.C. 37, 501 S.E.2d 116 (1998). As a result, there is no merit to this issue of ineffective assistance of appellate counsel.

Further, there is no merit to the underlying issue Applicant alleges appellate counsel should have raised. State v. Inman, 395 S.C. 539, 556, 720 S.E.2d 31 (2011); State v. Allen, 386 S.C. 93, 687 S.E.3d 21, 25-26 (2009); State v. Crisp, 362 S.C. 412, 608 S.E.2d 429 (2005); State v. Downs, 361 S.C. 141, 146, 604 S.E.2d 377, 380 (2004); State v. Wood, 362 S.C. 135, 607 S.E.2d 57 (2004). See also Lewis v. Wheeler, 609 F.3d 291, 309 (4th Cir. 2010); Nunley v. Bowersox, 784 F.3d 468, 472 (8th Cir. 2015); State v. Nunley, 341 S.W.3d 611, 620 (Mo. 2011); Leon v. State, 797 N.E.2d 743, 750 (Ind. 2003); Byrom v. State, 927 So.2d 709, 728 (Miss. 2006); Mack v. State, 75 P.3d 803, 806 (2003); Colwell v. State, 59 P.3d 463, 474 (Nev. 2002); People v. Alton, 788 N.E.2d 55, 60-61 (Ill. 2003); State v. Ketterer, 855 N.E.2 48, 69 (Ohio 2006); Thacker v. State, 100 P.3d 1052 (OK 2004).

As set forth in its Opinion in this very case, the South Carolina Supreme Court noted:

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 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. 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

sentence shall be reviewed on the record by the Supreme Court of South Carolina.”).

State v. Inman, 395 S.C. 539, 555-56, 720 S.E.2d 31, 40 (2011) (emphasis added).

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 31. As a result, there could be no ineffective assistance of appellate counsel. Jones v. Barnes; Inman.

For these reasons, there is no genuine issue of material fact, and Respondent is entitled to summary judgment on this issue or in the alternative to dismissal of this ground for failure to state a claim upon which relief may be granted. (Rules 56 & 12(b)(6), SCRCP).

Ground 10(d)11(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.

Supporting facts: S.C. Code Ann. Section 16-3-20, as written by the General Assembly and construed by the South Carolina Supreme Court, denied Mr. Inmon his right to have the jury determine the existence of aggravating circumstances, consider statutory and non-statutory mitigating circumstances, and determine whether a death sentence should be imposed.

This is a free-standing claim that could have been raised at a trial or on direct appeal if preserved at the trial; and therefore, is not cognizable in post-conviction relief. Roscoe v. State, 345 S.C. at 20, 546 S.E.2d at 419 (“In PCR cases, a defendant asserting a constitutional violation must frame the issue as one of ineffective assistance of counsel.”); Drayton v. Evatt, 312 S.C. 4, 430 S.E.2d 517 (1993) (issues that could have been raised at trial or on direct appeal cannot be raised in a PCR application absent a claim of ineffective assistance of counsel) (citing S.C. Code Ann. § 17-27-20(b)); Hyman v. State, 278 S.C. 501, 299 S.E.2d 330 (1983); Peeler v. State, 277 S.C. 70, 283 S.E.2d 826 (1981). As a result, it also fails to state a claim upon which relief may be granted by this Court. Rule 12(b)(6), SCRCP. This ground must be dismissed with prejudice.

Further, Inman personally waived the applicability assertion in his sworn statements to Judge Miller during the plea waiving a right to have a jury sentence him. At the August 19, 2008 proceeding, Judge Miller questioned Inman concerning his desire to enter a guilty plea and be sentenced by Judge Miller rather than a jury. R. 927, Aug. 19, 2008 Tr. p. 17. Inman declared he was there "to enter a guilty plea." Id. R. 927, Tr. p. 17, l. 4. Judge Miller went through the elements and punishment for the charges of murder, criminal sexual conduct in the first degree and kidnapping. R. 927, Id. Tr. 17-19. He stated he was there to plead guilty. Id. R. 929, Tr. p. 19, ll. 10-13. Particularly, Judge Miller made the following inquiry:

[20]THE COURT: That it would be a bifurcated proceeding with a jury that would hear the guilt phase and, also, the same jury would hear then if a guilty verdict was returned, they would hear the sentencing phase and make a decision about that.

Do you understand that?

DEFENDANT INMAN: Yes, sir.

THE COURT:Do you understand that if you enter a plea of guilty that you waive and give up your right to a jury trial to have a jury decide the guilt phase? And, by doing that, you give up your right to have a jury decide the sentencing phase.

Do you understand that?

MR. BANNISTER: Do you understand that?

DEFENDANT INMAN: Yes, sir.

THE COURT:Okay. And do you understand that you could impanel a jury, and that you could get in front of that jury in the guilt phase and admit your guilt and have that jury decide your sentence?

Do you understand that?

MR. BANNISTER: Judge, I would object to that question, the way it's asked. I don't believe he's got that right, if I'm understanding it the way you're asking it.

THE COURT:Well, I don't want to be - - make it [21]confusing.

But if you were to impanel a jury in the guilt phase, you could testify and admit to your guilt in front of that jury and have that jury then in a sentencing phase sentence you.

Do you understand that?

DEFENDANT INMAN: Yes, sir.

THE COURT: Okay. And do you - -

MR. BANNISTER: Judge - -

THE COURT: - - understand by doing that that you give up that right?

Yes, sir, Mr. Bannister.

MR. BANNISTER: Judge I need to, I guess at least, put on the record, at this point, that in March, we raised the issue that the Defendant sought to enter a guilty plea, as he's doing today, and then proceed to a jury trial sentencing. And we believe that that was an option that he should be entitled based on the fact of his Sixth Amendment right to a jury trial, his Eighth Amendment right to present mitigation, and his Fourteenth Amendment right to present a complete defense.

You determined, prior to this proceeding, that he did not have that option. I believe that that issue has been preserved for review. But to the extent that I need to state it again for the record, I'm saying that we raised that [22] issue and we believe it's part of this case no matter what going forward. But that's been part of my explanation to him about where we go.

So, with that on the record, go ahead.

THE COURT: Well, I want to tell you, Mr. Inman, that, in South Carolina, we do not have conditional guilty pleas. And the law is very clear about that. Whether or not this issue is preserved for appeal is not something that I will address, and I have no control over it.

Do you understand that?

DEFENDANT INMAN: Yes, sir.

THE COURT: All right. Now, and I would tell you that there are - - I have no - - and I don't have an opinion about whether or not what your attorney claims - - what he thinks about the preservation of that issue for appeal is. But I can tell you that the law is very clear. There are no conditional pleas. And if you enter a plea of guilty, you can't do it on a condition.

Do you understand that?

You can't hold something out in abeyance by entering this guilty plea.

Do you understand that?

DEFENDANT INMAN: Yes, sir.

THE COURT: All right.

MR. BANNISTER: And, Judge, I guess what I want to [23] say is, I want to be sure that there's a clear distinction on the record between what you're asking him to waive, which is his ability to stand up in front of a jury and tell them he's guilty versus going through a formal guilty plea and then proceeding to a jury trial having entered the guilty plea. He cannot do that. But I think the way the question was worded to him, it sounded like that was an option. And it's simply not. I mean - -

THE COURT: Well, I don't want to get into confusing semantics. But if you enter this plea and I accept it, you are giving up your right to have a jury impaneled.

And let me tell you, there are significant rights which attach to the selection of a jury in a capital case. And part of that is already in place. A lengthy and comprehensive juror questionnaire has been sent to potential jurors. That has been provided to your counsel and to the State. They are able to learn many things about jurors. And, additionally, at the time, if you were to go forward with a jury trial, you and the State would have an opportunity to individually question potential jurors to make a - - to find out information about whether or not they could follow the law and be impartial in your case.

Do you understand that?

DEFENDANT INMAN: Yes, sir.

THE COURT: And if you enter this plea and I accept this plea, you are giving that right up.

Do you understand that?

DEFENDANT INMAN: Yes, sir.

THE COURT: All right. And are you doing this of your own free will?

DEFENDANT INMAN: Yes, sir.

THE COURT:Okay. Has anybody - - this is what you want to do?

DEFENDANT INMAN: Yes.

THE COURT:It's not at someone elses (sic) suggestion; is that correct?

DEFENDANT INMAN: Yes, sir.

THE COURT:It is at someone elses (sic) suggestion?

DEFENDANT INMAN: No. I mean, that's correct.

R. 930-34, August 19, 2008 Tr. p. 20, l. 1 - p. 24, l. 15.

Judge Miller then went over the other specific constitutional rights Inman was waiving including, the burden of proof beyond a reasonable doubt, the right of confrontation and cross-examination, and the right to challenge seized evidence. Id. R. 934-35, Tr. 24-25.

Inman then advised the Court that he still desired to enter his plea and admitted that he was guilty. R. 936, Tr. p. 26, ll. 1-4.

The State, through Solicitor Ariail, next made a statement concerning the factual basis for the pleas based upon the stipulated facts. R. 937, Tr. 27-41. After the recitation of facts, Inman agreed to the stipulated facts. R. 952, Tr. p. 42, ll. 1-12. At that point the following occurred concerning the jury trial issue:

**[42]THE COURT: I just want to - - do you understand that if I accept this plea, you are giving up your right to have a jury make this determination on your sentence with respect to the murder case?
Do you understand that?**

DEFENDANT INMAN: Yes.

THE COURT:And - -

MR. BANNISTER: Judge, for the record, since we're going back into the jury trial rights, let me just say again that we previously made a motion
- -

THE COURT:It's well documented and I - -

MR. BANNISTER: I think that I have to restate it, though, just for the record.

THE COURT: All right. Go ahead.

MR. BANNISTER: He's been put in a position where he's got to make a choice between Constitutional provisions, one is the Fourteenth Amendment, Sixth Amendment, and Eighth Amendment right to present a complete defense, which would include the mitigation of his guilty plea. The other is the right to a jury trial and have a sentencer determine what sentence he would receive. He has to choose between those two.

We say the choice itself is unconstitutional. And we - - I'm just stating that again for the record. You've already decided that that's not the case. And I just want to make sure it is preserved.

Thank you, Your Honor.

THE COURT: Now, again, Mr. Inman, let me tell you that the law in South Carolina is clear that there are no conditional guilty pleas.

Do you understand that?

DEFENDANT INMAN: Yes, sir.

THE COURT: And whether or not that issue is preserved for appeal is not for me to decide.

Do you understand that?

DEFENDANT INMAN: Yes, sir.

THE COURT: An Appellate Court will make that determination, the Supreme Court of the State of South Carolina.

Do you understand that?

DEFENDANT INMAN: Yes, sir.

THE COURT: But you understand that a jury's verdict would have to be unanimous.

Do you understand that?

DEFENDANT INMAN: Yes, sir.

THE COURT: All 12 persons on the jury would have to agree to a verdict.

Do you understand that?

DEFENDANT INMAN: Yes, sir.

THE COURT: And you understand that if one of the 12 people couldn't make up their mind that the law would require that the sentence would be life.

Do you understand that?

DEFENDANT INMAN: Yes, sir.

THE COURT: And you're giving that right up and you're requesting that the Court be the fact finder and the determiner of the sentence; is that right?

DEFENDANT INMAN: Yes.

THE COURT: Has anybody made any promise, prediction, or prophesy to you about what they think my sentence might be?

DEFENDANT INMAN: No, sir.

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.

THE COURT: And you still want to go forward?

DEFENDANT INMAN: Yes, sir.

THE COURT: Is there any other questions that should be propounded to Mr. Inman, at this time, that anyone can think of?

MR. ARIAIL: The only thing I would suggest, Your Honor, I would like to put on the record from the State's perspective - - and I think based on the current events taking place in some related cases - - the Court has made no indication to

the State of any - - any indication as to which sentence would be appropriate. Therefore, it is our understanding that we are moving forward with the Court able to conclude to impose either sentence available based upon what your determination of the facts is.

THE COURT: All right. Do you understand what he just said?

DEFENDANT INMAN: Yes, sir.

THE COURT: Is there any other questions that need to be propounded that you can think of, Mr. Bannister?

MR. BANNISTER: No, sir, Your Honor.

THE COURT: Mr. Inman, do you have any questions you want to ask of me?

DEFENDANT INMAN: No.

THE COURT: All rights. Well, I'm going to accept this plea to these four cases as being freely, voluntarily, and intelligently made with the advice of three very competent attorneys with whom Mr. Inman states he is well satisfied. And I find there is a substantial factual basis for the plea.

R. 952-56, Tr. p. 42, l. 13 - p. 46, l. 15.

After the plea was entered, Solicitor Ariail expressed a concern that defense counsel's injection of his comments about preservation of an appeal was an attempt to make it a conditional plea. He asked Judge Miller to direct to Mr. Inman a specific question "does he understand by waiving and giving up those rights that he is, from the law's perspective waiving the right to be tried by a jury in the sentencing phase?" R. 957, Tr. p. 47, ll. 3-14. Defense counsel Bannister objected to the question. R. 957, Tr. p. 47, l. 15. The Court suggested that he had already asked that question, but not in the specific language the State requested. R. 957, Tr. p. 47, ll. 16-19.

The following colloquy continued:

[47]MR. BANNISTER: Well, that's saying the condition here is that he give up an appellate right that he would have. Every defendant that appears in court still has the right to appeal his guilty plea. And so - -

THE COURT:And that's absolutely correct.

MR. BANNISTER: So the condition that they're asking to put on there is one from the State, that is that he [48] give up rights that he would normally otherwise have.

THE COURT:That is not what they're saying. But what the law - -

And, Mr. Inman, I direct this to you. Because in the end, you get advice from your attorneys. But this decision is yours. I don't - - the law is clear in South Carolina that you cannot enter a conditional guilty plea, which means you cannot plead guilty and reserve some issue with respect to the guilt phase for the Appellate Courts to rule on.

Mr. Bannister may disagree with me.

MR. BANNISTER: And I want to state, for the record, that I do.

THE COURT:Okay.

MR. BANNISTER: And I have advised him that I believe this issue is preserved and will survive the guilty plea.

THE COURT:Mr. Inman, I want to tell you that we disagree on that with respect to that, that by your entering this plea that it has - - I believe - - and, of course, I'm not the final word on this issue, because the Supreme Court will be the final word. But I believe that you're giving up that right, so.

And I'll ask you again, because if you want - -

MR. BANNISTER: I'm sorry, Your Honor. Are you giving him - - I mean, I just have to object. Because I [49]think, at this point, what you are doing is giving your opinion about what an Appellate Court might do,. And I think that's entirely inappropriate. I mean, I object to - - I don't think you can give him an opinion about what an Appellate Court might do with that issue.

THE COURT:Mr. Bannister, I've tried to be very plain that I don't have an opinion about what they would do.

But I want to tell you, Mr. Inman, and this - - without arguing legal semantics with you, South Carolina, clearly, states that they do not allow conditional guilty pleas. so if there is some question in your mind, I would - - about this issue, I would urge - - I would allow you to withdraw your plea at this time. And we've got the jury coming. We can go forward with that. You can handle it in that fashion.

I just want - - Mr. Bannister may be convinced that he's got

An appellate issue. And I don't know whether he does or not. but I'm telling you I believe the law in South Carolina is clear that guilty pleas are unconditional.

MR. BANNISTER: I guess - - what is the condition, though, that you're telling him that the - - what is the conditional part of this plea?

I mean, he has unconditionally entered his guilty [50]plea. We're having an argument with - - I guess the three of us are trying to decide whether the issue I've raised - - or that we've raised prior to this is or is not appealable. I'm trying to see what - - what is the condition exactly that you're asking him to give up?

In general, I agree with you. He can't have a conditional guilty plea. But what, specifically, is the condition that he is presently - -

THE COURT:Mr. Bannister, I'm not going to get into a legal argument with you on the record about this issue. Your client has entered the plea. I don't want him to do it - - I want him to be aware that you cannot reserve - - I mean, you can go over the law with him about what the courts review when they look at guilty plea.

MR. BANNISTER: That's right.

And I think that's my province, which is why I have this - -

THE COURT:Well, if this is a big issue, then I'm about to not accept the plea.

MR. BANNISTER: Well, all I can tell you is that I believe he's entered an unconditional plea at this point. And I'm having a hard time seeing what is the condition that he's put on. I mean, I agree with you that it's - - that he cannot enter a conditional plea. So on that, we're all in agreement.

[51]THE COURT: Well, Mr. Inman, clearly, there is some disagreement about the preservation of this issue that your attorneys have raised. I'm not involved in it. And I don't have an opinion about it. Whether or not Mr. Bannister can do that successfully is something that the Supreme Court will answer. The State does not believe that he can. He believes that he can.

But I don't want you - - I want your plea to be - - you've got to understand it's unconditional, that you enter that, and whether or not that happens on appeal is really of no concern here. I want your plea to not be dependent on that issue.

So I'd ask you now, is your plea predicated on that issue? Is it dependent on that issue?

MR. BANNISTER: If you want a moment, we can talk.

DEFENDANT INMAN: We need to talk.

R. 957-961, Tr. p. 47, l. 19 - p. 51, l. 16.

After the break, a conference was held between Inman and his defense counsel. R. 961, Tr. p. 51, ll. 17-25. The Court returned to the record. At that point, Mr. Inman declared that he wanted to continue on with the plea proceedings. R. 962, Tr. p. 52, ll. 1-3.

THE COURT: And while this may not be a - - all I'm trying to determine is that your entry of this plea is not based on or predicated on some issue that you think you might prevail on or might not prevail on in an Appellate Court.

Do you understand what I'm saying to you?

DEFENDANT INMAN: Yes, Sir.

THE COURT: That the only basis for the plea should be you're knowing - - your knowledge of your rights, intelligent nature of your plea, your ability to understand what's going on, and your admission to the facts that you believe the State could prove against you. And whether or not you can prevail on an appellate issue should have nothing to do with your entry of this plea.

Do you understand that?

DEFENDANT INMAN: Yes, Sir.

THE COURT: Okay. So whether or not you're successful or not successful at some higher court on some issue that might be raised should have nothing to do with why you're entering this plea.

Is that clear?

DEFENDANT INMAN: Yes.

R. 962, Tr. p. 52, ll. 4-25. More particularly, Judge Miller asked Inman the following:

THE COURT: All right. So tell me, in your own words, if you would, sir, why are you entering this plea?

DEFENDANT INMAN: I just want to enter the plea and get it over with, just go on from here with the sentencing phase.

THE COURT: All right. Do you have any questions you want to ask me about any of your rights?

DEFENDANT INMAN: No.

THE COURT: And you have had enough time to speak with your attorneys about the issue of the jury trial versus a guilty plea; is that correct?

DEFENDANT INMAN: Yes.

THE COURT: Do you think you fully comprehend and understand all the differences?

DEFENDANT INMAN: Yes.

THE COURT: And this is what you want to do?

DEFENDANT INMAN: Yes, sir.

R. 963, Tr. p. 53, ll. 1-17. The Applicant's statements in open court carry a presumption of verity. See Blackledge v. Allison, 431 U.S. 63, 74, 97 S.Ct. 1621, 52 L.Ed.2d 136 (1977) (holding that solemn declarations in open court "carry a strong presumption of verity") ; cf. Edmonds v. Lewis, 546 F.2d 566, 567-68 (4th Cir.1976) ("[T]he accuracy and truth of a prisoner's denial of any threats inducing his plea of guilty, given during an examination on the record at his sentencing ... will be considered conclusively established by that proceeding ... unless he offers (by the allegations of his petition) a valid reason why he should be permitted to depart from the apparent truth of his earlier statement ." (citations and quotation marks omitted)).

Further, there is no substantive merit to this ground. State v. Inman, 395 S.C. 539, 556, 720 S.E.2d 31 (2011); State v. Allen, 386 S.C. 93, 687 S.E.2d 21, 25-26 (2009), *cert. denied*, ___ U.S. ___, 130 S.Ct. 3329, 176 L.Ed. 2d 1229 (2010); State v. Crisp, 362 S.C. 412, 608 S.E.2d 429 (2005); State v. Downs, 361 S.C. 141, 146, 604 S.E.2d 377, 380 (2004); State v. Wood, 362 S.C. 135, 607 S.E.2d 57 (2004). See also Lewis v. Wheeler, 609 F.3d 291, 309 (4th Cir. 2010); Nunley v. Bowersox, 784 F.3d 468, 472 (8th Cir. 2015); State v. Nunley, 341 S.W.3d 611, 620 (Mo. 2011);

Leon v. State, 797 N.E.2d 743, 750 (Ind. 2003); Byrom v. State, 927 So.2d 709, 728 (Miss. 2006); Mack v. State, 75 P.3d 803, 806 (2003); Colwell v. State, 59 P.3d 463, 474 (Nev. 2002); People v. Alton, 788 N.E.2d 55, 60-61 (Ill. 2003); State v. Ketterer, 855 N.E.2 48, 69 (Ohio 2006); Thacker v. State, 100 P.3d 1052 (OK 2004).

Applicant entered a knowing, voluntary, and intelligent guilty plea that was unconditional and was not involuntary. State v. Inman, *supra*. As a result, Inman waived and abandoned a jury determination of his guilt or innocence, the existence of statutory aggravating circumstances, statutory and non-statutory mitigating circumstances, and the appropriate sentence.

And, South Carolina's death penalty statute on this issue has repeatedly been found to be constitutional, including in this very case on direct appeal. *Id.*, *citations omitted*. As a result, this ground must be dismissed with prejudice.

Ground 10(e)11(e) Mr. Inmon's death sentence was obtained in violation of the Fifth, Sixth, Eighth, and Fourteenth Amendments to the United States Constitution.

Supporting Facts: The capital sentencing scheme in South Carolina violates the Constitution because its methods for the imposition and review of capital punishment suffers the same infirmities as the statute rejected as unconstitutional by the United States Supreme Court in Furman v. Georgia, 408 U.S. 238 (1972) because:

- (1) South Carolina's capital sentencing statute, as written by the General Assembly and construed by the South Carolina Supreme Court, does not perform the constitutionally mandated narrowing function.
- (2) South Carolina's sentencing system permits discrimination on the basis of race.
- (3) The South Carolina Supreme Court consistently fails to fulfill its statutory and constitutional obligation to conduct a meaningful proportionality review in capital cases.
- (4) The death penalty is unconstitutional because it is unreliable, arbitrary, and lacks penological purpose.

This entire ground is not cognizable in post-conviction relief as it could have been raised at a trial and on direct appeal if it had been preserved. Roscoe v. State, 345 S.C. at 20, 546 S.E.2d at 419 ("In PCR cases, a defendant asserting a constitutional violation must frame the issue as one of ineffective assistance of counsel."); Drayton v. Evatt, 312 S.C. 4, 430 S.E.2d 517 (1993) (issues that

could have been raised at trial or on direct appeal cannot be raised in a PCR application absent a claim of ineffective assistance of counsel) (citing S.C. Code Ann. § 17-27-20(b)); Hyman v. State, 278 S.C. 501, 299 S.E.2d 330 (1983); Peeler v. State, 277 S.C. 70, 283 S.E.2d 826 (1981). As a result, this ground also fails to state a claim upon which relief may be granted by this Court. Rule 12(b)(6), SCRCP. This ground must be dismissed with prejudice.

In its mandated proportionality review, the South Carolina Supreme Court concluded:

III. Proportionality Review

Based on our decision to affirm Inman's guilty plea and the judge's rulings regarding the sentencing proceedings, we must assess Inman's sentence of death as it is this Court's duty to conduct a proportionality review of Inman's death sentence. S.C.Code Ann. § 16-3-25(C) (2003).²⁰

"The United States Constitution prohibits the imposition of the death penalty when it is either excessive or disproportionate in light of the crime and the defendant." State v. Wise, 359 S.C. 14, 28, 596 S.E.2d 475, 482 (2004). In conducting a proportionality review, we search for similar cases in which the sentence of death has been upheld. *Id.*; S.C.Code Ann. § 16-3-25(E) (2003) (providing that in conducting a sentence review the Supreme Court "shall include in its decision a reference to those similar cases which it took into consideration").

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.

Furthermore, 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. See State v. Stanko, 376 S.C. 571, 658 S.E.2d 94 (2008) (death sentence warranted where defendant was convicted of murder, ABWIK, criminal sexual conduct, kidnapping, and armed robbery); State v. Evins, 373 S.C. 404, 645 S.E.2d 904 (2007) (death sentence warranted where defendant was convicted of murder, kidnapping, first-degree criminal sexual conduct, and grand larceny); State v. Simmons, 360 S.C. 33, 599 S.E.2d 448 (2004) (death sentence upheld where jury found aggravating circumstances of criminal sexual conduct, kidnapping, armed robbery, physical torture, and burglary); State v. Whipple, 324 S.C. 43, 476 S.E.2d 683 (1996) (death sentence upheld where defendant was convicted of murder, criminal sexual conduct, armed robbery, and grand larceny of a motor vehicle).

State v. Inman, 395 S.C. 539, 566-68, 720 S.E.2d 31, 46 (2011)

Further, as to subpart (1), that “South Carolina’s capital sentencing statute, as written by the General Assembly and construed by the South Carolina Supreme Court, does not perform the constitutionally mandated narrowing function”, there is no merit to this ground. Kansas v. Marsh, 548 U.S. 163 (2006); Blystone v. Pennsylvania, 494 U.S. 299 (1990); Gregg v. Georgia, 428 U.S. 153, 206-07 (1976). See also Proffitt v. Florida, 428 U.S. 242 (1976); compare Woodson v. North Carolina, 428 U.S. 280 (1976); Roberts v. Louisiana, 428 U.S. 325 (1976); Roberts v. Louisiana, 431 U.S. 633 (1977); Sumner v. Goodman, 483 U.S. 66 (1987). See Zant v. Stephens, 462 U.S. 862 (1983); Woodson v. North Carolina, 428 U.S. 280 (1976)(plurality opinion); Johnson v. Texas, 509 U.S. 350 (1993); Lockett v. Ohio, 438 U.S. 586 (1978); Tenard v. Dretke, 542 U.S. 274 (2004). See S.C. Code Ann. Section 16-3-10 & 16-3-20, 16-3-25, 16-3-26, & 16-3-28.

Further, as to subpart (2), “South Carolina’s sentencing system permits discrimination on the basis of race” there is no cognizable merit to this ground as a matter of state law. See S.C. Code Ann. Section 16-3-10 & 16-3-20, 16-3-25, 16-3-26, & 16-3-28. A similar assertion was attempted in be raised and rejected in Thompson v. Aiken, 281 S.C. 239, 241-42, 315 S.E.2d 110, 111 (1984). In Thompson, the South Carolina Supreme Court cautioned against this issue being raised in collateral proceedings:

The petitioner submitted to the post-conviction court a deposition taken of Professor Raymond Paternoster, University of South Carolina, bolstered by statistical data which he had compiled. We feel it necessary to comment upon this submission in light of our concern expressed in State v. Truesdale, 278 S.C. 368, 371, 296 S.E.2d 528, about “unwise depletion of the obviously limited public funds available for the defense of indigents.” Because we are convinced that the issue which petitioner sought to raise is not appropriately framed for resolution in the context of a capital case, we would recommend to the bench and bar that judicial resources be applied to more fruitful endeavors.

In the record before us, the petitioner has made an elaborate presentation of testimony and data purporting to show that prosecutors in this State consciously and

systematically choose to seek the death penalty in a racially discriminatory manner. As noted by the post-conviction court in its Order, the petitioner has relied upon gross statistics and probabilities. The petitioner has elected not to consider various intangible factors entering into prosecutorial decisions. The petitioner has provided no direct testimony to support his charge that impermissible influences routinely distort the application of capital punishment throughout this State.

In the final analysis, the allegation of statewide “patterns” raised by a specific capital defendant has no real bearing upon his individual guilt or innocence nor upon the correctness of any sentence imposed in his particular case. The commission of an aggravated murder places every potential defendant at risk; he may indeed be ultimately sentenced to death. On the other hand, he may never be caught. He may never be tried, for any number of reasons. He may plead guilty or be tried on a lesser charge. A jury may, for reasons of its own, elect to acquit him or, in sentencing, elect to spare his life. Our role as an appellate court is not to base rulings upon such possibilities. Far less are we entitled to intrude upon the operations of executive officers when we have no more than general data compiled for academic purposes.

The petitioner acknowledges that this Court has already settled the scope of proportionality review. State v. Copeland, 278 S.C. 572, 586-596, 300 S.E.2d 63, cert. denied, 460 U.S. 1103, 103 S.Ct. 1802, 76 L.Ed.2d 367. Prosecutorial discretion plays no role in such review, yet the sole basis upon which this or any other petitioner could offer a showing of “patterns” would be an argument based on disproportionate punishment. We are not persuaded and accordingly we recommend that the bench and bar focus attention upon real and substantial issues in future capital cases.

Thompson v. Aiken, 281 S.C. 239, 241-42, 315 S.E.2d 110, 111 (1984).

Further, as to subpart (3), “The South Carolina Supreme Court consistently fails to fulfill its statutory and constitutional obligation to conduct a meaningful proportionality review in capital cases,” there is no merit to this ground. In Pulley v. Harris, 465 U.S. 37, 104 S.Ct. 871, 79 L.Ed.2d 29 (1984), the United States Supreme Court held that proportionality review, comparing the sentence in the case before the court with the penalties imposed in similar cases, is not constitutionally required. State v. Koon, 285 S.C. 1, 3-4, 328 S.E.2d 625, 626 (1984). See State v. Copeland, 278 S.C. 572, 591 S.E.2d 63 (1975); State v. Dickerson, 395 S.C. 101, 716 S.E.2d 895 (2011),⁶Pleicones, C.J.,

⁶ In Dickerson, the Supreme Court stated in rejecting the appellant similar proportionality claim:

Before the circuit court, Dickerson argued that our current proportionality review is deficient because it fails to examine cases where death was not imposed and cases where death was not even sought. See State v. Copeland, 278 S.C. 572, 591, 300

concurring in result; State v. Inman, 395 S.C. 539, 720 S.E.2d 31 (2011). See S.C. Code Ann. Section 16-3-20 & 16-3-25. As noted above, statutory proportionality review was completed by the Supreme Court in this case.

Further, as to subpart (4), “the death penalty is unconstitutional because it is unreliable, arbitrary, and lacks penological purpose,” it is procedurally barred under Drayton v. Evatt, *supra.*, for the reasons stated above. Further this issue was addressed as a matter of state law in State v. Shaw, 273 S.C. 194, 255 S.E.2d 799 (1979) and its progeny. There is no merit to this ground as a free-

S.E.2d 63, 75 (1982). He primarily relied upon Justice Stevens's statement regarding the denial of certiorari in Walker v. Georgia — U.S. —, 129 S.Ct. 453, 172 L.Ed.2d 344 (2008) (memorandum opinion), in which he wrote that examining similar cases “assume[s] that the court would consider whether there were ‘similarly situated defendants’ who had *not* been put to the death because that inquiry is an essential part of any meaningful proportionality review.” *Id.* at 454. In his view, this analysis is “judicious because, quite obviously, a significant number of similar cases in which death was not imposed might well provide the most relevant evidence of arbitrariness in the sentence before the court.” *Id.* Justice Stevens noted,

Had the Georgia Supreme Court looked outside the universe of cases in which the jury imposed a death sentence, it would have found numerous cases involving offenses very similar to petitioner's in which the jury imposed a sentence of life imprisonment. If the Georgia Supreme Court had expanded its inquiry still further, it would have discovered many similar cases in which the State did not even seek death. Cases in both of these categories are eminently relevant to the question of whether a death sentence in a given case is proportionate to the offense. The Georgia Supreme Court's failure to acknowledge these or any other cases outside the limited universe of cases in which the defendant was sentenced to death creates an unacceptable risk that it will overlook a sentence infected by impermissible considerations.

Id. at 455–56 (citations omitted). This issue is not before us on appeal, and it would require us to overrule our prior decision in Copeland. However, we note our concern that restricting our statutorily-mandated proportionality review to only similar cases where death was actually imposed is largely a self-fulfilling prophecy as simply examining similar cases where the defendant was sentenced to death will almost always lead to the conclusion that the death sentence under review is proportional.

State v. Dickerson, 395 S.C. 101, 125, 716 S.E.2d 895, 908 (2011).

standing challenge to the death penalty for murder in a collateral proceeding. See S.C. Code Ann. Section 16-3-10 & 16-3-20, 16-3-25, 16-3-26, & 16-3-28.

In Gregg v. Georgia, 428 U.S. 153, 96 S.Ct. 2909, 49 L.Ed.2d 859 (1976), the Supreme Court rejected the argument that the death penalty is *per se* unconstitutional. The Gregg court recognized that the death penalty serves the dual purposes of retribution and deterrence. It recognized that retribution “though unappealing to many, ... is essential in an ordered society that asks its citizens to rely on legal processes rather than self-help to vindicate their wrongs.” Id., at 184, 96 S.Ct. at 2930. The Gregg court also recognized the complexity of evaluating the deterrent effect of capital punishment, and it wisely noted that the responsibility for making such an evaluation “properly rests with the legislatures.” Id., at 186-187, 96 S.Ct. at 2930. The Supreme Court has cited Gregg with approval in recent decisions, stating in one case that: “[O]ur decisions in this area [constitutionality of methods of execution] have been animated in part by the recognition that because it is settled that capital punishment is constitutional, ‘[i]t necessarily follows that there must be a [constitutional] means of carrying it out.’ ” Glossip v. Gross, 135 S.Ct. 2726 (2015), citing Baze v. Rees, 553 U.S. 35, 47, 128 S.Ct. 1520 (2008). In his concurring opinion, Justice Scalia summarized the state of the law on this very question.

“Mind you, not once in the history of the American Republic has this Court ever suggested the death penalty is categorically impermissible. The reason is obvious: it is impossible to hold unconstitutional that which the Constitution explicitly *contemplates*. The Fifth Amendment provides that ‘[n]o person shall be held to answer for a capital ... crime, unless on a presentment or indictment of a Grand Jury,’ and that no person shall be ‘deprived of life ... without due process of law.’ ” Glossip, *supra*, at 2747.

The relief Applicant seeks in this claim - the complete abolition of the death penalty - would properly be achieved by an amendment to the federal Constitution. As it stands, the amended

application ignores the Fifth Amendment and Eighth Amendment, minimizes the retributive value of capital punishment, and, if granted, would usurp the legislative prerogative for determining the appropriate penalties available for the worst of offenses.

Even though infrequently imposed, the death penalty provides an appropriate avenue by which society may express its moral outrage against the depravity of murders, like the one committed by Applicant. The death penalty also provides a means of justice for those families of the murdered who seek to have it imposed against the murderer. Certainly, some families of murder victims do not seek capital punishment. But for those who do, it would be indecent to deprive them of this long-recognized and constitutional means of obtaining justice, regardless of any delays in the ultimate execution of the sentence. These considerations should not be lightly overlooked. That lengthy delays exist and that some jurisdictions have halted executions are not support for considering again the constitutionality of the death penalty as it exists today. Rather, they evidence the care that society is taking to ensure that death penalties are meted out to the truly deserving, like Inman.

By its decisions in Atkins v. Virginia, 536 U.S. 304, 122 S.Ct. 2242, 153 L.Ed.2d 335 (2002); Roper v. Simmons, 543 U.S. 551, 125 S.Ct. 1183, 161 L.Ed.2d 1 (2005); Kennedy v. Louisiana, 554 U.S. 407, 128 S.Ct. 2641, 171 L.Ed.2d 525 (2008), and Coker v. Georgia, 433 U.S. 584, 97 S.Ct. 2861, 53 L.Ed.2d 982 (1977), the Supreme Court limited the instances in which the death penalty could be imposed. Now, in line with the prevailing standards of decency in our ever evolving society, the death penalty is barred as to rapists of both adult women and children who do not kill, murderers who are mentally retarded (intellectually disabled), and murderers who were under the age of 18 at the time of the crime. In holding that the death penalty is violative of the Eighth Amendment in Coker and Kennedy, the opinion distinguished between the severity and irrevocability of an intentional first degree murder as compared to a non-homicide crime such as rape. Kennedy, 554 U.S. at 438, 128 S.Ct. at 2660; Coker, 433 U.S. at 598, 97 S.Ct. at 2861. In Atkins and Roper, the court found murderers who are “mentally retarded” and those who were under the age of 18 to be

"categorically less culpable than the average criminal." Atkins, 536 U.S. at 316, 122 S.Ct. at 2242; Roper, 543 U.S. at 567, 125 S.Ct. at 1194.

Here, the penalty imposed against Inman, a fully culpable adult, is not barred by precedent confining the instances where the death penalty may be imposed and is not offensive to prevailing and evolving standards of decency in today's world.

CONCLUSION

For the above stated reasons, Respondent is entitled to the granting of its Motion for Summary Judgment or in the alternative to Dismiss the above grounds.

Respectfully submitted,

ALAN WILSON
Attorney General

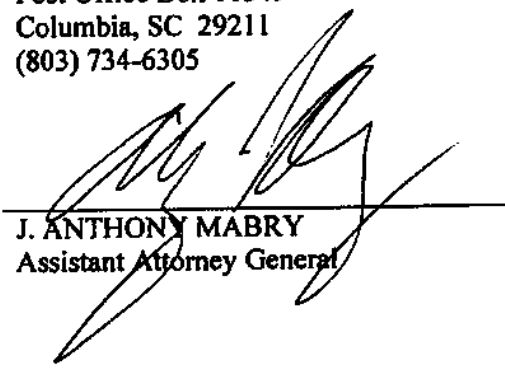
JOHN W. McINTOSH
Chief Deputy Attorney General

DONALD J. ZELENKA
Senior Assistant Deputy Attorney General

J. ANTHONY MABRY
Assistant Attorney General

S.C. Bar No. 11973
Post Office Box 11549
Columbia, SC 29211
(803) 734-6305

By:


J. ANTHONY MABRY
Assistant Attorney General

July 1, 2016

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CLERK OF COURT
PICKENS COUNTY
SOUTH CAROLINA

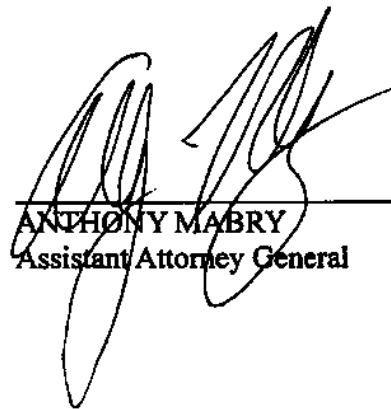
CERTIFICATE OF SERVICE

I, Anthony Mabry, certify that I have served Respondent's Motion for Summary Judgment or in the Alternative to Dismiss (Rules 21(b)(6) & 56, SCRCF) by depositing one copy to his counsel of record in the United States mail, postage prepaid, addressed as follows:

Diana L. Holt, Esquire
Diana L. Holt, LLC
P. O. Box 6454
Columbia, SC 29260-6454

E. Charles Grose, Jr., Esquire
The Grose Law Firm
404 Main Street
Greenwood, SC 29646

This 1st day of July, 2016.



ANTHONY MABRY
Assistant Attorney General

STATE OF SOUTH CAROLINA PM 12 59
COUNTY OF Pickens

Jerry Inmon

Plaintiff,

vs.

State of South Carolina

Defendant.

IN THE COURT OF COMMON PLEAS
13th JUDICIAL CIRCUIT

CASE NO.: 2012 -CP-39-0918

**MOTION AND ORDER INFORMATION
FORM AND COVERSHEET**

Plaintiff's Attorney:

Charles Grose, Bar No. 66063

Address:

404 Main Street, Greenwood, SC 29646

Phone: 864-538-4466 Fax 864-538-4405

E-mail: charles@groselawfirm.com Other:

Defendant's Attorney:

Anthony Mabry, Bar No. _____

Address:

PO Box 11549, Columbia, SC 29211

Phone: _____ Fax _____

E-mail: amabry@scag.gov Other:

- ☐ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)
☒ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)
☐ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)

SECTION I: Hearing Information

Nature of Motion: Cross Motion for Summary Disposition

Estimated Time Needed: _____

Court Reporter Needed: ☐ YES/☐ NO

SECTION II: Motion/Order Type

- ☒ Written motion attached
☐ Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.

Signature of Attorney for ☒ Plaintiff/☐ Defendant

August 8, 2016
Date submitted

SECTION III: Motion Fee

- ☐ PAID - AMOUNT: \$ _____
☒ EXEMPT: (check reason)
☐ Rule to Show Cause in Child or Spousal Support
☐ Domestic Abuse or Abuse and Neglect
☐ Indigent Status ☐ State Agency v. Indigent Party
☐ Sexually Violent Predator Act ☒ Post-Conviction Relief
☐ Motion for Stay in Bankruptcy
☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP)
☐ Proposed order submitted at request of the court; or,
reduced to writing from motion made in open court per judge's instructions
Name of Court Reporter: _____
☐ Other: _____

JUDGE'S SECTION

- ☐ Motion Fee to be paid upon filing of the attached order.
☐ Other: _____

JUDGE CODE _____

Date: _____

CLERK'S VERIFICATION

Collected by: B. Fox Date Filed: _____

- ☐ MOTION FEE COLLECTED: \$ _____
☐ CONTESTED - AMOUNT DUE: \$ _____

THE STATE OF SOUTH CAROLINA)
COUNTY OF PICKENS)
) IN THE COURT OF COMMON PLEAS
) THIRTEENTH JUDICIAL CIRCUIT

Case No. 2012-CP-39-00918

Jerry Buck Inmon,

Applicant,)

**Mr. Inmon's Cross-Motion for Summary
Disposition**

vs.)

State of South Carolina,

Respondent.)

The applicant, Jerry Inmon, moves the Court for an order granting a summary disposition on the following grounds for relief set forth in his First Amended Application for Post-Conviction Relief:

10(c) Mr. Inmon was denied the right to effective assistance of counsel—guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution and by Article I, §§ 3 and 14 of the South Carolina Constitution—during the appeal of his capital trial.

11(c)(1) Appellate counsel was ineffective for not appealing the trial court judge denying Mr. Inmon his request to plead guilty and have his sentence determined by a jury when that right is protected by the Fifth, Sixth, Eighth, and Fourteenth Amendments to the United States Constitution and trial counsel had preserved that issue for appellate review.

10(d) S.C. Code Ann. § 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. § 16-3-20, as written by the General Assembly and construed by the South Carolina Supreme Court, denied Mr. Inmon 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.

In support of this motion, Mr. Inmon respectfully requests this Court consider the following materials that are already a part of the record:

1. Written motion and memorandum dated September 12, 2008 to

determine the mode of trial;

2. Transcript of hearing dated September 14, 2007 regarding the motion to determine the order of trial;
3. Order denying Mr. Inmon's motion for mode of trial;
4. Brief of Appellant dated January 2, 2008;
5. Order of the South Carolina Supreme Court dated January 9, 2008;
6. Guilty plea transcript dated August 19, 2008;
7. Sentencing hearing transcript dated September 8, 2008; and
8. Written opinion of the South Carolina Supreme Court, *State v. Inman*, 395 S.C. 539, 720 S.E.2d 31 (2011).

I. FACTUAL AND PROCEDURAL BACKGROUND.

On September 12, 2007, Mr. Inmon served his motion and memorandum to determine the mode of his capital trial. On September 14, 2007, the trial judge convened a hearing on the motion to determine the mode of his capital trial. Tr. (9/14/2007) 24-54. Trial counsel informed the court that Mr. Inmon "wants to plead guilty" because "[h]e wants to accept responsibility for what he has done, and "[t]he only way he can adequately show the remorse he feels and acknowledge the moral guilt that he is dealing with is to" plead guilty. Trial counsel continued, "[T]he issue that has been building in South Carolina and in the federal courts is, does a defendant have a separate right to a jury trial sentencing?" Trial counsel explained, "A defendant has two separate trial rights, the right to a trial . . . during the guilt phase. It is not until after that guilt is established that he then has a right to a trial for the sentencing phase." Tr. (9/14/2007) 24-25. Trial counsel further argued, "[T]he guilty plea doesn't change the fact that a defendant has a right to demand any further fact finding that's going to take place to be done before a jury." Tr. 36. Trial counsel relied on *Blakely v. Washington*, 542 U.S. 296, 307 (2004)

(holding that the state trial court's sentencing of defendant to more than three years above the 53-month statutory maximum of the standard range for his offense, on basis of sentencing judge's subjective finding that defendant acted with deliberate cruelty, violated defendant's Sixth Amendment right to trial by jury).

By written order dated November 15, 2007, the trial judge denied Mr. Inmon's motion to be sentenced by a jury following his guilty plea. After the trial judge denied Mr. Inmon's motion, Mr. Inmon attempted an interlocutory appeal to the South Carolina Supreme Court. By written order dated January 9, 2008, the Supreme Court dismissed the appeal as interlocutory.

Both Mr. Inmon's written motion and appellate brief argued our state's statute disallowing jury sentencing following a guilty plea infringes on Mr. Inmon's Sixth Amendment right to have a jury decide sentencing enhancing facts following a guilty plea. In addition to *Blakeley*, Mr. Inmon also relied on decisions from other states. *People v. Montour*, 157 P.3d 489, 497 (Colo. 2007) (holding provision of death penalty statute that mandated that defendant waive his right to a jury trial on sentencing facts when he pled guilty violated defendant's Sixth Amendment rights); *State v. Page*, 2006 S.D. 2, ¶ 71, 709 N.W.2d 739, 762 (2006) ("We agree with Page's argument that under *Ring*, a capital sentencing scheme would be unconstitutional if it prevented a defendant who pleaded guilty from having alleged aggravating circumstances found by a jury."); *State v. Piper*, 2006 S.D. 1, ¶ 48, 709 N.W.2d 783, 803 (2006) ("We agree with Piper's argument that under *Ring*, a capital sentencing scheme would be unconstitutional if it prevented a defendant who pleaded guilty from having alleged aggravating circumstances found by a jury."); and *State v. Louviere*, 833 So. 2d 885, 895 (La. 2002) ("Only this interpretation of Art. I § 17—that the legislature is thereby restricted only inasmuch as any capital sentencing

scheme must put the penalty issue before the jury—preserves a capital defendant's ability to present a defense of his choice, while preventing the infirmity ultimately found in *Ring*.”).

On August 19, 2008, Mr. Inmon pleaded guilty to murder, first-degree burglary, kidnapping, and first-degree criminal sexual conduct. Prior to accepting the guilty plea, the trial judge explained to Mr. Inmon his rights in a capital case and advised him that by pleading guilty he gave up his right to have jurors determine his sentence. Trial counsel reminded the court about the hearing on the motion to allow Mr. Inmon to plead guilty and proceed with jury sentencing. Counsel reaffirmed his belief that the issue was preserved for appellate review. The trial judge explained to Mr. Inmon that South Carolina does not recognize conditional guilty pleas and stated, “Whether or not this issues is preserved for appeal is not something that I will address, and I have no control over it.” Tr. (8/18/2008) 19-23.

Trial counsel renewed Mr. Inmon’s demand for a jury trial for the sentencing phase of his capital trial. Tr. (9/8/2008) 17, lines 13-21. The trial judge then presided over a non-jury sentencing hearing. In addition to finding that the murder was committed “in the commission of the crimes of kidnapping, burglary in the first degree, and criminal sexual conduct in the first degree,” the trial judge found, “The circumstances surrounding the murder of Tiffany Souers are savage, brutal, and unconscionable.” Tr. 308-09. And, “This crime was horrific and was perpetrated on one of society’s most valuable citizens, a young woman full of life, energy and vitality, love for her family, and with a passion for life and for people, whose own life was marked by good deeds and generosity for others.” Tr. 314. The trial judge clearly struggled with his subjective feelings:

The concept of a fair sentence includes consideration of many factors, such as the seriousness of the crime, the culpability of the offender, characteristics of the offender, need for protection of society, and need for punishment and accountability.

Determining the proper sentence in a case in which the death penalty is sought is especially painful and agonizing. The death penalty is the ultimate sentence, which is to be imposed only in the worst cases and only after serious deliberate and consideration. 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.

Tr. 314-15.

On direct appeal, the South Carolina Supreme Court held the issue of whether the Constitution requires jury sentencing following a guilty plea was preserved for appellate review:

Turning to the facts of the instant case, we find that Inman's guilty plea was unconditional. Significantly, Inman never attempted to reserve the right to challenge or deny the merits of his guilt. Any condition that he sought to attach to the plea involved an 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. 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, 395 S.C. 539, 555, 720 S.E.2d 31, 40 (2011).¹ Our Supreme Court then held that Mr. Inmon “specifically abandoned this issue on appeal.” *Id.* at 556, 720 S.E.2d at 40.

II. STANDARD OF REVIEW.

This action is governed by the Uniform Post Conviction Relief Act, S.C. Code Ann. § 17-27-10, *et. seq.* “The court may grant a motion by either party for summary disposition of the application when it appears from the pleadings, depositions and admissions and agreements of fact, together with any affidavits submitted, that there is no genuine issue of material fact and the

¹ The State acknowledges this holding in footnote five of its motion.

moving party is entitled to judgment as a matter of law.” S.C. Code Ann. § 17-27-70.

Due process of law also requires that a defendant receive effective assistance of counsel on direct appeal. *Evitts v. Lucey*, 469 U.S. 387, 396 (1985). Effectiveness of appellate counsel is judged under the same test as other ineffectiveness claims. *Smith v. Robbins*, 528 U.S. 259 (2000); *Strickland v. Washington*, 466 U.S. 668 (1984). Certainly, appellate counsel has no constitutional duty to raise every nonfrivolous issue on appeal. *Jones v. Barnes*, 463 U.S. 745 (1983); *Thrift v. State*, 302 S.C. 535, 397 S.E.2d 523 (1990). In most cases, the reason for abandoning one issue is to enable counsel to focus on the more meritorious issues, since a “brief that raises every colorable issue runs the risk of burying good arguments.” *Jones*, 463 U.S. at 752-53. Appellate counsel, however, is ineffective for not raising a meritorious issue entitling an appellant to relief. *See, e.g., Southerland v. State*, 337 S.C. 610, 524 S.E.2d 833 (1999) (appellate counsel provided ineffective assistance of counsel that required a new capital sentencing trial by failing to assert, as trial counsel had, that the defendant was entitled to a charge that life is to be understood in its “ordinary and plain meaning,” pursuant to *State v. Norris*, 285 S.C. 86, 328 S.E.2d 339 (1985)). *See also Carter v. Bowersox*, 265 F.3d 705 (8th Cir. 2001) (appellate counsel was ineffective in failing to assert as error that the trial court failed to instruct the jury, as required by state law, that if it failed to make a unanimous finding that the death penalty was warranted by evidence in aggravation of punishment, it was required to return a life sentence); *Commonwealth v. Chambers*, 807 A.2d 872 (Pa. 2002) (appellate counsel ineffective for failing to assert as error the trial court’s instruction that once the jurors “have unanimously found an aggravating circumstance, before they can weigh aggravating circumstances against any mitigating circumstances, they must all find the existence of at least one mitigating circumstance. This is not a correct articulation of the law”).

III. ARGUMENT.

A. Paragraphs 10(c) & 11(c)(1) – Ineffective Assistance of Counsel for Failure to Appeal the trial court judge denying Mr. Inmon his request to plead guilty and have his sentence determined by a jury.

In its motion, at pp. 11-15, the State argues that Mr. Inmon did not preserve this issue for appeal and, therefore, appellate counsel could not be ineffective for not raising it on appeal. As seen, this argument is conclusively refuted by our Supreme Court's opinion in Mr. Inmon's direct appeal. *Inman*, 395 S.C. at 555-56, 720 S.E.2d at 40.

Since this issue was preserved for appeal, this issue before this Court is whether Mr. Inmon received ineffective assistance of appellate counsel who failed to brief it for appellate review. Based on the extensive litigation of this issue, trial counsel obviously believed it to be an important issue for future appellate review. Although appellate counsel can make a strategic decision² to abandon an issue on appeal, it would not be a valid strategic decision to abandon a winning issue on appeal. *See e.g. Patrick v. State*, 349 S.C. 203, 562 S.E.2d 609 (2002) (holding that appellate counsel was ineffective in failing to adequately raise or brief the issue of prosecutorial retaliation). This Court, therefore, must consider the merits of Mr. Inmon's contention that the Sixth Amendment requires jury sentencing. This issue can be determined as a matter of law.

The State's relies on *State v. Allen*, 386 S.C. 93, 101-02, 687 S.E.2d 21, 25 (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); and *State v. Downs*, 361 S.C. 141, 146, 604 S.E.2d 377, 380 (2004). Motion, p. 14.

² *See e.g. Freiburger v. State*, 413 S.C. 243, 247, 775 S.E.2d 391, 393 (Cl. App. 2015) ("If the State contends the alleged deficiency resulted from a strategic decision made at trial, counsel must articulate a valid reason for employing a certain strategy."); *Ingle v. State*, 348 S.C. 467, 470, 560 S.E.2d 401, 402 (2002) ("Counsel must articulate a **valid** reason for employing a certain strategy to avoid a finding of ineffectiveness." (emphasis supplied by court)).

None of these cases, however, cited *Blakeley*.³ *Blakeley*, as a superseding contrary decision of the Supreme Court,” *United States v. Collins*, 415 F.3d 304, 311 (4th Cir. 2005), allows this Court to consider the merits of Mr. Inmon’s arguments that are contrary to *Allen*, *Crisp*, and *Downs*.

Blakeley followed *Apprendi v. New Jersey*, 530 U.S. 466 (2000) and *Ring v. Arizona*, 536 U.S. 584 (2002). “In each case, [the Supreme Court] concluded that the defendant’s constitutional rights had been violated because the judge had imposed a sentence greater than the maximum he could have imposed under state law without the challenged factual finding.” *Blakeley* at 303. *Blakeley* “was sentenced to more than three years above the 53-month statutory maximum of the standard range because the sentencing judge subjectively found that *Blakeley* had acted with ‘deliberate cruelty.’ The facts supporting that finding were neither admitted by [*Blakeley*] nor found by a jury.” *Id.* The Court held, “[T]he State’s sentencing procedure did not comply with the Sixth Amendment” and *Blakeley*’s “sentence [was] invalid.” *Id.* at 305.

This Court, therefore, must consider whether the trial court judge found any fact beyond Mr. Inmon’s admissions during his guilty plea to support imposing the death sentence. In South Carolina, a death sentence is never required, even with a finding of an aggravating circumstance. S.C. Code Ann. § 16-3-20(B) and (C). The trial judge expressly stated that, in addition to the statutory aggravating factors, he considered the circumstances of the crime, the characteristic of Mr. Inmon, victim impact evidence, and penological justifications for sentencing. Our state’s

³ The South Carolina appellate courts have cited *Blakeley* on three occasions. *State v. Rice*, 401 S.C. 330, 737 S.E.2d 485 (2013) (held that *Apprendi* was not applicable to a family court juvenile waiver hearing); *Dervin v. State*, 386 S.C. 164, 687 S.E.2d 712 (2009) (held that trial counsel was ineffective in failing to object to imposition of 25-year sentence when maximum sentence was 10 years); *State v. Brown*, 360 S.C. 581, 602 S.E.2d 392 (2004) (evidence did not establish that defendant actually used aggravated force on or about time of sexual assaults, as element of first-degree criminal sexual conduct). None of these cases considered the issue currently before this Court.

capital sentencing scheme allows for consideration of the specific circumstances of the crime and the character of the defendant. In a capital “sentencing proceeding, the jury or judge shall hear additional evidence in extenuation, mitigation, or aggravation of the punishment.” S.C. Code Ann. § 16-3-20(B). *And see State v. Stewart*, 283 S.C. 104, 107, 320 S.E.2d 447, 450 (1984) (“Before a death sentence may be imposed, the attention of the jury or judge must be directed to the specific circumstances of the crime and the characteristics of the person who committed the crime.”); *State v. Plath*, 281 S.C. 1, 15, 313 S.E.2d 619, 627 (1984) (“the sole function of the jury in a capital sentencing trial is the individualized selection of one or the other penalty, based upon the circumstances of the crime and characteristics of the individual defendant.”). South Carolina’s capital sentencing scheme additionally allows the sentencing authority to consider victim impact evidence. *Payne v. Tennessee*, 501 U.S. 808 (1991); *State v. Bixby*, 388 S.C. 528, 698 S.E.2d 572 (2010); *Lucas v. Evatt*, 308 S.C. 31, 33, 416 S.E.2d 646, 647 (1992); *State v. Johnson*, 306 S.C. 119, 410 S.E.2d 547 (1991). Protection of the community, punishment, and accountability are traditional sentencing considerations. *See e.g. Graham v. Florida*, 560 U.S. 48, 71-74 (2010) (discussing “penological justifications” including retribution, deterrence, incapacitation, and rehabilitation).

In Mr. Inmon’s case, the sentencing judge, as provided for by our state’s capital sentencing scheme, considered more than Mr. Inmon’s admissions to the elements of murder, first-degree burglary, kidnapping, and first-degree criminal sexual conduct. The trial judge subjectively found the crime “horrific,” “savage, brutal, and unconscionable.” The trial judge further subjectively found Mr. Inmon to be “within a small group of deviant predators who exhibit in their conduct a callous disregard for society and the rights and safety of others.” The trial court subjectively made findings of fact concerning victim impact evidence. Under

Blakeley, a jury and not a judge must decide all of these facts, which the trial judge used to enhance Mr. Inmon's sentence. That did not happen here. Because consideration of *Blakeley* would have led our Supreme Court to a different outcome, appellate counsel was ineffective for not raising and briefing this meritorious issue on appeal, and Mr. Inmon was prejudiced by that failure. *Strickland and Patrick, supra*.

Based on the foregoing, this Court should deny the State's motion for summary disposition, grant Mr. Inmon's motion for summary disposition, grant post-conviction relief, and remand this case to the Pickens County Court of General Sessions for sentencing by a jury.

B. Paragraphs 10(d) & 11(d) – S.C. Code Ann. § 16-3-20, as written by the General Assembly and construed by the South Carolina Supreme Court, denied Mr. Inmon 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.

At the hearing on July 26, 2016, Mr. Inmon argued that this claim is based on *Hurst v. Florida*, __ U.S. __, 136 S. Ct. 616, 193 L. Ed. 2d 504 (2016).⁴ *Hurst*, of course, had not been decided at the time of Mr. Inmon's trial and direct appeal. As a constitutional decision binding on the Supreme Court of South Carolina, Mr. Inmon is allowed to present this claim in post-conviction relief. S.C. Code Ann. § 17-27-45(B).⁵

⁴ The decision in *Hurst* followed a jury trial where "Florida law required the judge to hold a separate hearing and determine whether sufficient aggravating circumstances existed to justify imposing the death penalty." 136 S. Ct. at 619. Like *Hurst*, Mr. Inmon chose to exercise his right for a jury to find facts relevant to punishment, but a judge determined those facts instead.

⁵ The State contends, "This is a free-standing claim that could have been raised at trial or on direct appeal if preserved at trial." Motion, p. 15. The Court should not be persuaded by the State's insistence that Mr. Inmon is raising a free-standing claim that is not cognizable in post-conviction relief because of S.C. Code Ann. § 17-27-45(B) allowing consideration of new, binding constitutional decisions. The State then argues, at pp. 15-27, that Mr. Inmon's guilty plea "waived and abandoned a jury determination of his guilt or innocence, the existence of statutory aggravating circumstances, statutory and non-statutory mitigating circumstances, and

Hurst 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 Supreme Court reviewed its evolving precedent:

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). 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 the 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), sentencing guidelines, *United States v. Booker*, 543 U.S. 220, 125 S.Ct. 738, 160 L.Ed.2d 621 (2005), criminal fines, *Southern Union Co. v. United States*, 567 U.S. —, 132 S.Ct. 2344, 183 L.Ed.2d 318 (2012), mandatory minimums, *Alleyne*, 570 U.S., at —, 133 S.Ct., at 2166 and, in *Ring*, 536 U.S. 584, 122 S.Ct. 2428, 153 L.Ed.2d 556, capital punishment.

Id. at 621.

As set forth in Section A above, Mr. Inmon’s sentencing judge, as provided for by our state’s capital sentencing scheme, impermissibly and subjectively considered more than Mr. Inmon’s admissions to the elements of murder, first-degree burglary, kidnapping, and first-degree criminal sexual conduct. Proof of one or more aggravating circumstance is necessary for someone to be eligible for a death sentence but not enough to **impose** a death sentence under S.C. Code Ann. § 16-3-20. Here, in deciding to **impose** a death sentence, the trial judge impermissibly and subjectively found the crime “horrific,” “savage, brutal, and unconscionable.” The trial judge impermissibly and subjectively further found, without scientific evidence or the appropriate sentence.” These arguments ignore our Supreme Court’s holding that the separate sentencing issue was preserved for appeal. *Inman*, 395 S.C. at 555-56, 720 S.E.2d at 40.

record bases, Mr. Inmon to be “within a small group of deviant predators who exhibit in their conduct a callous disregard for society and the rights and safety of others.” The trial court made findings of fact concerning victim impact evidence. Under *Hurst*, a jury and not a judge must decide all of these facts, which the trial judge used to *impose* a death sentence. That did not happen here.

To the extent there might be any doubt about the validity of Mr. Inmon’s position on jury sentencing under *Blakeley*, *Hurst* removed that doubt. *Hurst* is a new binding constitutional decision entitling Mr. Inmon to post-conviction relief pursuant to S.C. Code Ann. § 17-27-45(B). See e.g. *Franklin v. Maynard*, 356 S.C. 276, 588 S.E.2d 604 (2003) (declaring procedures for implementing *Atkins v. Virginia*, 536 U.S. 304 (2002) holding it unconstitutional to execute people with Intellectual Disabilities).

Hurst is retroactive. See *Montgomery v. Louisiana*, __ U.S. ___, 136 S. Ct. 718, 193 L. Ed. 2d 599 (2016) (Supreme Court’s decision in *Miller v. Alabama*, prohibiting under Eighth Amendment mandatory life sentences without parole for juvenile offenders, announced a new substantive constitutional rule that was retroactive on state collateral review); *Aiken v. Byars*, 410 S.C. 534, 765 S.E.2d 572 (2014) (United State Supreme Court decision in *Miller v. Alabama*, holding that mandatory imposition of life without parole on juveniles was cruel and unusual punishment, applied retroactively).

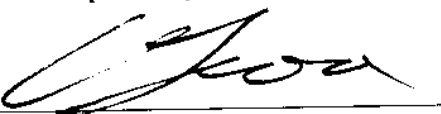
Based on the foregoing, this Court should deny the State’s motion for summary disposition, grant Mr. Inmon’s motion for summary disposition, and remand this case to the Pickens County Court of General Sessions for sentencing by a jury.

IV. CONCLUSION.

This Court should grant Mr. Inmon's motion for summary disposition of paragraphs 10(c) & 11(c)(1) and 10(d) & 11(d) of Mr. his first amended application for post-conviction relief, grant Mr. Inmon post-conviction relief, and remand his case to the Court of General Sessions of Pickens County for sentencing by a jury.

IT IS SO MOVED.

Respectfully Submitted,

By 

Diana Holt
Diana Holt, LLC
Post Office Box 6454
Columbia, South Carolina 29260-6454
Phone: 803-782-1663
Email: DianaHolt@dianaholtllc.com

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

August 8, 2016

THE STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF PICKENS) THIRTEENTH JUDICIAL CIRCUIT

Jerry Inmon

CLERK) COURT
PICKENS COUNTY)
SOUL)
Applicant)

Case No. 2012-CP-39-918

vs.

State of South Carolina

Respondent)

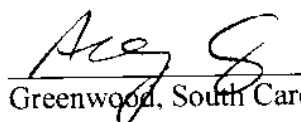
I certify that I have served a copy of this pleading on the State of South Carolina by placing a copy in the US Mail, postage prepaid, on the date reflected below, addressed to

J. Anthony Mabry, Esquire
S.C. Attorney General's Office
PO Box 11549
Columbia, SC 29211

By



E. Charles Grose, Jr.
The Grose Law Firm, LLC
404 Main Street
Greenwood, SC 29646
(864) 538-4466

 2016
Greenwood, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF PICKENS

Jerry B. Inmann

vs.

State of South Carolina

Plaintiff,

Defendant.

IN THE COURT OF COMMON PLEAS

13th JUDICIAL CIRCUIT

CASE NO.: 2012-CP-39-00918

**MOTION AND ORDER INFORMATION
FORM AND COVERSHEET**

Plaintiff's Attorney:

Diana L. Holt, Bar No.

Address:

P. O. Box 6454, Columbia, SC 29260

Phone: (803) 782-1663

E-mail: dianaholt@utexas.edu Other:

Defendant's Attorney:

Christopher R. Antley, Jr., Bar No. 13631

Address:

P. O. Box 10387, Greenville, SC 29603

Phone: (864) 242-4050 Fax (864) 242-4277

E-mail: crantley@devlinparkinson.com Other:

☒ **MOTION HEARING REQUESTED** (attach written motion and complete SECTIONS I and III)

☐ **FORM MOTION, NO HEARING REQUESTED** (complete SECTIONS II and III)

☐ **PROPOSED ORDER/CONSENT ORDER** (complete SECTIONS II and III)

SECTION I: Hearing Information

Nature of Motion: Motion for Protective Order

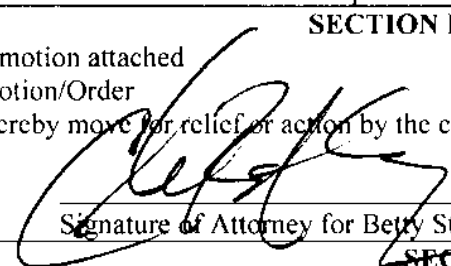
Estimated Time Needed: Court Reporter Needed: ☒ YES/☐ NO

SECTION II: Motion/Order Type

☒ Written motion attached

☐ Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.


Signature of Attorney for Betty Strom

August 17, 2016

Date submitted

SECTION III: Motion Fee

☒ PAID - AMOUNT: \$25.00

☐ EXEMPT:

(check reason)

☐ Rule to Show Cause in Child or Spousal Support

☐ Domestic Abuse or Abuse and Neglect

☐ Indigent Status ☐ State Agency v. Indigent Party

☐ Sexually Violent Predator Act ☐ Post-Conviction Relief

☐ Motion for Stay in Bankruptcy

☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP)

☐ Proposed order submitted at request of the court; or,
reduced to writing from motion made in open court per judge's instructions

Name of Court Reporter: _____

☐ Other: _____

JUDGE'S SECTION

☐ Motion Fee to be paid upon filing of the attached order.

☐ Other: _____

JUDGE CODE _____

Date: _____

CLERK'S VERIFICATION

Collected by: _____ Date Filed: _____

☐ MOTION FEE COLLECTED: \$ _____

☐ CONTESTED - AMOUNT DUE: \$ _____

SCCA 233 (11/2003)

2016 AUG 17 PM 3 29
CLERK OF COURT
PICKENS COUNTY
SOUTH CAROLINA

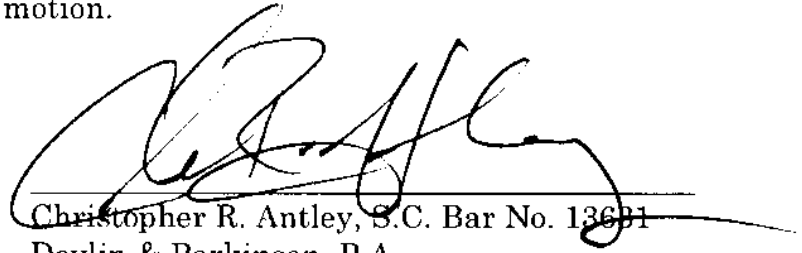
STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF PICKENS	)	Civil Action No. 2012-CP-39-00918
	)	
Jerry B. Inman,	)	
	)	
Plaintiff,	)	<i>IN RE: DEPOSITION OF BETTY C. STROM</i>
	)	
v.	)	DEPONENT BETTY C. STROM'S MOTION
	)	FOR PROTECTIVE ORDER AND FOR
State of South Carolina,	)	POSTPONEMENT OF DEPOSITION
	)	
Defendant.	)	<u>EXPEDITED CONSIDERATION REQUESTED</u>
	)	

TO: DIANA L. HOLT AND CHARLES GROSE, JR., ATTORNEYS FOR THE PLAINTIFF:

YOU WILL PLEASE TAKE NOTICE that on a day as soon as the Court is able to schedule a hearing, the Deponent, Betty C. Strom, will ask the Court to enter a protective order, protecting her from attending the deposition scheduled for Friday August 19, 2016. The Deponent asks that the deposition be rescheduled for another day for the following reasons:

1. In preparing for the upcoming deposition, the Deponent has determined that she needs the assistance of an attorney with experience in civil cases and the South Carolina Rules of Civil Procedure to represent the Deponent both in preparation for and in participating in the deposition.
2. The Thirteenth Circuit Solicitor's Office has hired attorney Christopher R. Antley to assist in this case. Attorney Antley assists the solicitor's office in civil matters and has represented the solicitor's office in the past in civil suits that involve the solicitor's office directly or, as in this case, indirectly.
3. Attorney Antley has a conflict on Friday, August 19, 2016, which requires him to be in Charleston, South Carolina for another case.
4. Also, Attorney Antley needs additional time to familiarize himself with the issues presented by this PCR and with the underlying criminal case.

We have attempted to consult with all attorneys of record in this case this morning (both by email and telephone), but our attempts have thus far been unsuccessful. Because of the time sensitivity of this matter, though, the Deponent is filing the motion and requesting that the Court schedule an expedited hearing or conference call to address this motion.



Christopher R. Antley, S.C. Bar No. 13681
Devlin & Parkinson, P.A.
P.O. Box 10387
Greenville, South Carolina
Phone: (864) 242-4050/ Fax: (864) 242-4277
crantley@devlinparkinson.com

Attorney for the Deponent, Betty C. Strom

Date: August 17, 2016
Greenville, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF PICKENS	)	Civil Action No. 2012-CP-39-00918
	)	
Jerry B. Inman,	)	
	)	
Plaintiff,	)	
	)	
v.	)	
	)	
State of South Carolina,	)	CERTIFICATE OF SERVICE
	)	
Defendant.	)	
	)	

I hereby certify that on the 17TH day of August, 2016, I served the following with a copy of **Betty C. Strom's Motion for Protective Order and for Postponement of Deposition** by depositing same in the United States Mail, postage prepaid and properly addressed as follows:

Diana L. Holt, Esq.
Diana Holt, LLC
P. O. Box 6454
Columbia, SC 29260-6454

E. Charles Grose, Jr., Esq.
Grose Law Firm
404 Main Street
Greenwood, SC 29646

Attorneys for Plaintiff

Donald J. Zelenka, Esq.
S.C. Attorney General's Office
P. O. Box 11549
Columbia, SC 29211-1549

Attorneys for Defendant

2016 AUG 17 PM 3 29
CLERK OF COURT
PICKENS COUNTY
SOUTH CAROLINA



Laura Kirwan

Legal Assistant to Christopher R. Antley
Devlin & Parkinson, P.A.

P.O. Box 10387
Greenville, SC 29603

2016 AUG 26 PM 3 33

STATE OF SOUTH CAROLINA
COUNTY OF PICKENS

CLERK OF COURT
IN THE COURT OF COMMON PLEAS
PICKENS COUNTY
CASE NO.: 2012-CP-39-918
SOUTH CAROLINA
(Capital PCR Action)

Jerry Buck Inmon, #5226,
a/k/a Jerry Buck Inman

Applicant,

Vs.

State of South Carolina,
Respondent.

ORDER DENYING AND DISMISSING

RESPONDENT'S MOTION FOR SUMMARY
JUDGMENT OR IN THE ALTERNATIVE MOTION
TO DISMISS (Rules 12(b)(6)&56, SCRPC)

And

APPLICANT'S CROSS-MOTION FOR
SUMMARY DISPOSITION, GRANTING PCR
AND REMANDING FOR JURY
SENTENCING

After careful and complete consideration of the motions and other filings of the parties, and the able arguments of counsel, the Court finds that the **Respondent's Motion for Summary Judgment or, in the alternative, to Dismiss the three grounds alleged in Applicant's Amended Application, and Applicant's Cross-Motion for Summary Disposition Granting Post Conviction Relief and Remanding this Case to the Court of General Sessions for Jury Sentencing**, each must be **DENIED** in all particulars.

The motions and cross-motion are brought pursuant to Rule 56 and Rule 12(b) (6), SCRPC. The grounds for the motions are founded on the alleged ineffective assistance of appellate counsel for the failure to appeal the trial court's denial of the Applicant's request to have his sentenced determined by a jury alleged in the Applicant's Amended Application as follows:

1 of 4



¶¶ 10(c) and 11(c) (1), the denial of rights to effective assistance of counsel and appellate counsel guaranteed by Article 1, §§ 3 and 14 of the Constitution of South Carolina and the Fifth, Sixth, Eighth and Fourteenth Amendments to the United States Constitution;

¶¶ 10(d) and 11(d), the capital sentencing provisions of S.C. Code Ann. § 16-3-20 (B) and (C) denial of the right to have a jury determine statutory aggravating and mitigating circumstances and sentence; and

¶¶ 10(e) and 11(e), the death sentence was obtained in violation of the Fifth, Sixth, Eighth and Fourteenth Amendments of the United States Constitution.

The Applicant's cross-motion for summary disposition regarding ¶¶ 10(c) & 11(c)(1) and 10(d) & 11(d) of Applicant's first amended application seeks post-conviction relief granting the remand of the case to the Court of General Sessions for Pickens County for re-sentencing by a jury.

Prior to trial, Applicant's trial counsel moved "to determine the mode of the trial" and "in his motion, sought to enter his guilty plea and demand a jury trial for sentencing." Because, "[u]nder the current law, the State asserts that the defendant must obtain the consent of the State and the Court in order to plead guilty," and "the State asserted that it will not give consent to the defendant to plead guilty and be sentenced by a jury," the Court ordered that "the defendant's motion is DENIED." Order of Presiding Judge, dated November 15, 2007. Thereafter, the



Applicant “filed a notice of appeal from the order of the circuit court denying his Motion to Determine Mode of Trial,” and a unanimous Supreme Court held, “[h]owever, it has been long held in South Carolina that a criminal defendant may not appeal until after sentence has been imposed,” and ruled, “[a]ccordingly, the notice of *appeal is hereby dismissed without prejudice.*” ORDER, dated January 9, 2008 (emphasis supplied).

After the Applicant entered his pleas of guilty before the trial judge, on August 19, 2008, and sentencing was conducted by the court on September 8-1, 2008, and April 20-22, 2009, direct appeal was denied by the South Carolina Supreme Court, and *certiorari* denied by the United States Supreme Court, this PCR action was filed on June 21, 2012, and, then, on April 16, 2016, this Amended PCR Application was filed relying upon the recent decision of the United States Supreme Court, *Hurst v. Florida*, ____ U.S. ____, 136 S. Ct. 616, 193 L. Ed.2d, 504 (2016), within the time provided by S.C. Ann. § 17-27-45 (B). The Supreme Court in *Hurst* held, in pertinent part, 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.” *Id.*, 136 S. Ct. at 624.

RULE 56(c), SCRPC, provides that: “[t]he judgement sought shall be rendered forthwith if the pleadings . . . show that there is no genuine issue as to any material fact and the moving party is entitled to a judgment as a matter of law.”

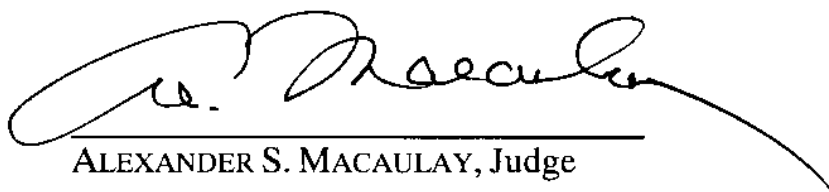
3 of 4



In light of the *Hurst* decision, the record raises issues of whether there could be and was there a freely, voluntarily, and knowingly waiver of “a substantive standard not previously recognized or a right not in existence at the time of the state court trial,” § 17-27-45(B). More, particular, was the waiver of the right to a jury trial voluntarily and knowingly made inasmuch as it was without the “benefit of considered advice of competent attorneys,” *cf. Sweet v. State*, 255 S.C. 293, 178 S.E. 657 (1971), who persistently declined to abandon those grounds for appeal.

Accordingly, in order to properly apply the law in this case, the court finds and concludes that summary judgment or other summary disposition would not be appropriate, and the Respondent’s Motion for Summary Judgment or, in the alternative, to Dismiss the three grounds alleged in Applicant’s Amended Application, and Applicant’s Cross-Motion for Summary Disposition, Granting Post Conviction Relief and Remanding this Case to the Court of General Session for Jury Sentencing, each, in all particulars, must be **DENIED**.

AND, IT SO ORDERED.


ALEXANDER S. MACAULAY, Judge

August 22, 2016
Walhalla, South Carolina

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

JUDGMENT IN A CIVIL CASE

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

Jerry Buck Inmon #5226
APPLICANT(S)

State of South Carolina
RESPONDENT(S)

Submitted by: The 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.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☒ Other: **See attached Order**
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRPC; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIUNAL, 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 Denying Motions of Applicant and Cross-Motion of Respondent for Summary Dispositions.

ORDER INFORMATION

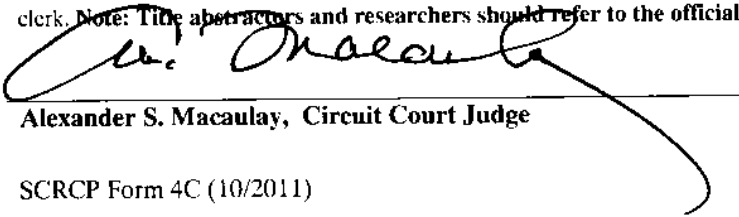
This order does not end the case.

Additional Information for the Clerk : Scheduling Order

INFORMATION FOR THE PUBLIC 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.


Alexander S. Macaulay, Circuit Court Judge

2063
Judge Code

8/22/2016
Date

2016 OCT 20 PM 12 40

THE STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	THIRTEENTH JUDICIAL CIRCUIT
COUNTY OF PICKENS	)	
	)	Case No. 2012-CP-39-918
Jerry Inmon	)	
	)	
	)	Second Amended Application for Post-
vs.	)	Conviction Relief
	)	
	)	
State of South Carolina	)	
	)	
	)	
	)	

The applicant, Jerry Inmon,¹ amends his application for post-conviction relief as follows:²

- 1) Mr. Inmon is confined at the Lieber Correctional Institution.
- 2) The Honorable Edward W. Miller, presiding judge of the Court of General Session for Pickens County, by special assignment of the Supreme Court, imposed the sentences.
- 3) There were not any co-defendants.
- 4) The State indicted Mr. Inmon for first-degree burglary (2006-GS-39-2222), first-degree criminal sexual conduct (2006-GS-39-2223), kidnapping (2006-GS-39-2224), and murder (2006-GS-39-2225).
- 5) On April 22, 2009, the Honorable Edward W. Miller sentenced Mr. Inmon to death for murder, thirty years' imprisonment for first-degree burglary, and thirty years' imprisonment for first-degree criminal sexual conduct. The sentences are consecutive. Pursuant to S.C. Code § 16-3-1910, Judge Miller did not impose a sentence for kidnapping.

¹ The respondent's last name is correctly spelled "Inmon." His last name is spelled "Inman" in prior proceedings and prior court documents in this case.

² This pleading is based on SCRCForm5, revised 3/2003, found on the South Carolina Judicial Department Website. Mr. Inmon reserves the right to amend his application as provided by law.

- 6) The sentences were imposed following a guilty plea, entered on August 19, 2008.
- 7) Mr. Inmon appealed to the Supreme Courts of South Carolina and the United States.
- 8) On December 28, 2011, the South Carolina Supreme Court affirmed Mr. Inmon's convictions and sentences. *State v. Inman*, 395 S.C. 539, 720 S.E.2d 31 (2011). On October 1, 2012, the Supreme Court of the United States denied Mr. Inmon's petition for a writ of *certiorari*. *Inman v. South Carolina*, 133 S. Ct. 219 (2012).
- 9) Not applicable because Mr. Inmon appealed.
- 10) Statement of grounds for relief:
 - (a) Mr. Inmon was denied the right to effective assistance of counsel—guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution and by Article I, §§ 3 and 14 of the South Carolina Constitution—during the guilt-or-innocence phase of his capital trial.
 - (b) Mr. Inmon was denied the right to effective assistance of counsel—guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution and by Article I, §§ 3 and 14 of the South Carolina Constitution—during the sentencing phase of his capital trial.
 - (c) Mr. Inmon was denied the right to effective assistance of counsel—guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution and by Article I, §§ 3 and 14 of the South Carolina Constitution—during the appeal of his capital trial.
 - (d) S.C. Code Ann. § 16-3-20, allowing for judge sentencing, violates the Fifth, Sixth, Eighth, and Fourteenth Amendments of the United States Constitution.
 - (e) Mr. Inmon's death sentence was obtained in violation of the Fifth, Sixth, Eighth, and Fourteenth Amendments to the United States Constitution.

(f) The cumulative effect of all of counsels' failures entitle Mr. Inmon to the relief sought because he was also prejudiced by the synergistic impact of the constitutional failures.

(g) Mr. Inmon was denied the right to a fair trial—as guaranteed by the Fifth, Sixth, Eighth, and Fourteenth Amendments to the United States Constitution and by Article I, §§ 3 and 14 of the South Carolina Constitution—during the sentencing phase of his capital trial because of prosecutorial misconduct.

(h) Mr. Inmon was denied the right to a fair trial—as guaranteed by the Fifth, Sixth, Eighth, and Fourteenth Amendments to the United States Constitution and by Article I, §§ 3 and 14 of the South Carolina Constitution—during the sentencing phase of his capital trial because of the rush to the forgone judicial conclusion that the sentence would be death.

Applicable case law: *Hill v. Lockhart*, 474 U.S. 52 (1985) (*Strickland* standard applies to guilty plea challenges based on ineffective assistance of counsel); *Pauling v. State*, 331 S.C. 606, 503 S.E.2d 468 (1998) (Counsel ineffective in burglary and criminal sexual conduct case for failing to call triage nurse as witness); *Thomas v. State*, 308 S.C. 123, 417 S.E.2d 531 (1992) (Ineffective for failing to interview witnesses who could have contradicted state's evidence); *Ingle v. State*, 25416 (2002) (Ineffective for failing to interview a witness before calling the witness to testify); *Frett v. State*, 298 S.C. 54, 378 S.E.2d 249 (1988) (Ineffectiveness so pervasive that showing of prejudice unnecessary); *State v. King*, 155 S.E. 409, 158 S.C. 251 (1930); *Strickland v. Washington*, 466 U.S. at 668, 695 ("In making this [prejudice] determination, a court hearing an ineffectiveness claim must consider the totality of the evidence before the judge or jury") (emphasis added); *Wiggins v. Smith*, 123 S.Ct. 2527, 2535-37 (2003) (holding trial counsel's failure to investigate and present mitigation evidence required new trial where counsel's failure to investigate was unreasonable under "prevailing professional norms,"

as measured in part by the ABA Standards); *Williams v. Taylor*, 529 U.S. at 397 (in assessing prejudice flowing from deficient performance, reviewing court must consider “the totality of the available mitigation evidence – both that adduced at trial, and the evidence adduced in the habeas proceeding”); *State v. Johnson*, 334 S.C. 78, 93, 512 S.E.2d 795, 803 (1999) (citations omitted) (“cumulative error doctrine provides relief to a party when a combination of errors that are insignificant by themselves have the effect of preventing a party from receiving a fair trial and it requires the cumulative effect of the errors to affect the outcome of the trial”).

Ineffective assistance of appellate counsel where trial counsel well-preserved constitutional and legal issues at trial: *Southerland v. State*, 337 S.C. 610, 524 S.E.2d 833 (1999) (requiring new sentencing trial where appellate counsel failed to raise on appeal a preserved and meritorious issue); *Evitts v. Lucey*, 469 U.S. 387, 105 S.Ct. 830, 83 L.Ed.2d 821 (1985) (to be effective appellate counsel must give assistance of such quality as to make appellate proceedings fair)); and see *Strickland v. Washington*, 466 U.S. 668, 685, 696, 104 S.Ct. 2052, 2063, 2069, 80 L.Ed.2d 674, 692, 699 (1984). *Ring v. Arizona*, 536 U.S. 584 (2002), (holding that the Sixth Amendment requires a jury to find the aggravating factors necessary for imposing the death penalty); and, *Hurst v. Florida*, 577 U.S. ____ (slip op. at 9) (2016), (overruling the holdings in *Spaziano v. Florida*, 468 U.S. 447 (1984) and *Hildwin v. Florida*, 490 U.S. 638, 640–641 (1989) reversing the holding that “the Sixth Amendment does *not* require that the specific findings authorizing the imposition of the sentence of death be made by the jury.”).

11) Statement of facts that support each of the grounds set forth in paragraph 10:

(a) Trial counsel was ineffective during the guilt-innocence phase for:

(1) Trial counsel was ineffective for advising Mr. Inmon to plead guilty and appeal the trial court judge denying his request to be sentenced by a jury when then existing state law

did not allow jury sentencing following a guilty plea in a capital case.

(2) Not developing information through experts retained by the defense that Mr. Inmon's sexual misconduct was the result of a rare medical condition that was treatable and controllable with a common drug, and failing to advise the Court, sitting in judgment of Mr. Inmon, of this evidence that supported a verdict of guilty but mentally ill.

(b) Trial counsel was ineffective during the sentencing phase for:

(1) Failing to obtain another mitigation expert witness after Dr. Marti Loring would not continue in Mr. Inmon's case because she was intimidated by the prosecutor who threatened to have her arrested if she testified, and Mr. Inmon was prejudiced by the same.

(2) In the alternative to (11)(b)(1), failing to continue to prepare with Dr. Loring in the event the trial judge reconvened the trial, as in fact occurred, and Mr. Inmon was prejudiced by the same.

(3) In the alternative to 11(b)(1) and 11(b)(2), counsel is informed and believes that trial counsel did obtain another mitigation expert witness but failed to prepare and present that witness to testify and render an expert opinion, and Mr. Inmon was prejudiced by counsel's deficient performance.

(4) Failing to investigate, develop, and/or present mitigation evidence that was available to trial counsel at the time of the sentencing hearing, including but not necessarily limited to social history information and adaptability to incarceration, and Mr. Inmon was prejudiced by the same.

(5) Developing information through experts retained by the defense that Mr. Inmon's sexual misconduct was the result of a rare medical condition that was treatable

and controllable with a common drug, and failing to advise the Court, sitting in decision of what punishment to mete out to Mr. Inmon, of this extraordinarily powerful mitigation evidence that was and is a treatable medical condition Mr. Inmon, and Mr. Inmon was prejudiced by counsels' failures.

(6) Failing to object to the rush to the forgone judicial conclusion that the sentence would be death. This ground is based on the deposition testimony of former Solicitor Robert M. Ariail:

And Judge Miller had an agenda, probably one of the better agendas. And that was: Let's get through this case. You know, I know what the decision – I know what the verdict is going to be. Let's get through it and quit interrupting.

(7) In the alternative to 11(b)(1), (2), (3), (4), (5), and (6), intentionally not presenting powerful, available mitigation evidence in order to create an issue for post-conviction relief. This alternate ground for relief is based on the deposition of testimony of former Solicitor Robert M. Ariail. If Solicitor Ariail is correct, then such conduct amounts to intentional sandbagging for which no strategic justification exists.

(c) Appellate counsel was ineffective for:

(1) Not appealing the trial court judge denying Mr. Inmon his request to plead guilty and have his sentence determined by a jury when that right is protected by the Fifth, Sixth, Eighth, and Fourteenth Amendments to the United States Constitution and trial counsel had preserved that issue for appellate review.

(2) Not appealing Mr. Inmon's motion to continue his sentencing hearing so that he would have sufficient time to obtain another mitigation expert witness after Dr. Marti Loring who refused to participate in Mr. Inmon's case because she was intimidated by the prosecutor.

(d) S.C. Code Ann. § 16-3-20, as written by the General Assembly and construed by the South Carolina Supreme Court, denied Mr. Inmon 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.

(c) The capital sentencing scheme in South Carolina violates the Constitution because its methods for the imposition and review of capital punishment suffers the same infirmities as the statute rejected as unconstitutional by the United States Supreme Court in *Furman v. Georgia*, 408 U.S. 238 (1972) because:

(1) South Carolina's capital sentencing statute, as written by the General Assembly and construed by the South Carolina Supreme Court, does not perform the constitutionally mandated narrowing function.

(2) South Carolina's sentencing system permits discrimination on the basis of race.

(3) The South Carolina Supreme Court consistently fails to fulfill its statutory and constitutional obligation to conduct meaningful proportionality review in capital cases.

(4) The death penalty is unconstitutional because it is unreliable, arbitrary, and lacks penological purpose.

(g) Both the trial court judge and the South Carolina Supreme Court found prosecutorial misconduct regarding Solicitor Aerial's treatment of Dr. Marty Loring. Dr. Loring was traumatized by this misconduct and was unable to inform the sentencing judge with powerful mitigation evidence known to her that would have resulted in imposition of a life sentence.

- (h) This ground is based on the deposition testimony of former Solicitor Robert M.

Ariail:

And Judge Miller had an agenda, probably one of the better agendas. And that was: Let's get through this case. You know, I know what the decision – I know what the verdict is going to be. Let's get through it and quit interrupting.

12) Prior to his application for post-conviction relief, Mr. Inmon has not filed any other petitions or applications other than the appeals to the Supreme Courts of South Carolina and the United States as described in paragraph 8.

13) See paragraph 12.

14) None of the grounds set forth in paragraphs 10 and 11 have been presented to this or any other state or federal court.

15) Not applicable.

16) The grounds set forth in paragraph 10 rely on facts beyond those set forth in the record that was before previous courts.

17) Mr. Inmon was represented by counsel during his guilty plea, sentencing hearing, and appeal.

18) Names and addresses of prior counsel:

(a) During guilty plea and sentencing hearing:

James W. Bannister, Esquire
Bannister, Wyatt & Stalvey, LLC
PO Box 10007
Greenville, SC 29603

Symmes W. Culbertson, Esquire
701 Crecent Ave. Greenville SC
Greenville, SC 29603

John W. DeJong, Esquire
214 E. Main St., Ste. B240
Pickens, SC 29671

(b) On appeal:

Robert M. Dudek, Esquire
S.C. Commission on Indigent Defense
PO Box 11589
Columbia, SC 29211

Joseph L. Savitz, III, Esquire
1825 St. Julian Place
Unit 15-D
Columbia, SC 29204

19) This Court should vacate Mr. Inmon's convictions and sentences and order a new trial. In the alternative, this Court should vacate Mr. Inmon's sentences and order a new sentencing hearing.

20) Mr. Inmon is not under a sentence from any other court that he has not challenged.

Respectfully Submitted,

By



Diana Holt
Diana Holt, LLC
Post Office Box 6454
Columbia, South Carolina 29260-6454
Phone: 803-782-1663
Email: DianaHolt@utexas.edu

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

October 16, 2016

2016 OCT 20 PM 12 41

THE STATE OF SOUTH CAROLINA)
COUNTY OF PICKENS)
SOUTH CAROLINA)
IN THE COURT OF COMMON PLEAS
THIRTEENTH JUDICIAL CIRCUIT

Case No. 2012-CP-39-918

Jerry Inmon

Applicant

vs.

**Second Amended Application for Post-
Conviction Relief**

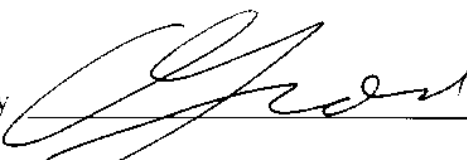
State of South Carolina

Respondent

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

J. Anthony Mabry, Esquire
S.C. Attorney General's Office
PO Box 11549
Columbia, SC 29211

By


E. Charles Grose, Jr.
The Grose Law Firm, LLC
404 Main Street
Greenwood, SC 29646
(864) 538-4466

10/16, 2016
Greenwood, South Carolina

COUNTY OF PickensJerry Buck Inmon

2016 OCT 20 PM 12 40 CIVIL ACTION COVERSHEET

Plaintiff(s)

CLERK OF COURT

PICKENS COUNTY

SOUTH CAROLINA

vs.

-CP-

State of South Carolina

Defendant(s)

Submitted By: Charles GroseAddress: 404 Main Street, Greenwood, SC 20646SC Bar #: 66063Telephone #: 864-538-4466Fax #: 864-538-4405

Other:

E-mail: charles@groselawfirm.com

NOTE: The coversheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this coversheet must be served on the defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION (Check all that apply)

*If Action is Judgment/Settlement do not complete

- ☐ JURY TRIAL demanded in complaint. ☒ NON-JURY TRIAL demanded in complaint.
☐ This case is subject to ARBITRATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☐ This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☒ This case is exempt from ADR. (Proof of ADR/Exemption Attached)

NATURE OF ACTION (Check One Box Below)

Contracts ☐ Constructions (100) ☐ Debt Collection (110) ☐ General (130) ☐ Breach of Contract (140) ☐ Fraud/Bad Faith (150) ☐ Failure to Deliver/ Warranty (160) ☐ Employment Discrim (170) ☐ Employment (180) ☐ Other (199) _____	Torts - Professional Malpractice ☐ Dental Malpractice (200) ☐ Legal Malpractice (210) ☐ Medical Malpractice (220) Previous Notice of Intent Case # 20 ____-NI-_____ ☐ Notice/ File Med Mal (230) ☐ Other (299) _____	Torts - Personal Injury ☐ Conversion (310) ☐ Motor Vehicle Accident (320) ☐ Premises Liability (330) ☐ Products Liability (340) ☐ Personal Injury (350) ☐ Wrongful Death (360) ☐ Assault/Battery (370) ☐ Slander/Libel (380) ☐ Other (399) _____	Real Property ☐ Claim & Delivery (400) ☐ Condemnation (410) ☐ Foreclosure (420) ☐ Mechanic's Lien (430) ☐ Partition (440) ☐ Possession (450) ☐ Building Code Violation (460) ☐ Other (499) _____
Inmate Petitions ☒ PCR (500) ☐ Mandamus (520) ☐ Habeas Corpus (530) ☐ Other (599) _____	Administrative Law/Relief ☐ Reinstate Drv. License (800) ☐ Judicial Review (810) ☐ Relief (820) ☐ Permanent Injunction (830) ☐ Forfeiture-Petition (840) ☐ Forfeiture-Consent Order (850) ☐ Other (899) _____	Judgments/Settlements ☐ Death Settlement (700) ☐ Foreign Judgment (710) ☐ Magistrate's Judgment (720) ☐ Minor Settlement (730) ☐ Transcript Judgment (740) ☐ Lis Pendens (750) ☐ Transfer of Structured Settlement Payment Rights Application (760) ☐ Confession of Judgment (770) ☐ Petition for Workers Compensation Settlement Approval (780) ☐ Other (799) _____	Appeals ☐ Arbitration (900) ☐ Magistrate-Civil (910) ☐ Magistrate-Criminal (920) ☐ Municipal (930) ☐ Probate Court (940) ☐ SCDOT (950) ☐ Worker's Comp (960) ☐ Zoning Board (970) ☐ Public Service Comm. (990) ☐ Employment Security Comm (991) ☐ Other (999) _____
Special/Complex /Other ☐ Environmental (600) ☐ Automobile Arb. (610) ☐ Medical (620) ☐ Other (699) _____ ☐ Sexual Predator (510) ☐ Permanent Restraining Order (680)	☐ Pharmaceuticals (630) ☐ Unfair Trade Practices (640) ☐ Out-of State Depositions (650) ☐ Motion to Quash Subpoena in an Out-of-County Action (660) ☐ Pre-Suit Discovery (670)		

Submitting Party Signature: _____

Date: October 16, 2016

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRPC, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

SCCA / 234 (03/2016)

Page 1 of 2

Effective January 1, 2016, Alternative Dispute Resolution (ADR) is mandatory in all counties, pursuant to Supreme Court Order dated November 12, 2015.

SUPREME COURT RULES REQUIRE THE SUBMISSION OF ALL CIVIL CASES TO AN ALTERNATIVE DISPUTE RESOLUTION PROCESS, UNLESS OTHERWISE EXEMPT.

Pursuant to the ADR Rules, you are required to take the following action(s):

1. The parties shall select a neutral and file a "Proof of ADR" form on or by the 210th day of the filing of this action. If the parties have not selected a neutral within 210 days, the Clerk of Court shall then appoint a primary and secondary mediator from the current roster on a rotating basis from among those mediators agreeing to accept cases in the county in which the action has been filed.
2. The initial ADR conference must be held within 300 days after the filing of the action.
3. Pre-suit medical malpractice mediations required by S.C. Code §15-79-125 shall be held not later than 120 days after all defendants are served with the "Notice of Intent to File Suit" or as the court directs.
4. Cases are exempt from ADR only upon the following grounds:
 - a. Special proceeding, or actions seeking extraordinary relief such as mandamus, habeas corpus, or prohibition;
 - b. Requests for temporary relief;
 - c. Appeals
 - d. Post Conviction relief matters;
 - e. Contempt of Court proceedings;
 - f. Forfeiture proceedings brought by governmental entities;
 - g. Mortgage foreclosures; and
 - h. Cases that have been previously subjected to an ADR conference, unless otherwise required by Rule 3 or by statute.
5. In cases not subject to ADR, the Chief Judge for Administrative Purposes, upon the motion of the court or of any party, may order a case to mediation.
6. Motion of a party to be exempt from payment of neutral fees due to indigency should be filed with the Court within ten (10) days after the ADR conference has been concluded.

**Please Note: You must comply with the Supreme Court Rules regarding ADR.
Failure to do so may affect your case or may result in sanctions.**

STATE OF SOUTH CAROLINA)
COUNTY OF PICKENS)

IN THE COURT OF COMMON PLEAS

Jerry Buck Inman, #5226,)
a/k/a Jerry Buck Inmon,)
Respondent,)
v.)
State of South Carolina,)
Applicant.)

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

RETURN TO 2nd AMENDED APPLICATION
FOR POST-CONVICTION RELIEF
AND MOTION TO DISMISS

2016 NOV 7 PM 2 02
CLERK OF COURT
PICKENS COUNTY
SOUTH CAROLINA

Respondent, by and through the undersigned counsel, hereby makes a Return to the 2nd Amended Application of capital PCR Applicant Jerry Buck Inman (aka "Inmon") filed October 16, 2016. Respondent denies each and every allegation of the 2nd Amended Application and requires strict proof thereof.

PROCEDURAL HISTORY¹

Applicant Jerry Buck Inman ("Inman")² was indicted in November 2006 by the Pickens County grand jury for the crimes of murder, kidnapping, criminal sexual conduct in the first degree [CSC 1st], and burglary in the first degree [burglary 1st] (Ind. #s 2006-GS-39-2225, 2224, 2223, & 2222). The circumstances of the crimes involve the May 26, 2006 murder of Tiffany Souers, a Clemson University coed.

The State timely noticed Inman of its intent to seek the death penalty for the murder of Souers on August 22, 2006 pursuant to S.C. Code Ann. Section 16-3-26 (1976). Inman was

¹ A more detailed procedural history is set forth in Respondent's Return to the original PCR application. For the purposes of this Return, a more concise procedural history is all that is necessary.

² Applicant is also referred to as Jerry Buck Inmon. Because Applicant was referred to in all previous proceedings as Jerry Buck Inman, Respondent will refer to Applicant by the last name Inman.

appointed three (3) capital defense attorneys to represent him: John DeJong, Sims Culbertson, and Jim Bannister, Esquires. On March 13, 2007, the Honorable Edward W. Miller, Circuit Court Judge, was assigned by Order of the South Carolina Supreme Court to preside over this capital case. On August 19, 2008, a hearing concerning Inman's competency to stand trial was held, and Inman was determined to be competent to stand trial.

On August 19, 2008, Inman entered guilty pleas to the indicted charges: murder, kidnapping, CSC 1st, and burglary 1st. During the guilty pleas, the Solicitor gave a factual basis for the entry of the pleas which Inman agreed was correct and was stipulated to by Inman and his attorneys. Judge Miller accepted the guilty pleas after determining they were freely, voluntarily, and knowingly entered by Inman. Sentencing was deferred until September 8, 2011.

Sentencing was conducted on September 8-11, 2008, and again from April 20, 2009 to April 22, 2009. On April 22, 2009, Judge Miller issued his sentence by reading his written sentencing order into the record. Judge Miller found the State had proven beyond a reasonable doubt three (3) aggravating circumstances: (1) the murder of Tiffany Souers was committed during the commission of a burglary in the 1st degree; (2) the murder of Souers was committed during the commission of criminal sexual conduct; and (3) the murder of Souers was committed during the commission of a kidnapping. After considering the evidence in aggravation and mitigation, Judge Miller sentenced Inman to death for the murder of Tiffany Souers. Judge Miller sentenced Inman to thirty (30) years for burglary 1st, and thirty (30) years for CSC 1st. All sentences were ordered to run consecutively. Inman was not sentenced on the kidnapping indictment pursuant to S.C. Code Ann. Section 16-3-910 (2003).

On April 23, 2009, a Motion to Reconsider and for a New Trial was made by Inman. Judge Miller denied the Motion by Order dated July 17, 2009 and filed July 28, 2009.

Inman appealed his guilty plea convictions and sentences, including his death sentence, to the South Carolina Supreme Court. On direct appeal, Inman raised the following issues:

1. Whether Inman's guilty plea should be vacated because it constituted an invalid conditional guilty plea?
2. Whether the trial judge abused his discretion by declining to recuse the Solicitor's office as advocates and refusing to allow defense counsel to question the Solicitor and members of his staff on the claim of intentional prosecutorial misconduct?
3. Whether the Solicitor's questioning of Dr. Loring constituted witness intimidation and, in turn, prosecutorial misconduct?
4. Whether a mistrial was warranted after the Solicitor's actions questioning Dr. Loring constituted prosecutorial misconduct?

On December 28, 2011, the South Carolina Supreme Court affirmed Inman's guilty plea convictions and sentences including his death sentence. State v. Inman, 395 S.C. 539, 720 S.E.2d 31 (2011).

In its published Opinion, the South Carolina Supreme Court held: (1) Inman's guilty plea was not a conditional guilty plea therefore it was valid and should not be vacated; (2) the trial judge did not abuse his discretion in declining to recuse the Solicitor's office and refusing to allow defense counsel to question the Solicitor and members of his staff on the claim of intentional prosecutorial misconduct; (3) the Solicitor's questioning of Dr. Loring did constitute witness intimidation and prosecutorial misconduct as found by the trial judge; and (4) the trial judge did not err in declining to grant a mistrial as Inman did not establish prejudice to warrant such a severe remedy; (a) as this was a bench sentencing; (b) the trial judge qualified Dr. Loring as an expert, (c) the trial judge properly called and questioned her as a court's witness; (d) Dr. Loring testified and Inman's counsel declined the opportunity to question Dr. Loring; (e) any testimony that was potentially excluded was cumulative to that of Dr. Price who testified in detail regarding Inman's childhood, his family, his mental health disorders, and his criminal

history; (f) finally, a review of the judge's oral and written orders established that the trial judge thoroughly considered all mitigating evidence. Based on all of the above, even though there was prosecutorial misconduct, Inman's sentence of death was not imposed in violation of his due process rights. State v. Inman, 395 S.C. 539, 720 S.E.2d 31 (2011). The Supreme Court also conducted its proportionality review and found the sentence was not the result of passion, prejudice, or any other arbitrary factor, and the judge's finding of three (3) statutory aggravating circumstances for the murder were supported by the evidence. Furthermore, a review of prior cases established that the death sentence in this case was proportionate to that in similar cases and was neither excessive nor disproportionate to the crime. Id.

Inman filed Petition for Writ of Certiorari in the United States Supreme Court. The United States Supreme Court denied certiorari.

Inman then filed the present post-conviction relief (PCR) action on June 21, 2012 through appellate counsel, Robert Dudek. Inman filed an amended PCR application on April 13, 2016 through PCR counsel Diana Holt and Charles Grose, Esquires, and then filed this amended petition on October 16, 2016.

FACTS

Tiffany Marie Souers was a rising junior engineering student at Clemson University. Tiffany lived in an off-campus apartment complex called the Reserve in Central, South Carolina. She lived in apartment 118-CC, in Pickens County, with her two (2) room-mates.

On May 25, 2006, Tiffany was staying in the apartment by herself, as her roommates were gone for various reasons. Sometime during the day of May 25th, the applicant, Jerry Buck Inman ("Inman"), drove by the apartment unit and saw Tiffany on the outside porch on the side of her apartment. Inman was not from South Carolina.

That evening, Tiffany, accompanied by two (2) of her friends, Erica Cooler and Anna Janiec, went to a restaurant known as *Sine Qua Non* where their friend Emily Raines was working. Around 11:00 p.m., Tiffany returned home when Erica dropped her off, and Tiffany went into her apartment alone. At 11:20 p.m., she answered a text message from her friend, Travis Braznell, but did not respond to a later text from Travis at 12:52 a.m.

By Inman's own admission, around 1:00 a.m., on May 26th, 2006, during the nighttime and while completely dark, Inman climbed over the porch rail to Tiffany's apartment where he had seen Tiffany standing earlier in the day. He then unlawfully, and without her consent or knowledge, opened the patio door to her apartment and entered her residence. After burglarizing her apartment, Inman then went into Tiffany's room where she was asleep.

Inman woke Tiffany and covered her mouth with his hand, and a struggle ensued. Inman eventually bound her hands and began to look for her pocketbook and wallet, including her driver's license, car keys, ATM card, and other items of value. During this time, Inman was questioning Tiffany about the location of these items. After locating these items, Inman sexually assaulted [raped] Tiffany. Inman then murdered Tiffany by tightening a bikini bathing suit top around her neck until he strangled her to death, i.e. asphyxiated her. Inman, under cover of darkness, then left Tiffany's apartment the same way he entered.

Inman then drove his 1990 Chevrolet Blazer to the Sun Trust Bank at 1051 Tiger Boulevard in Clemson, South Carolina, and attempted to use Tiffany's ATM card four (4) different times at 3:22 a.m., 3:29 a.m., 3:31 a.m., and 3:32 a.m. All attempts failed because he entered the wrong PIN number. Inman then drove to Wachovia Bank at 955 Tiger Boulevard, Clemson, South Carolina, where he attempted to use Tiffany's ATM card on two (2) occasions, 3:37 a.m., and 3:38 a.m. Those attempts failed, also, because the wrong PIN number was used. Photographs were obtained from these ATM machines showing Inman, whose face and head are

covered with bandanas, attempting to use the machines at the times listed. Also captured in these photographs was a portion of Inman's Blazer. The first photo captured a portion of the grill. The next photo captured the hood and the windshield.³

Inman then drove to his home in the State of Tennessee the morning of May 26, 2006, discarding the items he had stolen from Tiffany's apartment as he drove. Tiffany's driver's license that Inman discarded was later found by Mr. James Lindsay on Highway 76 between Clemson and Anderson.

On May 26, 2006, at approximately 1:30 p.m., Tiffany's body was found by one (1) of her roommates who was returning keys to the unit for use of someone who would be subleasing during the summer. Tiffany's body was found partially clad on the floor of her bedroom. Police were notified and the Central Police Department responded.

The South Carolina Law Enforcement Division (SLED) responded including with its forensic team to process the crime scene for evidence. Of particular evidentiary importance, SLED removed a large section of carpet from Tiffany's bedroom, which was taken to SLED's forensics laboratory for further testing.

Tiffany's body was transported to Greenville Memorial Hospital where an autopsy was conducted. It was determined Tiffany's death was a homicide resulting from asphyxia due to ligature strangulation. The bikini top had been twisted so tight around Tiffany's neck the blood flow to her brain was cut off killing her. It was also determined Tiffany's hands and wrists bore signs consistent with her being restrained. Finally, it was determined Tiffany had suffered traumatic sexual intercourse. A sexual assault kit was used and vaginal swabs were forwarded to SLED.

³ The truck's body style was eventually identified by Mr. Donald Floyd, the senior project engineer at General Motors, as either a Chevrolet Blazer or a GMC Jimmy with a model year between 1982 and 1994.

The SLED Forensic Laboratory processed the carpet from Tiffany's bedroom and found two (2) areas of semen stain. From these areas, a DNA profile was developed. The Lab also processed the vaginal swabs collected at Tiffany's autopsy. Semen was found there as well. A DNA profile was developed from this semen as well. The DNA profile from the carpet matched that from the vaginal swabs taken at the autopsy, i.e. it was the same person. The DNA profile was entered into the CODIS national database.

On June 5, 2006, SLED received a response from CODIS that a match had been found to the DNA profile submitted. There was a match to two (2) profiles in the data base, one (1) submitted by the State of North Carolina and one (1) submitted by the State of Florida. Both of these matches belonged to the same person, applicant Jerry Buck Inman, who had previously served prison sentences in both North Carolina and Florida.

SLED immediately began a nationwide information search to locate Inman. It was determined he was currently living in Dandridge, Tennessee. The Tennessee Bureau of Investigation ("TBI") was notified and requested to locate and arrest Inman. Warrants for Inman's arrest had, at that time, been secured by SLED based upon the DNA match and the CODIS hit.

Chief Deputy G.W. "Bud" McCoig of the Jefferson County Sheriff's Office and TBI Agent Mike Hannon began their efforts to locate Inman around 4:30 in the afternoon on June the 6th, 2006. They split up with McCoig watching Inman's parents' home and Hannon watching Inman's sister's residence. Inman was spotted returning to his parents' home shortly after 11:30 p.m. Upon seeing Chief Deputy McCoig's vehicle, Inman drove away for about half-a-mile when he was stopped at approximately 11:45 p.m., still on June 6, 2006. Inman was arrested.

At 11:47 p.m., McCoig advised Inman verbally of his Miranda rights as they sat in McCoig's vehicle. Inman was then briefly interviewed by McCoig. Inman admitted to the

crimes of murder, criminal sexual conduct, burglary, and kidnapping of Tiffany Souers in Pickens County on May 26, 2006.

Inman was then transported to the Jefferson County Sheriff's Department where Inman and McCoig met with TBI Agent Hannon for the purpose of obtaining a written statement. At 12:30 a.m., on June 7, 2006, Agent Hannon advised Inman of his Miranda rights by using a written form, and Inman signed the rights form and waived his rights and agreed to give a statement to Agent Hannon. The statement was witnessed by both Chief Deputy McCoig and Agent Hannon. Inman's statement to the two (2) police officers was as follows:

I went to South Carolina about two (2) weeks ago. I don't remember the exact date. I was just driving. I ended up somewhere around Clemson. I did not know the victim. I just saw her on the balcony of her apartment early in the evening. I drove around for a while until I thought she was asleep. I parked behind her apartment. Her apartment was on the bottom floor.

I climbed over the rail. The door heading to her apartment was unlocked. I entered the apartment and found her bedroom. I found the victim asleep in her bed - - in her bedroom. I woke the victim. She was startled. I tied her hands behind her. I did not go there to kill her. I don't want to talk about the sex part, but I did have sex with her.

I went and found - - no, excuse me. I used an item I found in her room to tie her up. I did not have anything - - I knew the victim could recognize me. When I knew the victim was dead, I went out the same way I came in. When I left her apartment, I drove back to 1712 Junior Williams Road in Dandridge.

Before I left her apartment, I took some things from her apartment. I took two credit cards. I tried to use one of the cards at a bank. I was not able to use the card, so I threw it away somewhere along the interstate on my way home. I did not know the name on the card. I know the girl in the apartment's name was Tiffany Souers. I saw it on the news here in Tennessee.

The clothes I wore while I was in Tiffany's apartment are in my car. I wore the shoes I have on now. I did not take any other item, except the credit cards. I knew Tiffany was dead because she stopped struggling. I held my hand over her mouth. I strangled her with a bathing suit top, the top of a bathing suit.

Inman would not sign the statement that he gave.

Thereafter, SLED Agents Jeff Kindley and Gene Donohue arrived at the Jefferson County Sheriff's Office for the purpose of interviewing and obtaining a statement from Inman concerning the murder of Tiffany Souers. Inman was again advised of his Miranda rights and

signed a Waiver of Rights form. Agent Donohue and Agent Kindley then took a statement from Inman. In this statement, Inman again admitted to the murder, kidnapping, burglary, and criminal sexual conduct of Tiffany Souers on May 16, 2006 in Central, S.C. in Pickens County.

The statement was as follows:

I live with my cousin, Derrick Adams, in Tennessee. I was not adjusting well to being out of jail. So I decided to get away. I started driving my car through Chattanooga, Georgia, North Carolina, and South Carolina. I ended up around Clemson about two weeks ago. I had run out of money so I was looking for something to rob.

I drove around some apartment complexes. I parked in the back of one of the apartment complexes and got out to try some doors. The first one I tried was open. I went in the back door after I hopped over the rail. No lights were on and I went in. I went in to the living room and then turned right into the bedroom.

After that, I went into a bedroom and a girl was sleeping there. I put my hand over her mouth and woke her up. She started fighting me and we wrestled. I tied her up with a piece of clothing behind her back. I asked her for her purse and she took her wallet out. I got her credit card and asked her for her PIN and she told me, but I forgot it. After that, I had sex with her. And then I killed her. I took her bed sheets, her wallet, her car keys, and went out the back door. I put some bandannas over my face and went to the ATM to get some money, but couldn't get any.

I then left and went back to Tennessee. I had seen a girl on the apartment balcony where I went in earlier in the day. But when I went back at 1:00 a.m. - - or 1:30 a.m., I don't think any - - I didn't think anyone was there. I didn't mean for anyone to get hurt. I was just looking for some money. [End of Statement].

Inman refused to sign this statement as well.

Thereafter, Inman was returned to Pickens County, S.C. for processing. Deputy Tony Robinson of the Pickens County Sheriff's Office obtained DNA samples from Inman for the purpose of DNA analysis. These samples were submitted to the SLED laboratory. A DNA profile was developed from this sample, and it was determined this DNA profile matched the DNA profiles developed from the vaginal swab of Tiffany Souers taken at autopsy and the carpet removed from Tiffany Souers' apartment the morning of her murder. The probability of randomly selecting an unrelated individual having a DNA profile matching the semen on these items is approximately 1 in 240 quadrillion.

On August 19, 2008, Inman pleaded guilty to murder, burglary in the 1st degree, criminal sexual conduct, and kidnapping. (R. 912-64). At his guilty plea hearing, Inman admitted he murdered Tiffany Souers, burglarized her apartment, kidnapped her, and raped her. (R. 912-64). He also admitted the facts recited by the Solicitor, which are set forth above, were true. (R. 912-64).

The Evidence in Aggravation

In the sentencing phase, the State called Suzanne Clavel, who was raped by applicant Inman just after midnight on December 14th, 1987. Ms. Clavel lived in an apartment in Tampa, Florida and had gone to bed around 11:00 p.m. on December 13th. She was awakened approximately one (1) hour later by Inman in her bedroom pointing a gun at her head. Inman told Clavel to "shut up" and ordered her to tie up her roommate with telephone cords Inman had with him, i.e. pre-cut telephone cords. She complied and tied up her roommate's hands and feet. Inman at gunpoint then tied Clavel's hands behind her back. Inman then raped her vaginally, anally, and vaginally again. The sexual assault lasted approximately twenty (20) minutes. Clavel's roommate witnessed the entire assault. Inman then stole money from Clavel and her roommate and Clavel's car keys. When Inman left, he told Clavel if she called the police he would come back and kill her.

Inman was apprehended two (2) years later, in 1989, and pled guilty to the burglary of Clavel's apartment and her kidnapping and rape, and the kidnapping of her roommate and theft of the roommate's car. He was sentenced to thirty (30) years in the Florida Department of Corrections. He was released in 2005.

Inman was convicted of 2nd degree criminal sexual assault which occurred on January 10, 1988, of which Inman was convicted on September 26, 1988. That offense and conviction

occurred in North Carolina. This sexual assault conviction was for a sexual assault on a male inmate in the county jail. Inman received a twenty (20) year sentence for that offense.

Inman was also charged with attempted escape from prison on February 5, 1991. He was convicted of that offense and received one (1) year in prison on April 8, 1991.

Approximately nine (9) months after his release from prison in 2005, on May 22, 2006, Inman burglarized the home of Jessica Gann. Ms. Gann lived in Sevierville, Tennessee. Ms. Gann woke up in her own bed with someone on top of her with a knife to her throat. It was Inman. He tied her hands behind her back. Ms. Gann's small daughter was crying during the incident. Inman attempted to rape Ms. Gann from the rear. Inman then turned her over and while holding a knife to her neck raped Ms. Gann. He then took her to the bathroom and made her clean herself with shampoo twice. Inman then left the victim's residence. Ms. Gann saw Inman on the news approximately two (2) weeks later. When interviewed by police about this incident, Inman confessed to the burglary and rape of Ms. Gann [including the rape occurring in the presence of her child] and placing them both in the bathroom after the rape before he fled.

On May 23, 2006, in Rainsville, Alabama, Inman burglarized the home of Beth Bates Patterson, an employee of the Department of Agriculture. Inman cut a hole in a vent in her residence' floor and entered her residence while she was gone. While in the residence he found a bank bag in a piano seat that contained cash that belonged to Ms. Patterson's church. When Ms. Patterson came home, Inman snuck up behind her and covered her mouth and placed a knife to her throat. He then tied her hands and feet and placed her on her bed in her bedroom. He started pulling her pants down and was going to rape her until she told him she was having her menstrual period. Inman checked to see if she was telling the truth, and when he discovered she was having her period, he placed her in a closet still bound, and placed a chair against the closet to lock her in. He then stole her car and the money belonging to her church and abandoned her

car nearby where he had left his car. Inman confessed to this crime after he was arrested for Souers' murder. Inman admitted his intent was to sexually assault Ms. Patterson when he broke into her residence. His confession was corroborated by Ms. Patterson's testimony in the sentencing proceeding. She later identified Inman after seeing him on CNN wanted for the Souers' murder.

Inman had numerous disciplinary violations while serving his prison sentences in Florida and North Carolina including assaults and possession of weapons. Inman also has a Nazi tattoo on him indicating he is a member of a security threat group.

At his sentencing proceeding, Inman admitted he had escaped from prison two (2) different times in the past. Inman also told Judge Miller that he could not be rehabilitated. Inman also indicated to Judge Miller the appropriate sentence for the murder of Tiffany Souers was the death penalty.

AMENDED PCR GROUNDS

Ground 10(a)11(a)(1) Mr. Inmon was denied the right to effective assistance of counsel—guaranteed by the Sixth And Fourteenth Amendments to the United States Constitution and by Article I. Sections 3 and 14 of the South Carolina Constitution—during the guilt-or-innocence phase of his capital trial.

Supporting facts: Trial counsel was ineffective for advising Mr. Inmon to plead guilty and appeal the trial court judge denying his request to be sentenced by a jury when then existing state law did not allow jury sentencing following a guilty plea in a capital case.

Ground 10(a)11(a)(2) Mr. Inmon was denied the right to effective assistance of counsel — guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution and by Article I. Sections 3 and 14 of the South Carolina Constitution - - during the guilt-or-innocence phase of his capital trial.

Supporting facts: Not developing information through experts by the defense that Mr. Inmon's sexual misconduct was the result of a rare medical condition that was treatable and controllable with a common drug, and failing to advise the Court, sitting in judgment of Mr. Inmon, of this evidence that supported a verdict of guilty but mentally ill.

Ground 10(b)11(b) Mr. Inmon was denied the right to effective assistance of counsel—guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution and by

Article I, Sections 3 and 14 of the South Carolina Constitution—during the sentencing phase of his capital trial.

Supporting facts: Trial counsel was ineffective during the sentencing phase for:

- (1) Failing to obtain another mitigation expert witness after Dr. Marti Loring would not continue in Mr. Inmon's case because she was intimidated by the prosecutor who threatened to have her arrested if she testified, and Mr. Inmon was prejudiced by the same.
- (2) In the alternative to (1), failing to continue to prepare with Dr. Loring in the event the trial judge reconvened the trial, as in fact occurred, and Mr. Inmon was prejudiced by the same.
- (3) In the alternative to (1) and (2), counsel is informed and believes that trial counsel did obtain another mitigation expert witness but failed to prepare and present that witness to testify and render an expert opinion, and Mr. Inmon was prejudiced by counsel's deficient performance.
- (4) Failing to investigate, develop, and/or present mitigation evidence that was available to trial counsel at the time of the sentencing hearing, including but not necessarily limited to social history information and adaptability to incarceration, and Mr. Inmon was prejudiced by the same.
- (5) Developing information through experts retained by then defense that Mr. Inmon's sexual misconduct was the result of a rare medical condition that was treatable and controllable with a common drug and failing to advise the Court, sitting in decision of what punishment to mete out to Mr. Inmon, of this extraordinarily powerful mitigation evidence that was and is a treatable medical condition Mr. Inmon, and Mr. Inmon was prejudiced by counsel's failures.
- (6) Failing to object to the rush to the forgone judicial conclusion that the sentence would be death. This ground is based on the deposition testimony of former Solicitor Robert M. Ariail:

And Judge Miller had an agenda, probably one of the better agendas. And that was: Let's get through this case. You know, I know what the decision – I know what the verdict is going to be. Let's get through it and quit interrupting.

- (7) In the alternative to 11(b)(1), (2), (3), (4), (5), and (6), intentionally not presenting powerful, available mitigation evidence in order to create an issue for post-conviction relief. This alternate ground for relief is based on the deposition testimony of former Solicitor Robert M. Ariail. If Solicitor Ariail is correct, then such conduct amounts to intentional sandbagging for which not strategic justification exists.

Ground 10(c)11(c) Mr. Inmon was denied the right to effective assistance of counsel—guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution and by Article I, Sections 3 and 14 of the South Carolina Constitution—during the appeal of his capital trial.

Supporting facts: Appellate counsel was ineffective for:

- (1) Not appealing the trial court judge denying Mr. Inmon his request to plead guilty and have his sentence determined by a jury when that right is protected by the Fifth, Sixth, Eighth, and Fourteenth Amendments to the United States Constitution and trial counsel had preserved that issue for appellate review.
- (2) Not appealing Mr. Inmon's motion to continue his sentencing hearing so that he would have sufficient time to obtain another mitigation expert witness after Dr. Marti

Loring who refused to participate in Mr. Inmon's case because she was intimidated by the prosecutor.

Ground 10(d)11(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.

Supporting facts: S.C. Code Ann. Section 16-3-20, as written by the General Assembly and construed by the South Carolina Supreme Court, denied Mr. Inmon his right to have the jury determine the existence of aggravating circumstances, consider statutory and non-statutory mitigating circumstances, and determine whether a death sentence should be imposed.

Ground 10(e)11(e) Mr. Inmon's death sentence was obtained in violation of the Fifth, Sixth, Eighth, and Fourteenth Amendments to the United States Constitution.

Supporting Facts: The capital sentencing scheme in South Carolina violates the Constitution because its methods for the imposition and review of capital punishment suffers the same infirmities as the statute rejected as unconstitutional by the United States Supreme Court in Furman v. Georgia, 408 U.S. 238 (1972) because:

- (1) South Carolina's capital sentencing statute, as written by the General Assembly and construed by the South Carolina Supreme Court, does not perform the constitutionally mandated narrowing function.
- (2) South Carolina's sentencing system permits discrimination on the basis of race.
- (3) The South Carolina Supreme Court consistency fails to fulfill its statutory and constitutional obligation to conduct a meaningful proportionality review in capital cases.
- (4) The death penalty is unconstitutional because it is unreliable, arbitrary, and lacks penological purpose.

Ground 10(f)11(f) The cumulative effect of all of counsel's failures entitle Mr. Inmon to the relief sought because he was also prejudiced by the synergistic impact of the constitutional failures.

Supporting facts: None

Ground 10(g)11(g) Mr. Inmon was denied the right to a fair trial - - as guaranteed by the Fifth, Sixth, Eighth, and Fourteenth Amendments to the United States Constitution and by Article I, Sections 3 and 14 of the South Carolina Constitution - - during the sentencing phase of his capital trial because of prosecutorial misconduct.

Supporting facts: Both the trial court judge and the South Carolina Supreme Court found prosecutorial misconduct regarding Solicitor Ariail's treatment of Dr. Marti Loring. Dr. Loring was traumatized by this misconduct and was unable to inform the sentencing judge with powerful mitigation evidence known to her that would have resulted in the imposition of a life sentence.

Ground 10(h)11(h) Mr. Inmon was denied the right to a fair trial - as guaranteed by the Fifth, Sixth, Eighth, and Fourteenth Amendments to the United States Constitution and by Article I, Sections 3 and 14 of the South Carolina Constitution - during the sentencing phase of his capital trial because of the rush to the forgone conclusion that the sentence would be death.

Supporting facts: This ground is based on the deposition testimony of former Solicitor Robert M. Ariail:

And Judge Miller had an agenda, probably one of the better agendas. And that was: Let's get through this case. You know, I know what the decision -- I know what the verdict is going to be. Let's get through it and quit interrupting.

Standard of Review

In a PCR action, the applicant has the burden of proving his allegations by a preponderance of the evidence. Rule 71.1(e), SCRPC; Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where ineffective assistance of counsel is alleged as a ground for relief, the applicant must prove "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064 (1984); Butler, *supra*.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Butler, *supra*. An applicant must overcome this presumption to prevail on PCR. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Second, counsel's deficient performance must have prejudiced the applicant, such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117, 385 S.E.2d at 625, *citing Strickland*.

"Surmounting Strickland's high bar is never an easy task[.]" Premo v. Moore, 131 S.Ct. 733 (2011) *citing Harrington v. Richter*, 131 S.Ct. 770 (2011), *quoting Padilla v. Kentucky*, 130 S.Ct. 1473 (2010). "It is 'all too tempting' to 'second-guess counsel's assistance after conviction or adverse sentence.'" Harrington v. Richter, 131 S.Ct. 770 (2011), *citations omitted*.

"The question is whether an attorney's representation amounted to incompetence under 'prevailing professional norms,' not whether it deviated from best practices or most common custom." Id.; Strickland, 466 U.S. at 690.

In the context of a guilty plea, the applicant also must establish deficient performance and prejudice. Hill v. Lockhart, 474 U.S. 52, 59 (1985). In the context of a guilty plea, the applicant also must establish prejudice by proving "counsel's constitutionally-ineffective performance affected the outcome of the plea process." Hill v. Lockhart, 474 U.S. 52, 59 (1985). The applicant must show, but for counsel's ineffective assistance, there is a reasonable probability he would not have pled guilty but would have proceeded to trial. Hill v. Lockhart, 474 U.S. 52, 59 (1985).

In the context of sentencing phase issues, the applicant must show deficient performance and prejudice. In the context of sentencing phase issues, the applicant must also prove deficient performance as defined above. Strickland; Harrington.

To show prejudice the applicant must show that "there is a reasonable probability that ... the sentencer--including an appellate court, to the extent it independently reweighs the evidence--would have concluded that the balance of aggravating and mitigating circumstances did not warrant death." Strickland, 466 U.S. at 695; *see also* Wiggins, 539 U.S. at 537; Jones v. State, 332 S.C. 329, 344-45, 504 S.E.2d 822, 829-30 (1998). "A reasonable probability is a probability sufficient to undermine confidence in the outcome." Jones, 504 S.E.2d at 823-824.

The United States Supreme Court has made clear the burden is *not on the State* to show the lack of prejudice, but **the burden is on the applicant to show prejudice**. Wong v. Belmontes, 130 S.Ct. 383 (2009), *citing* Strickland. The applicant must prove had counsel acted competently there is a reasonable probability a different sentence would have resulted. Id.; Wiggins v. Smith, 539 U.S. 510, 535, 536 (2003); *see* Terry v. State, 394 S.C. 62, 714 S.E.2d

326 (2011). Inman pled guilty and was sentenced by Judge Miller not a jury of twelve (12) individuals. Therefore, the appropriate standard for prejudice in this case is whether considering the new mitigation evidence presented at PCR, along with the original mitigation evidence, along with the evidence in aggravation produced at the sentencing hearing, and the aggravating evidence that would likely come in with the new mitigation evidence, is there a reasonable probability Judge Miller would have returned with a different sentence. Sears v. Upton, 130 S.Ct. 3259 (2010); Wong v. Belmontes. Such a showing “requires a substantial, not just conceivable, likelihood of a different result.” Cullen v. Pinholster, 131 S.Ct. 1388, 1403 (2011), citing Harrington, 131 S.Ct. at 791 (2011).

RESPONDENT’S RESPONSE TO THE ALLEGATIONS OF THE 2ND AMENDED APPLICATION

Ground 10(a) 11(a) Mr. Inmon was denied the right to effective assistance of counsel—guaranteed by the Sixth And Fourteenth Amendments to the United States Constitution and by Article I. Sections 3 and 14 of the South Carolina Constitution—during the guilt-or-innocence phase of his capital trial.

Supporting facts: Trial counsel was ineffective for advising Mr. Inmon to plead guilty and appeal the trial court judge denying his request to be sentenced by a jury when then existing state law did not allow jury sentencing following a guilty plea in a capital case.

Respondent denies the allegation of this ground and requires strict proof thereof.

Further, Applicant Inman will not be able to meet his burden of proof to prove deficient performance or resulting prejudice. Strickland v. Washington; Hill v. Lockhart.

Additionally, the record clearly shows Applicant Inman wished to enter a plea of guilty, and Applicant wanted the Court to impose the death penalty as he felt that was the appropriate punishment for his crime. The record also shows it was Applicant’s decision to enter a plea of guilty, and Applicant understood that there were no conditional guilty pleas in South Carolina, and he could not plead guilty and preserve issues related to the guilty plea if he pled guilty.

State v. Inman, 395 S.C. 539, 720 S.E.2d 31 (2011). As a result, Applicant cannot show deficient performance or resulting prejudice. Strickland; Hill.

Ground 10(a)11(a)(2) Mr. Inmon was denied the right to effective assistance of counsel – guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution and by Article I, Sections 3 and 14 of the South Carolina Constitution - - during the guilt-or-innocence phase of his capital trial.

Supporting facts: Not developing information through experts by the defense that Mr. Inmon's sexual misconduct was the result of a rare medical condition that was treatable and controllable with a common drug, and failing to advise the Court, sitting in judgment or Mr. Inmon, of this evidence that supported a verdict of guilty but mentally ill.

Respondent denies the allegations of this ground and requires strict proof thereof.

Furthermore, Applicant Inman will not be able to meet his burden of proof on this ground to show ineffective assistance of counsel and resulting prejudice. Strickland; Hill v. Lockhart.

Additionally, there is no factual or legal merit to this ground. Respondent is informed and believes the testimony at the PCR hearing will establish Inman was not "guilty but mentally ill (GBMI)" but Petitioner is arguing diminished capacity, which was presented as mitigation evidence in the sentencing proceeding. Applicant's current counsel conceded in an email received on October 24, 2016 that there was "no GBMI claim as of yet." *Email Holt to Mabry, October 24, 2016 @ 9:44 AM.*

Ground 10(b)11(b) Mr. Inmon was denied the right to effective assistance of counsel—guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution and by Article I, Sections 3 and 14 of the South Carolina Constitution—during the sentencing phase of his capital trial.

Supporting facts: Trial counsel was ineffective during the sentencing phase for:

- (1) Failing to obtain another mitigation expert witness after Dr. Marti Loring would not continue in Mr. Inmon's case because she was intimidated by the prosecutor who threatened to have her arrested if she testified, and Mr. Inmon was prejudiced by the same.

- (2) In the alternative to (1), failing to continue to prepare with Dr. Loring in the event the trial judge reconvened the trial, as in fact occurred, and Mr. Inmon was prejudiced by the same.
- (3) In the alternative to (1) and (2), counsel is informed and believes that trial counsel did obtain another mitigation expert witness but failed to prepare and present that witness to testify and render an expert opinion, and Mr. Inmon was prejudiced by counsel's deficient performance.
- (4) Failing to investigate, develop, and/or present mitigation evidence that was available to trial counsel at the time of the sentencing hearing, including but not necessarily limited to social history information and adaptability to incarceration, and Mr. Inmon was prejudiced by the same.
- (5) Developing information through experts retained by then defense that Mr. Inmon's sexual misconduct was the result of a rare medical condition that was treatable and controllable with a common drug and failing to advise the Court, sitting in decision of what punishment to mete out to Mr. Inmon, of this extraordinarily powerful mitigation evidence that was and is a treatable medical condition Mr. Inmon, and Mr. Inmon was prejudiced by counsel's failures.
- (6) Failing to object to the rush to the forgone judicial conclusion that the sentence would be death. This ground is based on the deposition testimony of former Solicitor Robert M. Ariail:

And Judge Miller had an agenda, probably one of the better agendas. And that was: Let's get through this case. You know, I know what the decision – I know what the verdict is going to be. Let's get through it and quit interrupting.

- (7) In the alternative to 11(b)(1), (2), (3), (4), (5), and (6), intentionally not presenting powerful, available mitigation evidence in order to create an issue for post-conviction relief. This alternate ground for relief is based on the deposition testimony of former Solicitor Robert M. Ariail. If Solicitor Ariail is correct, then such conduct amounts to intentional sandbagging for which not strategic justification exists.

Respondent denies the allegations of this ground, including subparts, and requires strict proof thereof.

Further, Applicant will not be able meet his burden of proof to prove deficient performance or resulting prejudice as to this ground or any of its subparts. Strickland v. Washington; Hill v. Lockhart; Wiggins v. Smith.

Furthermore, Applicant Inman cannot show resulting prejudice on this record, i.e. but for counsel's alleged deficient performance there is a reasonable probability Judge Miller would have returned with a different sentence. Wong v. Belmontes; State v. Inman, 395 S.C. 539, 720 S.E.2d 31 (2011). The evidence in aggravation was overwhelming.

Judge Miller found the State had proven beyond a reasonable doubt three (3) aggravating circumstances: (1) the murder of Tiffany Souers was committed during the commission of a burglary in the 1st degree; (2) the murder of Souers was committed during the commission of criminal sexual conduct; and (3) the murder of Souers was committed during the commission of a kidnapping. The State proved each of these aggravating circumstances in the sentencing proceeding through the testimony of the pathologist, the photographs of the crime scene, Inman's confessions, and the results of the DNA analysis from the crime scene and the victim's rape protocol kit. Further, Inman admitted and pled guilty to burglary 1st degree, criminal sexual conduct, and kidnapping.

There is no question Inman is the individual who murdered Tiffany Souers as he pled guilty to murder, he confessed to the murder on numerous occasions and to different officers, and his DNA was found at the crime-scene and in Souers' vaginal swabs. And, there is no question Inman acted completely alone in committing these horrible crimes.

Tiffany Marie Souers was a 20 year old rising junior engineering student at Clemson University with her whole life before her. Tiffany lived in an off-campus apartment complex called the Reserve in Central, South Carolina. She lived in apartment 118-CC, in Pickens County, with her two (2) room-mates.

On May 25, 2006, Tiffany was staying in the apartment by herself, as her roommates were gone. Sometime during the day of May 25th, the applicant, Inman, drove by her apartment

unit and saw Tiffany on the outside porch on the side of her apartment. Inman was not from South Carolina.

That evening, Tiffany, accompanied by two (2) friends, Erica Cooler and Anna Janiec, went to a restaurant where their friend Emily Raines was working. Around 11:00 p.m., Tiffany returned home when Erica dropped her off, and Tiffany went into her apartment. At 11:20 p.m., she answered a text message from her friend, Travis Braznell, but did not respond to a later text from Travis at 12:52 a.m.

By Inman's own admission, around 1:00 a.m., on May 26th, 2006, during the nighttime and while completely dark, Inman climbed over the porch rail to Tiffany's apartment where he had seen Tiffany standing earlier in the day. Inman admitted he waited until Tiffany was asleep to commit these horrendous crimes. He then unlawfully, and without her consent or knowledge, opened the patio door to her apartment and entered her residence with the intent to commit a crime therein. After burglarizing her apartment, Inman then went into Tiffany's room where she was asleep.

Inman woke Tiffany and covered her mouth with his hand, and a struggle ensued. Inman eventually bound her hands and began to look for her pocketbook and wallet, including her driver's license, car keys, ATM card, and other items of value. During this time, Inman was questioning Tiffany about the location of these items. After locating these items, Inman sexually assaulted [raped] Tiffany. Inman then murdered Tiffany by tightening a bikini bathing suit top around her neck until he strangled her to death, i.e. asphyxiated her. Inman, under cover of darkness, then left Tiffany's apartment the same way he entered.

Inman then drove his 1990 Chevrolet Blazer truck to the Sun Trust Bank at 1051 Tiger Boulevard in Clemson, S.C., and attempted to use Tiffany's ATM card four (4) different times at 3:22 a.m., 3:29 a.m., 3:31 a.m., and 3:32 a.m. All attempts failed because he entered the wrong

PIN number. Inman then drove to Wachovia Bank at 955 Tiger Boulevard, Clemson, S.C., where he attempted to use Tiffany's ATM card on two (2) occasions, 3:37 a.m., and 3:38 a.m. Those attempts failed, also, because the wrong PIN number was used. Photographs were obtained from these ATM machines showing Inman, whose face and head are covered with bandannas, attempting to use the machines at the times listed. Also captured in these photographs was a portion of a truck. The first photo captured a portion of the grill of the truck. The next photo captured the hood and the windshield.⁴

Inman then drove to his home in the State of Tennessee the morning of May 26, 2006, discarding the items he had stolen from Tiffany's apartment as he drove. Tiffany's driver's license that Inman discarded was found by Mr. James Lindsay on Highway 76 between Clemson and Anderson.

On May 26, 2006, at approximately 1:30 p.m., Tiffany's body was found by one (1) of her roommates who was returning keys to the unit for use of someone who would be subleasing during the summer. Tiffany's body was found partially clad on the floor of her bedroom. She was nude from her shoulders down to her feet with her top pushed up over her breasts. Police were notified and the Central Police Department responded.

SLED responded including with its forensic team to process the crime scene for evidence. Of particular evidentiary importance, SLED removed a large section of carpet from Tiffany's bedroom, which was taken to SLED's forensics laboratory for further testing. An unknown male's DNA was eventually recovered from a sperm fragment found on this carpet.

Tiffany's body was transported to Greenville Memorial Hospital where an autopsy was conducted. It was determined Tiffany's death was a homicide resulting from asphyxia due to

⁴ The truck's body style was eventually identified by Mr. Donald Floyd, the senior project engineer at General Motors, as either a Chevrolet Blazer or a GMC Jimmy with a model year between 1982 and 1994.

ligature strangulation. The bikini top had been twisted so tight around Tiffany's neck the blood flow to her brain was cut off killing her. It was also determined Tiffany's hands and wrists bore signs that were consistent with her being restrained. Finally, it was determined Tiffany had suffered traumatic sexual intercourse. A sexual assault kit was used and vaginal swabs were forwarded to SLED.

The SLED Forensic Laboratory processed the carpet from Tiffany's bedroom and found two (2) areas of semen stain. From these areas, a DNA profile was developed. The SLED Laboratory also processed the vaginal swabs collected at Tiffany's autopsy. Semen was found there as well. A DNA profile was developed from this semen as well. The DNA profile from the carpet matched that from the vaginal swabs taken at the autopsy, i.e. it was the same person. The DNA profile was entered into the CODIS national database.

On June 5, 2006, SLED received a response from CODIS that a match had been found to the DNA profile submitted. There was a match to two (2) profiles in the data base, one (1) submitted by the State of North Carolina and one (1) submitted by the State of Florida. Both of these matches belonged to the same person, applicant Jerry Buck Inman, who had previously served prison sentences in both North Carolina and Florida.

SLED immediately began a nationwide information search to locate Inman. It was determined he was currently living in Dandridge, Tennessee. The Tennessee Bureau of Investigation ("TBI") was notified and requested to locate and arrest Inman. Warrants for Inman's arrest had, at that time, been secured by SLED based upon the DNA match and the CODIS hit.

Chief Deputy G.W. "Bud" McCoig of the Jefferson County Sheriff's Office and TBI Agent Mike Hannon began their efforts to locate Inman around 4:30 in the afternoon on June the 6th, 2006. They split up with McCoig watching Inman's parents' home and Hannon watching

Inman's sister's residence. Inman was spotted returning to his parents' home shortly after 11:30 p.m. Upon seeing Chief Deputy McCoig's vehicle, Inman drove away for about half-a-mile when he was stopped at approximately 11:45 p.m., still on June 6, 2006. Inman was arrested.

At 11:47 p.m., McCoig advised Inman verbally of his Miranda rights as they sat in McCoig's vehicle. Inman was then briefly interviewed by McCoig. Inman admitted to the crimes of murder, criminal sexual conduct, burglary, and kidnapping of Tiffany Souers in Pickens County on May 26, 2006. Inman was then transported to the Jefferson County Sheriff's Office where Inman and McCoig met with TBI Agent Hannon for the purpose of obtaining a written statement. At 12:30 a.m., on June 7, 2006, Agent Hannon advised Inman of his Miranda rights by using a written form, and Inman signed the rights form and waived his rights and agreed to give a statement to Agent Hannon. The statement was witnessed by both Chief Deputy McCoig and Agent Hannon. Inman's statement to the two (2) police officers was as follows:

I went to South Carolina about two (2) weeks ago. I don't remember the exact date. I was just driving. I ended up somewhere around Clemson. I did not know the victim. I just saw her on the balcony of her apartment early in the evening. I drove around for a while until I thought she was asleep. I parked behind her apartment. Her apartment was on the bottom floor.

I climbed over the rail. The door heading to her apartment was unlocked. I entered the apartment and found her bedroom. I found the victim asleep in her bed - - in her bedroom. I woke the victim. She was startled. I tied her hands behind her. I did not go there to kill her. I don't want to talk about the sex part, but I did have sex with her.

I went and found - - no, excuse me. I used an item I found in her room to tie her up. I did not have anything - - I knew the victim could recognize me. When I knew the victim was dead, I went out the same way I came in. When I left her apartment, I drove back to 1712 Junior Williams Road in Dandridge.

Before I left her apartment, I took some things from her apartment. I took two credit cards. I tried to use one of the cards at a bank. I was not able to use the card, so I threw it away somewhere along the interstate on my way home. I did not know the name on the card. I know the girl in the apartment's name was Tiffany Souers. I saw it on the news here in Tennessee.

The clothes I wore while I was in Tiffany's apartment are in my car. I wore the shoes I have on now. I did not take any other item, except the credit cards. I knew

Tiffany was dead because she stopped struggling. I held my hand over her mouth. I strangled her with a bathing suit top, the top of a bathing suit.

Inman would not sign the statement that he gave.

Thereafter, SLED Agents Jeff Kindley and Gene Donohue arrived at the Jefferson County Sheriff's Office for the purpose of interviewing and obtaining a statement from Inman concerning the murder of Tiffany Souers. Inman was again advised of his Miranda rights and signed a Waiver of Rights form. Agents Donohue and Kindley then took a statement from Inman. Inman again admitted to the murder, kidnapping, burglary, and criminal sexual conduct of Tiffany Souers on May 16, 2006 in Central, S.C. in Pickens County. The statement was as follows:

I live with my cousin, Derrick Adams, in Tennessee. I was not adjusting well to being out of jail. So I decided to get away. I started driving my car through Chattanooga, Georgia, North Carolina, and South Carolina. I ended up around Clemson about two weeks ago. I had run out of money so I was looking for something to rob.

I drove around some apartment complexes. I parked in the back of one of the apartment complexes and got out to try some doors. The first one I tried was open. I went in the back door after I hopped over the rail. No lights were on and I went in. I went in to the living room and then turned right into the bedroom.

After that, I went into a bedroom and a girl was sleeping there. I put my hand over her mouth and woke her up. She started fighting me and we wrestled. I tied her up with a piece of clothing behind her back. I asked her for her purse and she took her wallet out. I got her credit card and asked her for her PIN and she told me, but I forgot it. After that, I had sex with her. And then I killed her. I took her bed sheets, her wallet, her car keys, and went out the back door. I put some bandannas over my face and went to the ATM to get some money, but couldn't get any.

I then left and went back to Tennessee. I had seen a girl on the apartment balcony where I went in earlier in the day. But when I went back at 1:00 a.m. - - or 1:30 a.m., I don't think any - - I didn't think anyone was there. I didn't mean for anyone to get hurt. I was just looking for some money. [End of Statement].

Inman refused to sign this statement as well.

Thereafter, Inman was returned to Pickens County, S.C. for processing. Deputy Tony Robinson of the Pickens County Sheriff's Office obtained DNA samples from Inman for the purpose of DNA analysis. These samples were submitted to the SLED forensic laboratory. A

DNA profile was developed from this sample, and it was determined that this DNA profile matched the DNA profiles developed from the vaginal swab of Tiffany Souers taken at autopsy and the carpet removed from Tiffany Souers apartment the morning of her murder. The probability of randomly selecting an unrelated individual having a DNA profile matching the semen on these items is approximately 1 in 240 quadrillion.

On August 19, 2008, Inman pleaded guilty to murder, burglary in the 1st degree, criminal sexual conduct, and kidnapping. (R. 912-64). At his guilty plea hearing, Inman admitted he murdered Tiffany Souers, burglarized her apartment, kidnapped her, and raped her. (R. 912-64). He also admitted the facts recited by the Solicitor, which are set forth above, were true. (R. 912-64).

The Other Evidence in Aggravation

In the sentencing phase, the State called Suzanne Clavel, who was raped by applicant Inman just after midnight on December 14th, 1987. Ms. Clavel lived in an apartment in Tampa, Florida and had gone to bed around 11:00 p.m. on December 13th. She was awakened approximately one (1) hour later by Inman in her bedroom pointing a gun at her head. Inman told Clavel to "shut up" and ordered her to tie up her roommate with telephone cords Inman had with him, i.e. pre-cut telephone cords. She complied and tied up her roommate's hands and feet. Inman at gunpoint then tied Clavel's hands behind her back. Inman then raped her vaginally, anally, and vaginally again. The sexual assault lasted approximately twenty (20) minutes. Clavel's roommate witnessed the entire assault. Inman then stole money from Clavel and her roommate and Clavel's car keys. When Inman left, he told Clavel if she called the police he would come back and kill her.

Inman was apprehended two (2) years later, in 1989, and pled guilty to the burglary of Clavel's apartment and her kidnapping and rape, and the kidnapping of her roommate and theft

of the roommate's car. He was sentenced to thirty (30) years in the Florida Department of Corrections. He was released in 2005.

Inman was convicted of 2nd degree criminal sexual assault which occurred on January 10, 1988, of which Inman was convicted on September 26, 1988. That offense and conviction occurred in North Carolina. This sexual assault conviction was for a sexual assault on a male inmate in the county jail. Inman received a twenty (20) year sentence for that offense.

Inman was also charged with attempted escape from prison on February 5, 1991. He was convicted of that offense and received one (1) year in prison on April 8, 1991.

Approximately nine (9) months after his release from prison in 2005, on May 22, 2006, Inman burglarized the home of Jessica Gann. Ms. Gann lived in Sevierville, Tennessee. Ms. Gann woke up in her own bed with someone on top of her with a knife to her throat. It was Inman. He tied her hands behind her back. Ms. Gann's small daughter was crying during the incident. Inman attempted to rape Ms. Gann from the rear. Inman then turned her over and while holding a knife to her neck raped Ms. Gann. He then took her to the bathroom and made her clean herself with shampoo twice. Inman then left the victim's residence. Ms. Gann saw Inman on the news approximately two (2) weeks later. When interviewed by police about this incident, Inman confessed to the burglary and rape of Ms. Gann [including the rape occurring in the presence of her child] and placing them both in the bathroom after the rape before he fled.

On May 23, 2006, in Rainsville, Alabama, Inman burglarized the home of Beth Bates Patterson, an employee of the Department of Agriculture. Inman cut a hole in a vent in her residence' floor and entered her residence while she was gone. While in the residence, he found a bank bag in a piano seat that contained cash that belonged to Ms. Patterson's church. When Ms. Patterson came home, Inman snuck up behind her and covered her mouth and placed a knife to her throat. He then tied her hands and feet and placed her on her bed in her bedroom. He

started pulling her pants down and was going to rape her until she told him she was having her menstrual period. Inman checked to see if she was telling the truth, and when he discovered she was having her period, he placed her in a closet still bound, and placed a chair against the closet to lock her in. He then stole her car and the money belonging to her church and abandoned her car nearby where he had left his car. She later identified Inman after seeing him on CNN wanted for the Souers' murder. Inman confessed to this crime after he was arrested for Souers' murder. Inman admitted his intent was to sexually assault Ms. Patterson when he broke into her residence. His confession was corroborated by Ms. Patterson's testimony in the sentencing proceeding.

Inman had numerous disciplinary violations while serving his prison sentences in Florida and North Carolina including assaults and possession of weapons. Inman also has a Nazi tattoo on him indicating he is a member of a security threat group.

At his sentencing proceeding, Inman admitted he had escaped from prison two (2) different times in the past. The State established Inman was not adaptable to prison. Inman also told Judge Miller that he could not be rehabilitated. Inman also indicated to Judge Miller the appropriate sentence for the murder of Tiffany Souers was the death penalty.

The Mitigation Evidence

Dr. David Price, an expert in forensic psychology, clinical psychology and neuropsychology, testified about an evaluation of Inman. He testified that in his opinion that at the time of the crime, a factor in the commission of the crime, Inman was under the influence of mental and emotional disturbance, and that his capacity to conform his conduct to the requirements of law was substantially impaired. (R. 258). He stated that he had reviewed 15 three to four inch thick notebooks which included records about his family, his incarceration, newspapers, and his mental health treatment records of over 3,000 pages. He confirmed Inman was the subject of

mental health treatment for the 19 years he was incarcerated. (R. 259). He opined that Inman had a number of mood disorders, including dysthymia (sustained or intermittent depression for over 2 years), major depressive disorder - recurrent type, major depressive disorder - with psychotic features, bipolar disorder and psycho-rhythmic disorder. (R. 260). He noted that Inman had prior diagnosis of personality disorders, including schizoid personality disorder and he opined that he could also be diagnosed with dissociative identity disorder and sexual paraphilia. (R. 260). He noted the presence in the records of multiple suicide attempts, suicide ideation and withdrawal. (R. 261). He rated him of the Global Assessment of Functioning with a 30 as someone with serious impairment with the ability to communicate and with judgment and profound impairment in overall ability to function. Id. Dr. Price stated the schizoid personality disorder was illustrated by the fact he was an introvert with intermittent relationships within his family.

In the social history, Dr. Price noted that Inman had a genetic predisposition for the mental disorders because his mother had paranoid schizophrenia and father was an alcoholic. (R. 265). He stated Inman was raised in a turbulent and unstable environment, began using drugs at age 10, ran away at age 13, living on the streets at 15 and in jail at 17. Id. He noted that this disorder is often associated with depression.

Concerning dissociative identity disorder, he stated that Inman was not very forthcoming about his illness. However, Dr. Price learned that in discussion with treatment providers and his pastor, Inman will assume a different effect and response which is like changing from one identity to another. He stated that the primary identity is a passive-dependent and depressed person that has difficulty with guilt. (R. 268-69). He stated that the evidence of depression, self-mutilation by tattooing and suicidal ideation supports the diagnosis. (R. 269). Also that he traveled in his series of sexual assaults is consistent. (R. 269).

Dr. Price described Inman as a serial rapist. He felt it "astounded" him that he was not similarly diagnosed in Florida. He felt the Rapid Risk Assessment for Sexual Offender Recidivism (RRASOR) suggested that he clearly met that criteria. (R. 271-72).

Dr. Price found that Inman had significant records for being sexually abused, physically abused, living in an unstable environment with a mother with periods of anger who they thought was depressed. (R. 272-73). Dr. Price felt that Inman had one stable relationship - his maternal grandfather who died when he was young. He was abandoned by his father who had sexually abused him and began to act out of conflict at age 10 with drugs, failing school, and the winding up on the street. (R. 273). In reviewing Inman's crimes, he found similarity from victim's crimes with Inman's own experiences where his sister was also subject to bondage when she was tied up and the rapes tended to follow a certain pattern - hand tied, kneeling down, lean forward over the bed in an awkward position, suggesting that he was acting out what had happened to him. (R. 275). This was part of his "compulsive rape." (R. 275). He stated that Inman felt 'shame and loathing about this rape and murder.' (R. 276). This similar feeling was consistent throughout his records, noting that he had attempted suicide on 7 occasions (six while incarcerated). Id. Dr. Price described the various ways he attempted to kill himself including slit wrist, cutting his jugular vein, swallowing barbed-wire, and trying to starve himself. (R. 276-77).

Dr. Price stated that Inman's statement that "I killed a 20 year old college student with everything to live for - I deserve to get the death penalty" statement is consistent with Inman's history and also reflected in his unhappiness and hopelessness while in prison. (R. 280-81).

Dr. Price opined that he is a national expert in malingering. He felt that Inman was not malingering based upon his extensive psychiatric history. He noted that Inman instead minimizes the problems and is protective of his parents' failings in raising him. (R. 283). He felt that Inman had tried to hinder Price's effort to get a life sentence. (R. 283). He noted that Inman had talents in being a

tattoo artist and had carpentry skills.

Concerning his interaction in prison, Dr. Price found that Inman grew up in prison and was afraid about being released. Particularly, he had stated that after release he had planned to work for a year or two give the money to his mother and then commit suicide. (R. 284).

Dr. Price concurred with a North Carolina doctor that Inman was a lost soul who would continue to be lost based upon his bad genetic loading with the history of a paranoid schizophrenic mother and alcoholic father. He had been physically and sexually abused and abandoned by his father in the unstable environment. He began getting into trouble at age 10 with drug use, by 13 he was running away and on the streets. Inman had a long history of mood disorder and his family had never been able to teach him to develop normal heterosexual relationships. He had a schizoid personality disorder, developed a dissociative identity disorder and developed sexual paraphilia. (R. 285).

On cross-examination, Dr. Price conceded that he did not bring the 15 notebooks with him that he reviewed to prepare his opinion and testimony. (R. 304-05). He stated that he received the material from counsel Bannister's office. Importantly, he admitted that he was influenced by every document he read. Id. At that point, Solicitor Ariail renewed his request to see all the notebooks that Dr. Price reviewed. (R. 306). During the questioning, Dr. Price confirmed that as to child abuse, sometimes Inman would report it happened and other times he would not report it. (R. 307-08). He admitted that the history showed the Inman had the ability to make choices inasmuch as he did not kill the victim in Florida, said he would not harm the child in Tennessee, did not kill the North Carolina inmate, but did kill Souers. (R. 308-09). Concerning death, Dr. Price stated that Inman did not want to die, but thought that the death penalty was the appropriate penalty and that he was remorseful for it, thinking of himself as "scum." (R. 311).

⁶See also, R. 299, Defense exhibit 11.

The defense then called Claude Tournay of the Florida Department of Corrections. He testified that he had reviewed the sexual offender screening and that in 2004 it was determined that he could not find enough criteria to determine a "paraphilic sexual disorder" or diagnosis. (R. 357, 11.21-25). He testified that in January 2004, he found sadistic behavior, child molestation abnormal sexual behavior and that Inman was being treated for major depression disorder, recurrent. (R. 358). Tournay stated that a April 2004 letter from the Florida Department of Corrections stating that Inman - convicted of rape - was a sexually violent predator would have required the Department of Children and Family Services to send three psychologists to review and examine the inmate and determine whether he was a threat to society. If so, he would have been civilly committed to an institution for crimes which occurred after 1993. (R. 360). However, Inman's crime had happened before October 1993. However, as a psychiatry inmate, the department made a referral to Tennessee and arrangements for Inman to continue his treatment for his depression. (R. 362-63).

James Aiken, an expert regarding the assessment of inmate classification and expert in prison management and prison classification, testified that based upon his record review, Inman would be automatically in a "high security status" due to the life without parole sentence he would receive, that crime he was convicted and his cumulative behavior patterns while previously confined. (R. 369). He also noted that Inman had some security threat group and gang related issues that concerned Aileen a great deal. (R. 369). He noted the presence of a Swastika tattoo, which suggests in the prison setting membership in a Nazi gang and security threat group. (R. 371). Because Inman is a "multiple sex offender... Aiken testified that it gave him added concern because gangs and security threat groups hate them" and will kill them because they have such a distaste for them." (R. 371-72). This is because he has the tattoo and is a multiple sex offender. (R. 372).

Aiken stated that because of these factors the correctional department would have to put Inman in a security envelope of a single cell with no free movement or interaction with other inmates since they do not know who would put a hit on him. He would have to be moved with a security escort and 23 hour lock up. (R. 376). He stated no other inmate could have access to him because it would violate "the duty to protect." (R. 377). Aiken stated that Inman's security status would be "SL-3" which is the highest level.

On cross-examination, Aiken added that his security level is also increased by the fact of publicity and that it was a high profile case that would be known within the inmate population that Inman was a multiple sex offender. Aiken also found significant in his prior prison record evidence of self-mutilation and multiple disciplinaries, including attempted suicide and attempted escapes. He noted that some of his disciplinaries included possession of weapons for either to do harm or for his own protection.

The Applicant's older sister testified about her relationship with Inman. She stated that she had a fond memory of him playing "pee-wee" football and she was a cheerleader. She described them getting ready for their roles on Saturday mornings and the family routine. (R. 388-89). She also testified about in winter going out from their home in the country across the street into a wooded area and sliding along a creek. She stated that one time they were out there with their cousins and Inman fell through a soft piece of ice and he cried all the way home, noting that he cried frequently as a child. (R. 390). She described "sibling rivalry" and fights over jeans between Inman and his sisters because he would wear their jeans and leak ink on them. She stated that he had "seizures" where he would gaze, his body stiffen and shake and would sometimes be accompanied by a high fever. (R. 392-93). She stated this set him apart from others and prompted a lack of friends. She said that the family moved frequently and lived in Tennessee, Florida, and North Carolina. (R. 393).

She said that Inman loved pets. She felt, however that Inman did not like himself. She stated that at one time Inman had to share a bedroom with his grandfather to whom he was very close and would talk together for hours. The grandfather passed away when he was 16, which was a turning point in his life. (R. 395). Afterwards, Inman began staying out late, became more withdrawn and once ran away from home and was found sleeping outside a church. (R. 396).

In describing their mother, she said that she suffered from bipolar disorder and schizophrenia. She said that the mother was affected by her medication and would hear things, talk to herself, and would freak out over the smallest thing. (R. 396-97).

The sister described events when he was age three and living in a trailer in Florida. She stated that she started receiving inappropriate presents such as see through nightgowns. Later they moved to another house in Florida and she claimed that her other grandfather, Mr. Inman Sr. would come into the bedroom she shared with the Applicant [she was 5 and he was 3] and the grandfather would blindfold her and tie her hands to the bed and turn her over and she recalled that it was sexual abuse. She described that the grandfather would leave her in the top bunk and go to the bottom bunk. While she did not know what was happening to Inman, she heard him crying and they both were threatened. Id. She stated that the step-grandfather also messed with her. (R. 400). She described a conversation that she once had with Inman when she stated that she had been sexually abused and he stated that he had been abused also. (R. 400-01).

Reverend David Hensley, Inman's pastor, was presented to testify. However, Inman objected to his testimony based upon the priest-penitent privilege which Inman refused to waive. (R. 402-05). Rev. Hensley then only described the fact that he met with Inman the Friday before with his Bible, grape juice, wafer, and poured water over Inman's head. (R. 405).

Kenneth McArthur, Inman's step-father, testified that he has known Inman since he was four years old. (R. 657). He stated that the September hearing was very stressful for McArthur and his wife, Vera, because of the potential sentence. He stated Vera had been hospitalized in January due to the stress. He stated they love Inman and enjoy having the opportunity to see him in prison. (R. 657).

Dr. Marti Loring was qualified as an expert "in the field of social history, trauma, and abuse." (R. 664-65). Dr. Loring presented a genogram [Court Exhibit 4] and described in narrative form the different types of interaction between the family members and their problems *with* drugs, alcohol, mental illness, sexual abuse and violence. (R. 670-80). Dr. Loring also presented a timeline of Inman's life. [Court Exhibit 5] (R. 680-82). Dr. Loring further presented a group of photographs and material suggesting as a child that Inman was "still miserable and crying" (R. 682) and had indicators of sexual abuse. (R. 683). She stated that he had headaches and suffered from head beatings, that he accidentally burned his genitals with spilled bleach without medical attention, that he was firmly spanked as a child, that he had seizures, that he was exposed to violence in 1980 involving a dog fight with a cat, that his leg was burned in 1981 in a motorcycle accident. (R. 684-86). He also began drug use including alcohol, huffing gas, marijuana, cocaine, and LSD beginning in 1981. (R. 686).

Inman was exposed in 1984-1986 to a sexually abusive step-brother who was later convicted as a pedophile. (R. 686). Dr. Loring noted she was unable to locate any pictures of Jerry smiling or happy after age 7. (R. 687). In addition, Dr. Loring found that Inman would play with matches and set fire to his step-brother's mattress, which is a symptom of sexual abuse. (R. 687-88). Family members gave him alcohol between 1984-1986.

Dr. Loring described while he was 15, his maternal grandfather suffered a painful and bloody

death with throat cancer. (R. 688). She described the closeness between them and apparent guilt Inman felt for his death.

His life in prison was based upon a series of thefts and behaviors and the encouraged use of alcohol led to the downhill path. (R. 689).

Dr. Loring noted that around 11 or 12, Inman was asking his mother for help, but because of her problems, she could not hear it. After he was caught looking into a neighbor's window, his windows were nailed shut. (R. 689-90).

Inman's suicide attempts were again described by her. (R. 690). Dr. Loring stated Inman was released in 2005 and was out 9 months before the tragedy. He was described as anxious and lost, unable to hold a job or relate to women. (R. 690). However, he was able to mentor his sister's son, who idolized him and was able to get him to stop huffing gas. (R. 690-91).

When the Court asked for anything else Dr. Loring might feel was important, counsel Bannister objected based upon "attorney-client" privilege. (R. 691). Judge Miller directed her to not talk about anything she talked with counsel about. (R. 691-92). A break was then taken and she was allowed to confer with counsel Godfrey. (R. 692).

Dr. Loring then concluded that Inman's early history revealed that he was seen in a "trance-like state" as a child, including the time period it was alleged he was abused as a child. (R. 693). This history was consistent with his later history of bipolar and having major depression with psychotic features.

She confirmed that the genogram and timeline were prepared by her in September for her testimony. (R. 701). Dr. Loring clarified her earlier testimony about Inman's father killing dogs and Jerry giving a neighbor a stray dog to care for. (R. 703). She confirmed that Inman experienced a bad childhood - exposure to violence, sexual abuse, and loss. Dr.

Loring admitted that she had reviewed his criminal history including the assaults on females and in prison. (R. 706-07). However, she had not reviewed the particular criminal incident in this case. (R. 708-09).

As a result, considering the evidence in aggravation, the evidence in mitigation received at Inman's sentencing hearing, and the new mitigation evidence Inman offers at his PCR proceeding, if any, along with any additional aggravating evidence that comes in with the new mitigation, there is no reasonable probability Judge Miller would have returned with a different sentence. Wiggins v. Smith; Wong v. Belmontes; Sears v. Upton, 130 S.Ct. 3259 (2010). This ground has no merit and must be dismissed with prejudice.

Ground 10(c)11(c) Mr. Inmon was denied the right to effective assistance of counsel—guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution and by Article I, Sections 3 and 14 of the South Carolina Constitution—during the appeal of his capital trial.

Supporting facts: Appellate counsel was ineffective for:

(1) Not appealing the trial court judge denying Mr. Inmon his request to plead guilty and have his sentence determined by a jury when that right is protected by the Fifth, Sixth, Eighth, and Fourteenth Amendments to the United States Constitution and trial counsel had preserved that issue for appellate review.

(2) Not appealing Mr. Inmon's motion to continue his sentencing hearing so that he would have sufficient time to obtain another mitigation expert witness after Dr. Marti Loring who refused to participate in Mr. Inmon's case because she was intimidated by the prosecutor.

Respondent denies the allegations of this ground, including subparts, and requires strict proof thereof.

Further, Applicant will not be able to prove deficient performance or resulting prejudice. Strickland v. Washington; Jones v. Barnes; State v. Thrift.

A PCR applicant has the burden of proving appellate counsel's performance was deficient. Anderson v. State, 354 S.C. 431, 581 S.E.2d 834 (2003). To obtain relief a PCR applicant must show that appellate counsel's performance was (1) deficient; and (2) prejudice resulted from the appellate counsel's deficiency. Southerland v. State, 337 S.C. 610, 524 S.E.2d 833 (1999). In other words, the applicant is required to demonstrate "that his counsel was objectively unreasonable in failing" to identify, argue and present significant and obvious issues on appeal, and "a reasonable probability that, but for his counsel's unreasonable failure . . . , he would have prevailed on his appeal." Smith v. Robbins, 528 U.S. 259, 285 (2000) (citation omitted).⁵ Although recognizing that "[n]otwithstanding Barnes, it is still possible to bring a Strickland claim based on counsel's failure to raise a particular claim" on direct appeal, the Supreme Court has recently reiterated that "it [will be] difficult to demonstrate that counsel was incompetent." Robbins, 528 U.S. at 288. "Generally, only when ignored issues are clearly stronger than those presented, will the presumption of effective assistance of counsel be overcome." Id. (quoting Gray v. Greer, 800 F.2d 644, 646 (C.A.7 1986)); see also Bell v. Jarvis, 236 F.3d 149, 164 (4th Cir. 2000) (*en banc*).

Appellate counsel is also not ineffective for failing to file a "kitchen sink" brief. Smith v. Stewart, 140 F.3d 1267, 1274, n.4 (9th Cir. 1988); see also Thrift v. State, 302 S.C. 535, 397 S.E.2d 523 (1990); Jones v. Barnes, *supra*, (appellate counsel may make a reasonable strategic decision not to appeal every non-frivolous argument requested by the defendant, and noting the "importance of winnowing out weaker arguments on appeal and focusing on one central issue if possible"). It is clear appellate counsel's representation will not be deemed ineffective if he

⁵ See also Smith v. South Carolina, 882 F.2d 895, 899 (4th Cir. 1989) (counsel's failure to raise a weak constitutional claim may constitute an acceptable strategic decision designed "to avoid diverting the appellate court's attention from what [counsel] felt were stronger claims").

makes an informed decision based on reasonable professional judgment not to pursue a particular issue on appeal. Griffin v. Aiken, 775 F.2d 1226 (4th Cir. 1985). Further, under the two part test of Strickland, *supra*, a defendant must show not only that counsel's performance was deficient, but that this deficiency prejudiced him Smith v. Robbins, *supra*; Jones v. Barnes, *supra*; Thrift v. State; *supra*.

Applicant pled guilty and his guilty plea was determined by the South Carolina Supreme Court to be unconditional and not involuntary. State v. Inman, *supra*. As a result, the issue Applicant alleges in subpart (1) above that appellate counsel should have raised on appeal was not preserved for appellate review. South Carolina is an issue preservation state. I'On, L.L.C. v. Town of Mt. Pleasant, 338 S.C. 406, 422, 526 S.E.2d 716, 724-25 (2000). An issue that is not preserved below will not be considered on appeal. State v. Powers, 331 S.C. 37, 501 S.E.2d 116 (1998); State v. Varvil, 338 S.C. 335, 526 S.E.2d 248 (Ct. App. 2000). There are no conditional guilty pleas in South Carolina state courts. Rivers v. Strickland, 264 S.C. 121, 213 S.E.2d 97 (1975); State v. Passaro, 567 S.E.2d 862, 866 (S.C. 2002)(A free and voluntary guilty plea acts as a waiver of all non-jurisdictional defects and defenses.); State v. O'Leary, 393 S.E.2d 186, 187 (S.C. 1990)(impermissible for a defendant to preserve constitutional issues while entertaining a guilty plea; the trial court may not accept the plea on such terms). Appellate counsel cannot be deficient, nor can the applicant show prejudice, from appellate counsel not raising an issue that was not preserved for appellate review. Lee v. Davis, 328 F.3d 896, 901-02 (7th Cir. 2003); Aparicio v. Artuz, 269 F.3d 78, 96 (2d Cir. 2001); Jackson v. Duggar, 931 F.2d 712 (11th Cir. 1991) (appellate counsel not ineffective for failing to appeal issue not preserved for review); Kitt v. Clarke, 931 F.2d 1246 (8th Cir. 1991) (similar); *see* Burton v. Renico, 391 F.3d 764, 777 (6th Cir. 2004) (similar); *see also* Albrecht v. Horn, 485 F.3d 103, 138 (3rd Cir. 2007). The

appellate courts of South Carolina would not consider such an issue. State v. Powers, 331 S.C. 37, 501 S.E.2d 116 (1998). As a result, there is no merit to this issue of ineffective assistance of appellate counsel.

Further, there is no merit to the underlying issue Applicant alleges appellate counsel should have raised in subpart (1). Further, even if the issue was preserved and could have been raised on appeal, or had been raised, there is no 6th Amendment deficient performance or resulting prejudice as a matter of law, as the Supreme Court found there was no merit to the issue Applicant alleges appellate counsel should have raised. State v. Inman, 395 S.C. 539, 555-56, 720 S.E.2d 31, 40 (2011). The South Carolina Supreme Court has repeatedly rejected this constitutional challenge to S.C. Code Ann. Section 16-3-20(B). Inman, 395 S.C. at 555-56, 720 S.E.2d at 40; State v. Allen, 386 S.C. 93, 687 S.E.3d 21, 25-26 (2009)(Section 16-3-20(B)'s is constitutional because it 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, 608 S.E.2d 429 (2005)(allowing appellant to argue against precedent and again rejecting claim that Section 16-3-20(B) is unconstitutional); State v. Downs, 361 S.C. 141, 146, 604 S.E.2d 377, 380 (2004)(when a defendant pleads guilty in a capital case, statutorily mandated sentencing by the trial judge does not violate the holding in Ring v. Arizona, 536 U.S. 584 (2002). Ring did not involve jury trial waivers and is not implicated when a defendant pleads guilty); State v. Wood, 362 S.C. 135, 607 S.E.2d 57 (2004)(finding Section 16-3-20(B) constitutional).

Additionally, the South Carolina Supreme Court has repeatedly reversed the plea and death sentence in cases where a defendant was allowed to plead guilty and have jury sentencing in contravention of the statute. State v. Patterson, 278 S.C. 319, 322, 295 S.E.2d 264, 266

(1982), *overruled on other grounds by* State v. Torrence, 305 S.C. 45, 406 S.E.2d 315 (1991); State v. Truesdale, 278 S.C. 368, 369, 296 S.E.2d 528, 529 (1982).

Numerous other federal and state courts considering this constitutional challenge to similar state statutes have found no merit to it. Lewis v. Wheeler, 609 F.3d 291, 309 (4th Cir. 2010); Nunley v. Bowersox, 784 F.3d 468, 472 (8th Cir. 2015); State v. Nunley, 341 S.W.3d 611, 620 (Mo. 2011); Leon v. State, 797 N.E.2d 743, 750 (Ind. 2003); Byrom v. State, 927 So.2d 709, 728 (Miss. 2006); Mack v. State, 75 P.3d 803, 806 (2003); Colwell v. State, 59 P.3d 463, 474 (Nev. 2002); People v. Altom, 788 N.E.2d 55, 60-61 (Ill. 2003); State v. Ketterer, 855 N.E.2 48, 69 (Ohio 2006); Thacker v. State, 100 P.3d 1052 (OK 2004). As a result, there could be no ineffective assistance of appellate counsel. Jones v. Barnes.

As set forth in its Opinion in this very case, the South Carolina Supreme Court noted:

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 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. 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 31 (emphasis added). As a result, there could be no ineffective assistance of appellate counsel. Jones v. Barnes; Inman. Appellate counsel could not be deficient in failing to raise an issue that the South Carolina Supreme Court had

repeatedly held had no merit and in fact noted in its Opinion in this very case had no merit. Inman, at 556, 720 S.E.2d 31; Allen, 386 S.C. 93, 687 S.E.3d at 25-26; Crisp, 362 S.C. 412, 608 S.E.2d 429; Downs, 361 S.C. at 146, 604 S.E.2d at 380; Wood, 362 S.C. 135, 607 S.E.2d 57.

Even if appellate counsel were somehow deficient in failing to raise this issue on appeal, there is no reasonable probability Inman would have prevailed on appeal as the South Carolina Supreme Court noted in its Opinion in this case that the issue had no merit and had been repeatedly decided against applicant's present argument. Inman; Allen; Crisp; Downs; Wood.

Hurst v. Florida does not affect a proper Strickland assessment.

Applicant also relies upon the recently decided case of Hurst v. Florida, 136 S.Ct. 616 (2016), decided January 12, 2016, which dealt with Florida's capital sentencing scheme, but his position fares no better for essentially the same reason. The sentencing method at issue in Hurst that was found unconstitutional allowed for the jury to hear the facts but make only an advisory recommendation to the judge when the defendant exercised his right to a jury trial, and, the trial judge in turn, made the critical findings to impose death. 136 S.Ct. at 620. Hurst does not implicate nor address the voluntary waiver of the right to a trial by jury encompassed when a defendant pleads guilty. Id.

Subsequent to the decision in Hurst, the Supreme Court of Florida has considered the same argument in regard to their statute as raised here. That court found: "We need not extensively consider the implications of Hurst to determine that Mullens cannot avail himself of relief pursuant to Hurst. Hurst said nothing about whether a defendant would waive the Sixth Amendment right to jury factfinding in sentencing procedures as recognized by Ring and Apprendi..." Mullens v. State, No. SC13-1824, 2016 WL 3348429, at *18 (Fla. June 16, 2016)(*Not yet released for publication*).

Applicant argues Hurst shows the law is evolving and appellate counsel should have raised this issue to the South Carolina Supreme Court and then the United States Supreme Court. This would be a misapplication of Strickland. See Maryland v. Kulbicki, 136 S.Ct. 2 (2015)(reversing based upon misapplication of Strickland in viewing counsel's actions through use of hindsight rather than viewing counsel's conduct at the time of the action). Accord Miller v. Zatecky, 830 F.3d 275 (7th Cir. 2016)(deficient performance not assessed through use of later decisions). Even if Hurst stood for the proposition that applicant argues, which it does not, Hurst was not decided until January of 2016, long after appellate counsel filed its direct appeal brief to the South Carolina Supreme Court and after the appeal was final. Appellate counsel is not required to be clairvoyant and foresee changes in the law subsequent to their representation of applicant. Schneider v. Day, 73 F.3d 610 (5th Cir. 1996)(holding cannot be ineffective for failing to foresee changes in the law subsequent to Petitioner's trial); Walker v. Jones, 10 F.3d 1569 (11th Cir. 1994)(counsel not ineffective for failing to challenge jury charge where defendant's trial took place four years before the United States Supreme Court voided the charge, and state courts at that time of counsel's representation had affirmed use of such charges).

As of the date of this Return, the United States Supreme Court has not found S.C. Code Ann. Section 16-3-20(B) unconstitutional in requiring judge sentencing after entry of a guilty plea in a capital case and waiver of a jury. See Lewis v. Wheeler, 609 F.3d 291, 309 (4th Cir. 2010); see also Nunley v. Bowersox, 784 F.3d 468, 472 (8th Cir. 2015) (citing Lewis v. Wheeler as persuasive). Nor has the Fourth Circuit Court of Appeals. In fact, the Fourth Circuit found Virginia's statute, which is similar to South Carolina's, was not unconstitutional in requiring judge sentencing when a defendant pleads guilty in a capital case. Lewis v. Wheeler, 609 F.3d

291, 309 (4th Cir. 2010); *see also* Nunley v. Bowersox, 784 F.3d 468, 472 (8th Cir. 2015) (*citing* Lewis v. Wheeler as persuasive). And, the South Carolina Supreme Court has repeatedly upheld the constitutionality of this provision numerous times including in this case on direct appeal. Inman; Allen; Crisp; Downs; Wood. As a result, appellate counsel could not have been deficient nor can applicant show prejudice. Jones v. Barnes.

As to subpart (2), there is no merit to this ground. Appellate counsel is not required to file a kitchen sink brief. State v. Thrift. Counsel informed the court his new mitigation investigator would not be available for approximately another year. Dr. Loring, the original social historian, was present and willing to testify as a social historian. She was called as a court's witness and testified to Inman's deprived life, childhood abuse, and mental health issues, and she testified to his family background. Dr. Randy Price had testified extensively regarding Inman's social history and background and his mental illnesses. Inman's sister testified similarly. No prejudice was shown from the failure to grant a continuance. *See* State v. Inman, *supra*. As a result, appellate counsel was not deficient nor can Applicant show prejudice from the failure to appeal the denial of the continuance motion. State v. Williams, 321 S.C. 455, 469 S.E.2d 49 (1996)(the denial of a motion for continuance is within the sound discretion of a trial judge, and his ruling will not be disturbed absent an abuse of discretion, resulting in prejudice to the defendant); State v. Dingle, 279 S.C. 278, 306 S.E.2d 223 (1983)(defendant must establish prejudice for denial of continuance); State v. Motley, 251 S.C. 568, 164 S.E.2d 569 (1968)(in absence of showing of prejudice by defendant, it cannot be said that the trial court abused its discretion in denying a motion for continuance); State v. Babb, 299 S.C. 451, 385 S.E.2d 827 (1989) State v. Lytchfield, 230 S.C. 405, 95 S.E.2d 857 (1957)(reversals for a trial judge's

denial of a motion for continuance "are about as rare as the proverbial hen's teeth.") Jones v. Barnes. This ground has no merit and must be denied and dismissed with prejudice.

Ground 10(d)11(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.

Supporting facts: S.C. Code Ann. Section 16-3-20, as written by the General Assembly and construed by the South Carolina Supreme Court, denied Mr. Inmon his right to have the jury determine the existence of aggravating circumstances, consider statutory and non-statutory mitigating circumstances, and determine whether a death sentence should be imposed.

This is a ground that could have been raised at trial or on direct appeal; and therefore, is not cognizable in post-conviction relief. Roscoe v. State, 345 S.C. at 20, 546 S.E.2d at 419 ("In PCR cases, a defendant asserting a constitutional violation must frame the issue as one of ineffective assistance of counsel."); Drayton v. Eyatt, 312 S.C. 4, 430 S.E.2d 517 (1993) (issues that could have been raised at trial or on direct appeal cannot be raised in a PCR application absent a claim of ineffective assistance of counsel) (citing S.C. Code Ann. § 17-27-20(b)); Hyman v. State, 278 S.C. 501, 299 S.E.2d 330 (1983); Peeler v. State, 277 S.C. 70, 283 S.E.2d 826 (1981). As a result, it also fails to state a claim upon which relief may be granted by this Court. Rule 12(b)(6), SCRCP. This ground must be dismissed with prejudice.

Further, Respondent denies the allegations of this ground and requires strict proof thereof. There is no merit to this ground. State v. Inman, 395 S.C. 539, 555-56, 720 S.E.2d 31, 40 (2011). The South Carolina Supreme Court has repeatedly rejected this constitutional challenge to S.C. Code Ann. Section 16-3-20(B). Inman, 395 S.C. at 555-56, 720 S.E.2d at 40; State v. Allen, 386 S.C. 93, 687 S.E.3d 21, 25-26 (2009)(Section 16-3-20(B)'s is constitutional because it 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, 608 S.E.2d 429 (2005)(allowing appellant to argue against precedent and again

rejecting claim that Section 16-320(B) is unconstitutional); State v. Downs, 361 S.C. 141, 146, 604 S.E.2d 377, 380 (2004)(when a defendant pleads guilty in a capital case, statutorily mandated sentencing by the trial judge does not violate the holding in Ring v. Arizona, 536 U.S. 584 (2002). Ring did not involve jury trial waivers and is not implicated when a defendant pleads guilty); State v. Wood, 362 S.C. 135, 607 S.E.2d 57 (2004)(finding Section 16-3-20(B) constitutional).

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Numerous other federal and state courts considering this constitutional challenge to similar state statutes have found no merit to it. Lewis v. Wheeler, 609 F.3d 291, 309 (4th Cir. 2010); Nunley v. Bowersox, 784 F.3d 468, 472 (8th Cir. 2015); State v. Nunley, 341 S.W.3d 611, 620 (Mo. 2011); Leon v. State, 797 N.E.2d 743, 750 (Ind. 2003); Byrom v. State, 927 So.2d 709, 728 (Miss. 2006); Mack v. State, 75 P.3d 803, 806 (2003); Colwell v. State, 59 P.3d 463, 474 (Nev. 2002); People v. Altom, 788 N.E.2d 55, 60-61 (Ill. 2003); State v. Ketterer, 855 N.E.2 48, 69 (Ohio 2006); Thacker v. State, 100 P.3d 1052 (OK 2004). As a result, there could be no ineffective assistance of appellate counsel. Jones v. Barnes.

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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 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. 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 31 (emphasis added).

Applicant Inman entered a knowing, voluntary, and intelligent guilty pleas to murder, burglary 1st degree, criminal sexual conduct in the 1st degree, and kidnapping that were unconditional and was not involuntary. State v. Inman, *supra*. As a result, Inman waived and abandoned a jury determination of his guilt or innocence, a jury determination of the existence of statutory aggravating circumstances, a jury determination of statutory and non-statutory mitigating circumstances, and a jury determination of the appropriate sentence. Additionally, Inman admitted the existence of the statutory aggravating circumstances by his guilty pleas, and Judge Miller separately found the existence of those statutory aggravating circumstances beyond a reasonable doubt based on the evidence presented by the State in the penalty phase. As a result, this ground has no merit and must be denied and dismissed with prejudice.

Applicant also relies upon the recently decided case of Hurst v. Florida, 136 S.Ct. 616 (2016), decided January 12, 2016, which dealt with Florida's capital sentencing scheme, but his position fares no better for essentially the same reason. The sentencing method at issue in Hurst that was found unconstitutional allowed for the jury to hear the facts but make only an advisory recommendation to the judge when the defendant exercised his right to a jury trial, and, the trial judge in turn, made the critical findings to impose death. 136 S.Ct. at 620. Hurst does not

implicate nor address the voluntary waiver of the right to a trial by jury encompassed when a defendant pleads guilty. Id.

Subsequent to the decision in Hurst, the Supreme Court of Florida has considered the same argument in regard to their statute as raised here. That court found: "We need not extensively consider the implications of Hurst to determine that Mullens cannot avail himself of relief pursuant to Hurst. Hurst said nothing about whether a defendant would waive the Sixth Amendment right to jury factfinding in sentencing procedures as recognized by Ring and Apprendi..." Mullens v. State, No. SC13-1824, 2016 WL 3348429, at *18 (Fla. June 16, 2016)(*Not yet released for publication*).

Applicant argues Hurst shows the law is evolving. As of the date of this Return, the United States Supreme Court has not found S.C. Code Ann. Section 16-3-20(B) unconstitutional in requiring judge sentencing after entry of a guilty plea in a capital case and waiver of a jury. See Lewis v. Wheeler, 609 F.3d 291, 309 (4th Cir. 2010); see also Nunley v. Bowersox, 784 F.3d 468, 472 (8th Cir. 2015) (*citing Lewis v. Wheeler as persuasive*). Nor has the Fourth Circuit Court of Appeals. In fact, the Fourth Circuit found Virginia's statute, which is similar to South Carolina's, was not unconstitutional in requiring judge sentencing when a defendant pleads guilty in a capital case. Lewis v. Wheeler, 609 F.3d 291, 309 (4th Cir. 2010); see also Nunley v. Bowersox, 784 F.3d 468, 472 (8th Cir. 2015) (*citing Lewis v. Wheeler as persuasive*). And, the South Carolina Supreme Court has repeatedly upheld the constitutionality of this provision numerous times including in this case on direct appeal. Inman; Allen; Crisp; Downs; Wood. There is no merit to this ground, and it must be denied and dismissed with prejudice.

Ground 10(e)11(e) Mr. Inmon's death sentence was obtained in violation of the Fifth, Sixth, Eighth, and Fourteenth Amendments to the United States Constitution.

Supporting Facts: The capital sentencing scheme in South Carolina violates the Constitution because its methods for the imposition and review of capital punishment suffers the same infirmities as the statute rejected as unconstitutional by the United States Supreme Court in Furman v. Georgia, 408 U.S. 238 (1972) because:

- (1) South Carolina's capital sentencing statute, as written by the General Assembly and construed by the South Carolina Supreme Court, does not perform the constitutionally mandated narrowing function.
- (2) South Carolina's sentencing system permits discrimination on the basis of race.
- (3) The South Carolina Supreme Court consistently fails to fulfill its statutory and constitutional obligation to conduct a meaningful proportionality review in capital cases.
- (4) The death penalty is unconstitutional because it is unreliable, arbitrary, and lacks penological purpose.

In this Ground, applicant again attacks the constitutionality of South Carolina's death penalty statute, but for different reasons. This entire ground is not cognizable in post-conviction relief as it is a free-standing claim which could have been raised at a trial and on direct appeal if it had been preserved. Roscoe v. State, 345 S.C. at 20, 546 S.E.2d at 419 ("In PCR cases, a defendant asserting a constitutional violation must frame the issue as one of ineffective assistance of counsel."), *citing* Al-Shabazz v. State, *supra*; Drayton v. Eyatt, 312 S.C. 4, 430 S.E.2d 517 (issues that could have been raised at trial or on direct appeal cannot be raised in a PCR application absent a claim of ineffective assistance of counsel)(*citing* S.C. Code Ann. § 17-27-20(b)); Humbert v. State, 345 S.C. 332, 548 S.E.2d at 866 (claim that state violated defendant's right to due process by compelling him to wear prison clothes in his trial could not be asserted in a PCR action because PCR is not a substitute for appeal or place for asserting errors for the first time which could have been reviewed on direct appeal, applicant was

required to frame the issue as one of ineffective assistance of counsel), *citing* Drayton v. Evatt, *supra* and Al-Shabazz v. State, *supra*; Al-Shabazz v. State, 338 S.C. 354, 527 S.E.2d 742 (when asserting violation of a constitutional right, the applicant generally must frame the issue as one of ineffective assistance of counsel); Hyman v. State, 278 S.C. 501, 299 S.E.2d at 331 (holding PCR claim that sentence violated double jeopardy could only be raised in post-conviction relief as a claim of ineffective assistance of counsel); Peeler v. State, 277 S.C. 70, 283 S.E.2d 826 (unpreserved issue regarding guilty plea and life sentence could not be raised in PCR as PCR is not a substitute for direct appeal); Cummings v. State, 274 S.C. 26, 260 S.E.2d at 188 (cruel and unusual punishment challenge to sentence which was not objected to or raised on direct appeal could not be raised in PCR absent a claim of ineffective assistance of counsel). *See* Franklin v. Catoe, 346 S.C. 563, 552 S.E.2d 718 (reviewing claim on appeal from PCR under Strickland ineffective assistance analysis including prejudice); Drayton v. Evatt, 312 S.C. 4, 430 S.E.2d 517 (1993) (issues that could have been raised at trial or on direct appeal cannot be raised in a PCR application absent a claim of ineffective assistance of counsel) (*citing* S.C. Code Ann. § 17-27-20(b)). As a result, this ground also fails to state a claim upon which relief may be granted by this Court. Rule 12(b)(6), SCRCP. This ground must be denied and dismissed with prejudice.

As to the ground itself, Respondent denies this entire ground, including subparts, and requires strict proof thereof.

As to subpart (1), the allegation that "South Carolina's capital sentencing statute, as written by the General Assembly and construed by the South Carolina Supreme Court, does not perform the constitutionally mandated narrowing function", this claim is without merit. Kansas v. Marsh, 548 U.S. 163 (2006); Blystone v. Pennsylvania, 494 U.S. 299 (1990); Gregg v.

Georgia, 428 U.S. 153, 206-07 (1976). *See also* Proffitt v. Florida, 428 U.S. 242 (1976); *compare* Woodson v. North Carolina, 428 U.S. 280 (1976); Roberts v. Louisiana, 428 U.S. 325 (1976); Roberts v. Louisiana, 431 U.S. 633 (1977); Sumner v. Goodman, 483 U.S. 66 (1987). *See* Zant v. Stephens, 462 U.S. 862 (1983); Woodson v. North Carolina, 428 U.S. 280 (1976)(plurality opinion); Johnson v. Texas, 509 U.S. 350 (1993); Lockett v. Ohio, 438 U.S. 586 (1978); Tenard v. Dretke, 542 U.S. 274 (2004). *See* S.C. Code Ann. Section 16-3-10 & 16-3-20, 16-3-25, 16-3-26, & 16-3-28. Pursuant to each of these decisions, South Carolina's statutory sentencing scheme properly performs the constitutionally required narrowing function, as the death penalty may not be imposed absent the State proving beyond a reasonable doubt the existence of a statutory aggravating circumstance, and the sentencing scheme requires the consideration of aggravating and mitigation evidence or circumstances by the sentencing authority in imposing a death or life sentence.

Further, as to subpart (2), the allegation that "South Carolina's sentencing system permits discrimination on the basis of race," there is no merit to this ground as a matter of state law. *See* S.C. Code Ann. Section 16-3-10 & 16-3-20, 16-3-25, 16-3-26, & 16-3-28. A similar assertion was attempted to be raised and rejected in Thompson v. Aiken, 281 S.C. 239, 241-42, 315 S.E.2d 110, 111 (1984). In Thompson, the South Carolina Supreme Court cautioned against this issue being raised in collateral proceedings:

The petitioner submitted to the post-conviction court a deposition taken of Professor Raymond Paternoster, University of South Carolina, bolstered by statistical data which he had compiled. We feel it necessary to comment upon this submission in light of our concern expressed in State v. Truesdale, 278 S.C. 368, 371, 296 S.E.2d 528, about "unwise depletion of the obviously limited public funds available for the defense of indigents." Because we are convinced that the issue which petitioner sought to raise is not appropriately framed for resolution in the context of a capital case, we would recommend to the bench and bar that judicial resources be applied to more fruitful endeavors.

In the record before us, the petitioner has made an elaborate presentation of testimony and data purporting to show that prosecutors in this State consciously and systematically choose to seek the death penalty in a racially discriminatory manner. As noted by the post-conviction court in its Order, the petitioner has relied upon gross statistics and probabilities. The petitioner has elected not to consider various intangible factors entering into prosecutorial decisions. The petitioner has provided no direct testimony to support his charge that impermissible influences routinely distort the application of capital punishment throughout this State.

In the final analysis, the allegation of statewide "patterns" raised by a specific capital defendant has no real bearing upon his individual guilt or innocence nor upon the correctness of any sentence imposed in his particular case. The commission of an aggravated murder places every potential defendant at risk; he may indeed be ultimately sentenced to death. On the other hand, he may never be caught. He may never be tried, for any number of reasons. He may plead guilty or be tried on a lesser charge. A jury may, for reasons of its own, elect to acquit him or, in sentencing, elect to spare his life. Our role as an appellate court is not to base rulings upon such possibilities. Far less are we entitled to intrude upon the operations of executive officers when we have no more than general data compiled for academic purposes.

The petitioner acknowledges that this Court has already settled the scope of proportionality review. State v. Copeland, 278 S.C. 572, 586-596, 300 S.E.2d 63, cert. denied, 460 U.S. 1103, 103 S.Ct. 1802, 76 L.Ed.2d 367. Prosecutorial discretion plays no role in such review, yet the sole basis upon which this or any other petitioner could offer a showing of "patterns" would be an argument based on disproportionate punishment. We are not persuaded and accordingly we recommend that the bench and bar focus attention upon real and substantial issues in future capital cases.

Thompson v. Aiken, 281 S.C. 239, 241-42, 315 S.E.2d 110, 111 (1984).

Finally, as to this particular issue, Inman cannot show he was discriminated against on the basis of race. Inman is Caucasian. Further, the South Carolina Supreme Court found the penalty in this case was proportionate given the aggravating circumstances, the circumstances of this crime, and the character of the accused. Inman, *supra*.

As to subpart (3), the allegation that "The South Carolina Supreme Court consistently fails to fulfill its statutory and constitutional obligation to conduct a meaningful proportionality

review in capital cases," there is no merit to this ground. In Pulley v. Harris, 465 U.S. 37, 104 S.Ct. 871, 79 L.Ed.2d 29 (1984), the United States Supreme Court held that proportionality review, comparing the sentence in the case before the court with the penalties imposed in similar cases, is not constitutionally required. State v. Koon, 285 S.C. 1, 3-4, 328 S.E.2d 625, 626 (1984). See State v. Copeland, 278 S.C. 572, 591 S.E.2d 63 (1975); State v. Dickerson, 395 S.C. 101, 716 S.E.2d 895 (2011),⁶Pleicones, C.J., concurring in result; State v. Inman, 395 S.C.

⁶ In Dickerson, the Supreme Court stated in rejecting the appellant similar proportionality claim:

Before the circuit court, Dickerson argued that our current proportionality review is deficient because it fails to examine cases where death was not imposed and cases where death was not even sought. See State v. Copeland, 278 S.C. 572, 591, 300 S.E.2d 63, 75 (1982). He primarily relied upon Justice Stevens's statement regarding the denial of certiorari in Walker v. Georgia, — U.S. —, 129 S.Ct. 453, 172 L.Ed.2d 344 (2008) (memorandum opinion), in which he wrote that examining similar cases "assume[s] that the court would consider whether there were 'similarly situated defendants' who had *not* been put to the death because that inquiry is an essential part of any meaningful proportionality review." *Id.* at 454. In his view, this analysis is "judicious because, quite obviously, a significant number of similar cases in which death was not imposed might well provide the most relevant evidence of arbitrariness in the sentence before the court." *Id.* Justice Stevens noted,

Had the Georgia Supreme Court looked outside the universe of cases in which the jury imposed a death sentence, it would have found numerous cases involving offenses very similar to petitioner's in which the jury imposed a sentence of life imprisonment. If the Georgia Supreme Court had expanded its inquiry still further, it would have discovered many similar cases in which the State did not even seek death. Cases in both of these categories are eminently relevant to the question of whether a death sentence in a given case is proportionate to the offense. The Georgia Supreme Court's failure to acknowledge these or any other cases outside the limited universe of cases in which the defendant was sentenced to death creates an unacceptable risk that it will overlook a sentence infected by impermissible considerations.

539, 720 S.E.2d 31 (2011). See S.C. Code Ann. Section 16-3-20 & 16-3-25. As noted above, statutory proportionality review was completed by the Supreme Court in this case. The South Carolina Supreme Court concluded:

III. Proportionality Review

Based on our decision to affirm Inman's guilty plea and the judge's rulings regarding the sentencing proceedings, we must assess Inman's sentence of death as it is this Court's duty to conduct a proportionality review of Inman's death sentence. S.C. Code Ann. § 16-3-25(C) (2003).²⁰

"The United States Constitution prohibits the imposition of the death penalty when it is either excessive or disproportionate in light of the crime and the defendant." *State v. Wise*, 359 S.C. 14, 28, 596 S.E.2d 475, 482 (2004). In conducting a proportionality review, we search for similar cases in which the sentence of death has been upheld. *Id.*; S.C. Code Ann. § 16-3-25(E) (2003) (providing that in conducting a sentence review the Supreme Court "shall include in its decision a reference to those similar cases which it took into consideration"). 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.

Furthermore, 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. See *State v. Stanko*, 376 S.C. 571, 658 S.E.2d 94 (2008) (death sentence warranted where defendant was convicted of murder, ABWIK, criminal sexual conduct, kidnapping, and armed robbery); *State v. Evins*, 373 S.C. 404, 645 S.E.2d 904 (2007) (death sentence warranted where defendant was convicted of murder, kidnapping, first-degree criminal sexual conduct, and grand larceny); *State v. Simmons*, 360 S.C. 33, 599 S.E.2d 448 (2004) (death sentence upheld where jury found aggravating circumstances of criminal sexual conduct, kidnapping, armed robbery, physical torture, and

Id. at 455-56 (citations omitted). This issue is not before us on appeal, and it would require us to overrule our prior decision in *Copeland*. However, we note our concern that restricting our statutorily-mandated proportionality review to only similar cases where death was actually imposed is largely a self-fulfilling prophecy as simply examining similar cases where the defendant was sentenced to death will almost always lead to the conclusion that the death sentence under review is proportional.

State v. Dickerson, 395 S.C. 101, 125, 716 S.E.2d 895, 908 (2011).

burglary); State v. Whipple, 324 S.C. 43, 476 S.E.2d 683 (1996) (death sentence upheld where defendant was convicted of murder, criminal sexual conduct, armed robbery, and grand larceny of a motor vehicle).

State v. Inman, 395 S.C. 539, 566-68, 720 S.E.2d 31, 46 (2011)

As to subpart (4), the allegation that “the death penalty is unconstitutional because it is unreliable, arbitrary, and lacks penological purpose,” has no legal merit. This issue was addressed as a matter of state law in State v. Shaw, 273 S.C. 194, 255 S.E.2d 799 (1979) and its progeny. There is no merit to this ground as a free-standing challenge to the death penalty for murder in a collateral proceeding. See S.C. Code Ann. Section 16-3-10 & 16-3-20, 16-3-25, 16-3-26, & 16-3-28.

In Gregg v. Georgia, 428 U.S. 153, 96 S.Ct. 2909, 49 L.Ed.2d 859 (1976), the Supreme Court rejected the argument the death penalty is *per se* unconstitutional. The Gregg court recognized the death penalty serves the dual purposes of retribution and deterrence. It recognized that retribution “though unappealing to many, ... is essential in an ordered society that asks its citizens to rely on legal processes rather than self-help to vindicate their wrongs.” Id., at 184, 96 S.Ct. at 2930. The Gregg court also recognized the complexity of evaluating the deterrent effect of capital punishment, and it wisely noted that the responsibility for making such an evaluation “properly rests with the legislatures.” Id., at 186-187, 96 S.Ct. at 2930. The Supreme Court has cited Gregg with approval in recent decisions, stating in one case that: “[O]ur decisions in this area [constitutionality of methods of execution] have been animated in part by the recognition that because it is settled that capital punishment is constitutional, ‘[i]t necessarily follows that there must be a [constitutional] means of carrying it out.’ ” Glossip v. Gross, 135 S.Ct. 2726 (2015), citing Baze v. Rees, 553 U.S. 35, 47, 128 S.Ct. 1520 (2008). In his concurring opinion, Justice Scalia summarized the state of the law on this very question:

"Mind you, not once in the history of the American Republic has this Court ever suggested the death penalty is categorically impermissible. The reason is obvious: it is impossible to hold unconstitutional that which the Constitution explicitly *contemplates*. The Fifth Amendment provides that '[n]o person shall be held to answer for a capital ... crime, unless on a presentment or indictment of a Grand Jury,' and that no person shall be 'deprived of life ... without due process of law.' " Glossip, *supra*, at 2747.

The relief Applicant seeks in this claim - the complete abolition of the death penalty - would properly be achieved by an amendment to the federal Constitution. As it stands, the amended application ignores the Fifth Amendment and Eighth Amendment, minimizes the retributive value of capital punishment, and, if granted, would usurp the legislative prerogative for determining the appropriate penalties available for the worst of offenses.

Even though infrequently imposed, the death penalty provides an appropriate avenue by which society may express its moral outrage against the depravity of murders, like the one committed by Applicant. The death penalty also provides a means of justice for those families of the murdered who seek to have it imposed against the murderer. Certainly, some families of murder victims do not seek capital punishment. But for those who do, it would be indecent to deprive them of this long-recognized and constitutional means of obtaining justice, regardless of any delays in the ultimate execution of the sentence. These considerations should not be lightly overlooked. That lengthy delays exist and that some jurisdictions have halted executions are not support for considering again the constitutionality of the death penalty as it exists today. Rather, they evidence the care that society is taking to ensure that death penalties are meted out to the truly deserving, like Inman.

By its decisions in Atkins v. Virginia, 536 U.S. 304, 122 S.Ct. 2242 (2002); Roper v. Simmons, 543 U.S. 551, 125 S.Ct. 1183 (2005); Kennedy v. Louisiana, 554 U.S. 407, 128 S.Ct. 2641 (2008), and Coker v. Georgia, 433 U.S. 584, 97 S.Ct. 2861 (1977), the Supreme Court limited the instances in which the death penalty could be imposed. Now, in line with the prevailing standards of decency in our ever evolving society, the death penalty is barred as to rapists of both adult women and children who do not kill, murderers who are mentally retarded (intellectually disabled), and murderers who were under the age of 18 at the time of the crime. In holding that the death penalty is violative of the Eighth Amendment in Coker and Kennedy, the opinion distinguished between the severity and irrevocability of an intentional first degree murder as compared to a non-homicide crime such as rape. Kennedy, 554 U.S. at 438, 128 S.Ct. at 2660; Coker, 433 U.S. at 598, 97 S.Ct. at 2861. In Atkins and Roper, the court found murderers who are “mentally retarded” and those who were under the age of 18 to be “categorically less culpable than the average criminal.” Atkins, 536 U.S. at 316, 122 S.Ct. at 2242; Roper, 543 U.S. at 567, 125 S.Ct. at 1194.

Here, the penalty imposed against Inman, a fully culpable adult, is not barred by precedent confining the instances where the death penalty may be imposed and is not offensive to prevailing and evolving standards of decency in today's world.

For all of the foregoing reasons, this ground must be denied and dismissed with prejudice.

Ground 10(f)11(f) The cumulative effect of all of counsel's failures entitle Mr. Inmon to the relief sought because he was also prejudiced by the synergistic impact of the constitutional failures.

Supporting facts: None

Respondent denies the allegations of this ground and requires strict proof thereof.

Additionally, applicant Inman will not be able to show deficient performance or resulting prejudice under this ground. Strickland; Wong v. Belmontes.

Furthermore, there is no factual or legal merit to this claim as South Carolina does not recognize and has not recognized the cumulative error doctrine asserted under this ground. South Carolina has not recognized the concept of cumulative error as applicable in PCR cases. See Lorenzen v. State, 376 S.C. 521, 657 S.E.2d 771 n. 3 (2008) (declining opportunity to decide whether to recognize cumulative error); Simpson v. Moore, 367 S.C. 587, 604, 627 S.E.2d 701, 710 (2006); Green v. State, 351 S.C. 184, 196, 569 S.E.2d 318, 324 (2002). The Fourth Circuit has rejected this doctrine.

Next, Fisher argues that the cumulative effect of his trial counsel's individual actions deprived him of a fair trial. We disagree. Having just determined that none of counsel's actions could be considered constitutional error, see Lockhart v. Fretwell, 506 U.S. 364, 369 n. 2, 113 S.Ct. 838, 122 L.Ed.2d 180 (1993) ("[U]nder Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984), an error of constitutional magnitude occurs in the Sixth Amendment context only if the defendant demonstrates (1) deficient performance and (2) prejudice." (emphasis added)), it would be odd, to say the least, to conclude that those same actions, when considered collectively, deprived Fisher of a fair trial. Not surprisingly, it has long been the practice of this Court individually to assess claims under Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984). See, e.g., Hoots v. Allsbrook, 785 F.2d 1214, 1219 (4th Cir.1986) (considering ineffective assistance claims individually rather than considering their cumulative impact). In fact, in Arnold v. Evatt, 113 F.3d 1352 (4th Cir.1997), *cert. denied*, 522 U.S. 1058, 118 S.Ct. 715, 139 L.Ed.2d 655 (1998), this Court recently rejected a similar request to review the alleged errors of a trial court cumulatively rather than individually. See *id.* at 1364 ("Based on the findings of this court concerning the individual claims of error, we reject this claim.").

To the extent this Court has not specifically stated that ineffective assistance of counsel claims, like claims of trial court error, must be reviewed individually, rather than collectively, we do so now. [FN9] In so holding, we are in agreement with the majority of our sister circuits that have considered the issue. For example, in Wainwright v. Lockhart, 80 F.3d 1226 (8th Cir.), *cert. denied*, 519 U.S. 968, 117 S.Ct. 395, 136 L.Ed.2d 310 (1996), the Eighth Circuit expressly held that an attorney's acts or omissions "that are not unconstitutional individually cannot be added together to create a constitutional violation." *Id.* at

1233; *see also* Jones v. Stotts, 59 F.3d 143, 147 (10th Cir.1995) (noting that cumulative-error analysis evaluates only effect of matters determined to be error, not cumulative effect of non-errors); United States v. Stewart, 20 F.3d 911, 917-18 (8th Cir.1994) (same); United States v. Gutierrez, 995 F.2d 169, 173 (9th Cir.1993) (same). *But see* Williams v. Washington, 59 F.3d 673, 682 (7th Cir.1995) (stating that "a petitioner may demonstrate that the cumulative effect of counsel's individual acts or omissions was [prejudicial]"); Rodriguez v. Hoke, 928 F.2d 534, 538 (2d Cir.1991) (noting that a "claim of ineffective assistance of counsel can turn on the cumulative effect of all of counsel's actions"). Accordingly, the district court did not err in refusing to grant habeas relief on this claim.

FN9. Fisher relies, in part, on cases considering the cumulative effect of matters actually determined to be constitutional error. In these cases, however, the courts in question merely aggregated all of the actual constitutional errors that individually had been found to be harmless, and therefore not reversible, and analyzed whether their cumulative effect on the outcome of the trial was such that collectively they could no longer be determined to be harmless. *See, e.g., United States v. Rivera*, 900 F.2d 1462, 1471 (10th Cir.1990). Thus, legitimate cumulative-error analysis evaluates only the effect of matters actually determined to be constitutional error, not the cumulative effect of all of counsel's actions deemed deficient.

Fisher v. Angelone, 163 F.3d 835, 852-53 (4th Cir. 1998) *cert. denied*, 526 U.S. 1035 (1999). It is of no little note that the Fourth Circuit noted it was "in agreement with the majority of our sister circuits that have considered the issue." *Id.*

Here, as discussed under each individual allegation, Inman has failed to show constitutional error. Given there is no constitutional error, under Fourth Circuit precedent, there could be no cumulative error effect. *Id.* Inman must prove specific error and prejudice to show he is entitled to relief on an ineffective assistance of counsel claim. Strickland. Inman has failed to show either. Further, to the extent some analysis could be made, Inman still would not be entitled to relief where he has failed to demonstrate that he was somehow deprived of a fair trial. *See Welch v. Workman*, 639 F.3d 980, 1016 (10th Cir. 2011) (declining relief under cumulative error doctrine even where finding 2 errors were such errors did not deprive

defendant of fair trial). The record shows Inman received the constitutional assistance of counsel. Nothing indicates Inman did not receive a fair trial. But again, neither our state cases, nor the Fourth Circuit would provide support for a cumulative error analysis. Inman is not entitled to relief on this allegation.

Finally, even if South Carolina recognized the cumulative error doctrine, Inman cannot show prejudice under the applicable standard because of the overwhelming evidence in aggravation. Wong v. Belmontes; Wiggins v. Smith; Sears v. Upton. Inman admitted his guilt to the crimes of murder, burglary 1st, CSC 1st, and kidnapping. Inman admitted he acted alone. Inman confessed to the crimes against Tiffany Souers, and his DNA identified him as the perpetrator of these crimes. He admitted he burglarized the homes of three (3) other victims, and raped two (2) of those victims and attempted to sexually assault another victim. He raped one victim in the presence of her two (2) year old child. Inman served approximately sixteen (16) years in prison for a criminal sexual assault of a fellow inmate in North Carolina and the burglary, kidnapping, rape, and armed robbery of another victim in Florida, and had not been rehabilitated. After being released from prison in 2005, in 2006 Inman then committed three (3) more rapes and the murder of Tiffany Souers. Inman had been convicted on two (2) previous occasions of escape from a prison or jail facility, and had numerous disciplinary violations while in prison in North Carolina and Florida. As a result, Inman cannot show prejudice and this ground must be denied and dismissed.

Ground 10(g)11(g) Mr. Inmon was denied the right to a fair trial - - as guaranteed by the Fifth, Sixth, Eighth, and Fourteenth Amendments to the United States Constitution and by Article I, Sections 3 and 14 of the South Carolina Constitution - - during the sentencing phase of his capital trial because of prosecutorial misconduct.

Supporting facts: Both the trial court judge and the South Carolina Supreme Court found prosecutorial misconduct regarding Solicitor Atrial's treatment of Dr. Marti Loring. Dr. Loring was traumatized by this misconduct and was unable to inform the sentencing judge with

powerful mitigation evidence known to her that would have resulted in the imposition of a life sentence.

Respondent denies the allegations of this ground and requires strict proof thereof. Further, there is no factual or legal merit to this ground. Applicant Inman will be unable to show error or resulting prejudice.

First, this ground is barred because it is not cognizable on post-conviction relief. Hyman v. State, supra.

Second, this ground is barred by the doctrines of collateral estoppel, judicial estoppel, and res judicata. State v. Inman, supra. The South Carolina Supreme Court previously decided the claim of prosecutorial misconduct against Solicitor Ariail and found there was no prejudice to applicant Inman resulting from the prosecutorial misconduct. Inman, supra.

Third, there is no factual merit to this claim. Dr. Loring testified at the re-convening of the sentencing hearing on April 20, 2009 that she did not feel intimidated and had been protected by Judge Miller. She had also reviewed her file materials overnight, and a recess was granted overnight to allow counsel to interview and prepare Dr. Loring. When the hearing reconvened the following morning, trial counsel refused to call Dr. Loring as a witness and objected to Judge Miller calling Dr. Loring as a court's witness. Judge Miller called Dr. Loring as a court's witness. Dr. Loring testified regarding Inman's life history and background including physical and sexual abuse of Inman. Dr. Loring was even asked by Judge Miller if there was anything else he needed to know about Inman, and she stated no. Dr. Loring also was cross-examined by Deputy Solicitor Miller and she testified to additional evidence in mitigation. Counsel for Inman was allowed to question Dr. Loring; however, they chose not to elicit or discuss mitigation evidence but the circumstances of the service of an out of state

subpoena on her. As a result, this ground is without any merit and must be dismissed with prejudice.

Further, Dr. David Price testified extensively as to mitigation history and regarding Inman's life history, as did Inman's sister, Denise. State v. Inman, *supra*. As a result, this ground has no merit and must be denied and dismissed.

Further, the evidence in aggravation was overwhelming, as previously set forth above, and applicant Inman cannot show resulting prejudice.

Finally, applicant Inman informed the sentencing court he was guilty of the murder of Tiffany Souers, had escaped from prison twice, could not be rehabilitated, and the only appropriate sentence in this case was death. As a result, applicant Inman cannot show prejudice. This ground has no merit and must be dismissed with prejudice.

Ground 10(h)11(h) Mr. Inmon was denied the right to a fair trial – as guaranteed by the Fifth, Sixth, Eighth, and Fourteenth Amendments to the United States Constitution and by Article I, Sections 3 and 14 of the South Carolina Constitution – during the sentencing phase of his capital trial because of the rush to the forgone conclusion that the sentence would be death.

Supporting facts: This ground is based on the deposition testimony of former Solicitor Robert M. Ariail:

And Judge Miller had an agenda, probably one of the better agendas. And that was: Let's get through this case. You know, I know what the decision – I know what the verdict is going to be. Let's get through it and quit interrupting.

Respondent denies the allegations of this ground and requires strict proof thereof.

Additionally, applicant Inman will be unable to show error or resulting prejudice.

Furthermore, the Record shows there is no merit to this ground. (See Record on Appeal, and Sentencing Order). *See also* State v. Inman, *supra*. Applicant Inman takes an answer of former Solicitor Robert Ariail at his recent deposition in 2016, which is pure speculation on his part, as the sole basis for the allegations in this ground. However, the record of the deposition

shows Mr. Ariail did not know Judge Miller had any such *alleged* agenda and never communicated such an agenda to him or anyone else involved in the case. The Record of the proceedings in this case shows Judge Miller did not make a rush to judgment, and as the Supreme Court found in its Opinion in the direct appeal in this case, there was no due process violation of Inman even considering the prosecutorial misconduct. Inman, supra. In fact, the Record shows, and the Supreme Court's Opinion reflects that Judge Miller considered all of the mitigating evidence presented in this case from all of the defense' witnesses and contained in the record. Finally, the evidence of aggravation was overwhelming, as previously discussed above; Inman informed the Court he committed this heinous murder; he had escaped from prison two (2) times; he could not be rehabilitated; and, the only appropriate sentence in this case was death. Applicant Inman cannot show error or resulting prejudice. (Sentencing Order) State v. Inman, supra.

As a result, there is no merit to this ground, and it must be denied and dismissed with prejudice.

CONCLUSION

Respondent denies each and every allegation of Applicant's 2nd Amended Application for Post-Conviction Relief and requires strict proof thereof. Having fully answered Applicant's 2nd Amended Application for Post-Conviction Relief, Respondent also moves this Honorable Court to dismiss those allegations that are not cognizable in this setting, and fail to state a claim upon which relief may be granted by the PCR Court. Rule 12(b)(6), SCRCPP. Respondent also moves to dismiss that ground which is barred by res judicata, collateral estoppel, and judicial estoppel. As to the remaining grounds not dismissed, Respondent requests this Court convene an evidentiary hearing into this matter as to each ground.

Respectfully submitted,

ALAN WILSON
Attorney General

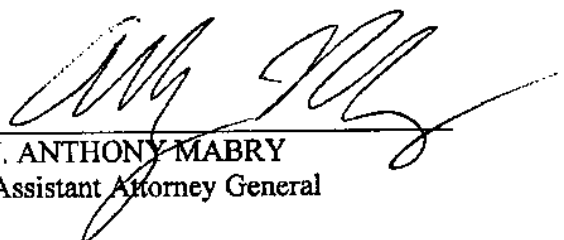
JOHN W. McINTOSH
Chief Deputy Attorney General

DONALD J. ZELENKA
Senior Assistant Deputy Attorney General

J. ANTHONY MABRY
Assistant Attorney General

S.C. Bar No. 11973
Post Office Box 11549
Columbia, SC 29211
(803) 734-6305

By:


J. ANTHONY MABRY
Assistant Attorney General

November 1, 2016

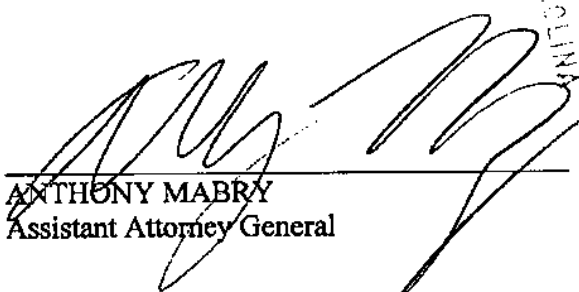
CERTIFICATE OF SERVICE

I Anthony Mabry, hereby certify that I have served the Return to Second Amended Application for Post-Conviction Relief and Motion to Dismiss by depositing copies of same in the United States Mail to:

Diana L. Holt, Esquire
Diana L. Holt, LLC
P. O. Box 6454
Columbia, SC 29260-6454

E. Charles Grose, Jr., Esquire
The Grose Law Firm
404 Main Street
Greenwood, SC 29646

This 1st day of November, 2016.



ANTHONY MABRY
Assistant Attorney General

2016 NOV 7 PM 2 03
CLERK OF COURT
PICKENS COUNTY
SOUTH CAROLINA

THE STATE OF SOUTH CAROLINA)
COUNTY OF PICKENS)
2018 AUG 10 P 12:05)

IN THE COURT OF COMMON PLEAS
FOR THE THIRTEENTH JUDICIAL
CIRCUIT

Jerry Buck Inmon,

Case No. 2012-CP-39-00918

vs.

State of South Carolina,

Respondent.

CLERK OF COURT
PICKENS COUNTY
SOUTH CAROLINA

**Motion to Quash Attorney General's Request
the Department of Corrections Transport Mr.
Inmon to Court on August 20, 2018 and
Prohibiting the Attorney General from
Directly Requesting the Department of
Corrections to Transport Mr. Inmon in the
Absence of an Order by this Court.**

Jerry Inmon moves the Court for an order quashing the Attorney General's letter dated August 2, 2018, a copy of which is attached, requesting the Department of Corrections ("SCDC") transport Mr. Inmon to arrive at the Pickens County Courthouse by 9:30 a.m. on Monday, August 20, 2018. Mr. Inmon additionally moves this Court for an order prohibiting the Attorney General from directly requesting the SCDC to transport Mr. Inmon in the absence of an order by this Court.

1) By email dated August 2, 2018, the Attorney General informed this Court and counsel that, in the absence to medical and security issues to the contrary, "respondent has prepared a letter of transport and will send it to SCDC today. We will also copy you and opposing counsel on the letter."¹ Counsel for Mr. Inmon responded that Mr. Inmon is waiving his right to be present at the evidentiary hearing. The Attorney General responded:

Please be advised it is anticipated Mr. Inmon will likely be called as a witness and will not be merely observing the proceedings. As you will recall, Mr. Inmon pled guilty, accordingly, his knowledge and decisions are key. A transportation order is not necessary, but if you would like to hear any additional comments or concerns, such as those provided by opposing counsel in the below email, we are available for a status conference at your convenience.

Copies of these emails are attached. Without waiting for a response from this Court, the Attorney

¹ The Attorney sent the letter to the SCDC by email and US Mail. Counsel for Mr. Inmon was not copied on the email.

General unilaterally forwarded the request to the SCDC on the same day.

2) Mr. Inmon waives his right to be present at the evidentiary hearing. Although Mr. Inmon cannot be required to explain his reasons for waiving his presences at the hearing, counsel provided the Court with an explanation. Additionally, Dr. Donna Schwartz Maddox examined Mr. Inmon on August 3, 2013. According to Dr. Maddox, Mr. Immon

reported he has not been receiving his prescribed Naprosyn by the South Carolina Department of Corrections. He also reported he has not been receiving his Amlodopine (antihypertensive) regularly. He reported after his last transport, he was handcuffed over 12 hours and was in pain afterwards. He reports this as the reason he does not wish to be transported to his upcoming legal proceedings.

Dr. Maddox relayed Mr. Inmon's "request to receive his scheduled medication to the Major in charge of Death Row." A copy of Dr. Maddox's report is attached.

3) The State did not represent it *definitely* will call Mr. Inmon as a witness, only that it "likely" will. The State cannot compel Mr. Inmon to testify against his will. Even if the State can compel Mr. Inmon to testify, it cannot so without a court order and until after Mr. Inmon, through counsel, has an opportunity to be heard. Requesting the SCDC transport Mr. Inmon under these circumstances, accordingly, is premature.

4) Although scheduled to commence on Monday, August 20, 2018, the evidentiary hearing will take more than one day, providing the parties the opportunity to litigate this issue prior to the State's portion of the case. Additionally, if the Court determines the State can compel Mr. Inmon's testimony, the Court could allow the State to present that testimony through a de bene esse deposition, if necessary.

5) In addition to the attached emails, counsel for Mr. Inmon has communicated with counsel for the State in an effort to resolve this matter. When the evidentiary hearing was scheduled to commence in November 2016, counsel for Mr. Inmon and the State had agreed for

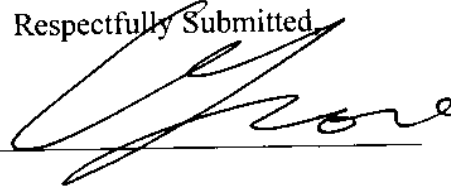
this Court to convene a telephone call with Mr. Inmon, in the presence of his counsel, to confirm his desire to waive his presence and only his presence at the hearing.

Therefore, Mr. Inmon respectfully requests this Court issue an order quashing the Attorney General's transportation request for August 20, 2018. Mr. Inmon additionally requests this Court issue an order prohibiting the Attorney General from directly requesting the SCDC to transport Mr. Inmon in the absence of an order by this Court.

IT IS SO MOVED.

Respectfully Submitted,

By



Diana Holt
Diana Holt, LLC
Post Office Box 6454
Columbia, South Carolina 29260-6454
Phone: 803-782-1663
Email: DianaHolt@utexas.edu

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

August 6, 2018

THE STATE OF SOUTH CAROLINA)
COUNTY OF PICKENS)

IN THE COURT OF COMMON PLEAS
THIRTEENTH JUDICIAL CIRCUIT

2018 AUG 10 P 12:05

Case No. 2012-CP-39-918

Jerry Inmon

Applicant

vs.

CLERK OF COURT
PICKENS COUNTY
SOUTH CAROLINA

State of South Carolina

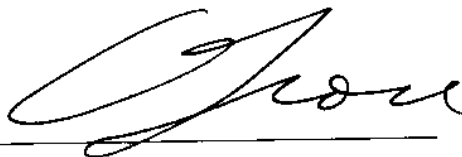
Respondent

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

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

Barton J. Vincent, Esquire
4444 Broad River Rd.
Columbia, SC 29221-1787

By



E. Charles Grose, Jr.
The Grose Law Firm, LLC
404 Main Street
Greenwood, SC 29646
(864) 538-4466

8/7, 2018
Greenwood, South Carolina

Subject: RE: Jerry Buck Inmon, # 5226, a/k/a Jerry Buck Inman v. State of South Carolina, 2012-CP-39-918
Date: Thursday, August 2, 2018 at 12:28:09 PM Eastern Daylight Time
From: Sherrie Butterbaugh
To: Diana Holt, AMacaulayJ@sccourts.org
CC: Charles Grose, Melody Brown
Attachments: image001.jpg, image002.jpg

Dear Judge Macaulay:

Please be advised it is anticipated Mr. Inmon will likely be called as a witness and will not be merely observing the proceedings. As you will recall, Mr. Inmon pled guilty, accordingly, his knowledge and decisions are key. A transportation order is not necessary, but if you would like to hear any additional comments or concerns, such as those provided by opposing counsel in the below email, we are available for a status conference at your convenience.

Thank you,
Melody Brown and Sherrie Butterbaugh



Sherrie Butterbaugh
Assistant Attorney General
SC Attorney General's Office
Rembert C. Dennis Bldg.
1000 Assembly St.
Columbia, SC 29201
Office: (803) 734.0128

CLERK OF COURT
PROBATE COURT
JULY 10 2018

2018 AUG 10 P 12:05

From: Diana Holt [mailto:DianaHolt@dianaholtllc.com]
Sent: Thursday, August 02, 2018 12:11 PM
To: Sherrie Butterbaugh; AMacaulayJ@sccourts.org
Cc: charles@groselawfirm.com; Melody Brown
Subject: RE: Jerry Buck Inmon, # 5226, a/k/a Jerry Buck Inman v. State of South Carolina, 2012-CP-39-918

Mr. Inmon is waiving his attendance for his PCR hearing. He has not attended any of the hearings thus far. He doesn't ***need*** a medical reason not to attend. His last transport July 2nd resulted in him being kept in full chains, including the black box, for over ten straight hours. He was not provided a lunch. When he needed to visit the gentleman's room, he was accompanied by COs who watch the entire time. This all is humiliating and painful. He has drafted his own statement about his reasons. I will provide it to all tomorrow afternoon. Respectfully, SCDC doesn't particularly know anything about Mr. Inmon's medical conditions, which is part of the reason they are in the middle of massive litigation concerning all death sentenced human beings in SC.

We would ask you not to request his transport. Short of your agreement not to transport him, we will file a motion for the Court's consideration concerning a no-transport order.

Many thanks.

Best~ dh


Diana Holt
DianaHolt@DianaHoltLLC.com
Diana Holt, LLC
Post Office Box 6454
Columbia, South Carolina 29260-6454
803.782.1663 (Office)
803.787.0374 (Facsimile)
803.351.8100 (Mobile)
www.dianaholtllc.com

CONFIDENTIALITY NOTICE: This E-Mail is intended only for the use of the individual or entity to whom it is addressed and may contain information that is privileged, confidential and exempt from disclosure under applicable law. If you have received this communication in error, please do not distribute and delete the original message. Please notify the sender by E-Mail at the address shown. Thank you for your compliance.

From: Sherrie Butterbaugh <SButterbaugh@scag.gov>
Sent: Thursday, August 2, 2018 11:53 AM
To: AMacaulayJ@sccourts.org
Cc: Diana Holt <DianaHolt@dianaholtllc.com>; charles@groselawfirm.com; Melody Brown <MBrown@scag.gov>
Subject: Jerry Buck Inmon, # 5226, a/k/a Jerry Buck Inman v. State of South Carolina, 2012-CP-39-918

Dear Judge Macaulay,

Good morning. SCDC has confirmed there are no medical or security reasons why Mr. Inmon would be unable to travel to Pickens County for his upcoming PCR hearing scheduled to begin August 20, 2018. We recall there were expressed medical concerns which may have prevented transport prior to the previously scheduled hearing in November 2016. Accordingly, respondent has prepared a letter of transport and will send it to SCDC today. We will also copy you and opposing counsel on the letter. Please do not hesitate to contact me if you have any questions.

Thank you,
Sherrie Butterbaugh



Sherrie Butterbaugh
Assistant Attorney General
SC Attorney General's Office
Rembert C. Dennis Bldg.
1000 Assembly St.
Columbia, SC 29201
Office: (803) 734.0128

CLERK OF COURT
PICKENS COUNTY
SHERIE BUTTERBAUGH

2018 AUG 10 P 12:05

Donna Schwartz Maddox MD
Consulting Forensic Psychiatrist

Re: Jerry Inmon

Dear Ms. Holt,

I am writing this letter as a response to your request.

I evaluated Mr. Inmon on Friday, August 3, 2018 for two hours at Kirkland Correctional Institution. At that time, he complained of severe bilateral elbow pain and specifically pain in the left olecranon bursa. He reported he has not been receiving his prescribed Naprosyn by the South Carolina Department of Corrections. He also reported he has not been receiving his Amlodopine (antihypertensive) regularly. He reported after his last transport, he was handcuffed over 12 hours and was in pain afterwards. He reports this as the reason he does not wish to be transported to his upcoming legal proceedings.

I did communicate his request to receive his scheduled medication to the Major in charge of Death Row.

Donna Schwartz Maddox, MD

CLERK OF COURT
SOUTH CAROLINA
JULY 2018

2018 AUG 10 P 12:05



2018 AUG 10 P 12:05

ALAN WILSON
ATTORNEY GENERAL

CLERK OF COURT
PICKENS COUNTY
SOUTH CAROLINA

August 2, 2018

Via Email and Via U.S. Mail

Ms. Lisa Miller
South Carolina Department of Corrections
P.O. Box 21787
Columbia, South Carolina 29221-1787

Re: Jerry Buck Inman, #5256 v. State of South Carolina
2012-CP-39-918
Capital PCR

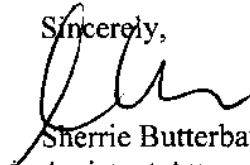
Dear Ms. Miller:

A Post-Conviction Relief hearing has been scheduled for **Monday, August 20, 2018 @ 9:30 a.m.** at the Pickens County Courthouse, 214 East Main Street, A100, Pickens, South Carolina 29671 before the Honorable Alexander S. Macaulay regarding the above matter.

Please have Mr. Inman at the courthouse on Monday, August 20, 2018 @ 9:00 a.m. for the hearing.

Thank you for your assistance in this matter. If you have any questions, please do not hesitate to contact me.

Sincerely,



Sherrie Butterbaugh
Assistant Attorney General

SB/dmd

cc: Honorable Alexander S. Macaulay
E. Charles Grose, Jr., Esq.
Diana L. Holt, Esq.

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF Pickens)

13th JUDICIAL CIRCUIT

CASE NO.: 2012-CP-39-0918

Jerry Inmon

Plaintiff,)

vs.)

State of South Carolina

Defendant.)

2018 AUG 10 P 12:04

**MOTION AND ORDER INFORMATION
FORM AND COVERSHEET**

CLERK OF COURT
PICKENS COUNTY
JULY 2018

Plaintiff's Attorney:

Charles Grose, Bar No. 66063

Address:

404 Main Street, Greenwood, SC 29646

Phone: 864-538-4466 Fax 864-538-4405

E-mail: charles@groselawfirm.com Other: _____

Defendant's Attorney:

Melody Brown, Bar No. _____

Address:

PO Box 11549, Columbia, SC 29211

Phone: _____ Fax _____

E-mail: amabry@scag.gov Other: _____

☒ **MOTION HEARING REQUESTED** (attach written motion and complete SECTIONS I and III)

☐ **FORM MOTION, NO HEARING REQUESTED** (complete SECTIONS II and III)

☐ **PROPOSED ORDER/CONSENT ORDER** (complete SECTIONS II and III)

SECTION I: Hearing Information

Nature of Motion: Motion to Quash Attorney General's Request the Department of Corrections Transport Mr. Inmon to Court on August 20, 2018 and Prohibiting the Attorney General from Directly Requesting the Department of Corrections to Transport Mr. Inmon in the Absence of an Order by this Court.

Estimated Time Needed: 15 min

Court Reporter Needed: ☒ YES / ☐ NO

SECTION II: Motion/Order Type

☒ Written motion attached

☐ Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.

Signature of Attorney for ☒ Plaintiff / ☐ Defendant

August 6, 2018

Date submitted

SECTION III: Motion Fee

☐ PAID - AMOUNT: \$ _____

☒ EXEMPT:

(check reason)

☐ Rule to Show Cause in Child or Spousal Support

☐ Domestic Abuse or Abuse and Neglect

☐ Indigent Status ☐ State Agency v. Indigent Party

☐ Sexually Violent Predator Act ☒ Post-Conviction Relief

☐ Motion for Stay in Bankruptcy

☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRPC)

☐ Proposed order submitted at request of the court; or,
reduced to writing from motion made in open court per judge's instructions

Name of Court Reporter: _____

☐ Other: _____

JUDGE'S SECTION

☐ Motion Fee to be paid upon filing of the attached order.

☐ Other: _____

JUDGE CODE _____

Date: _____

CLERK'S VERIFICATION

Collected by: _____ Date Filed: _____

☐ MOTION FEE COLLECTED: \$ _____

☐ CONTESTED - AMOUNT DUE: \$ _____

STATE OF SOUTH CAROLINA)

COUNTY OF PICKENS)

Jerry Buck Inman, #5226,
a/k/a Jerry Buck Inmon,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS

C/A No.: 2012-CP-39-918

(Capital PCR Action)

RESPONSE IN OPPOSITION TO MOTION
TO QUASH TRANSPORTATION REQUEST

2018 AUG 15 A 11: 51

CLERK OF COURT
PICKENS COUNTY
SOUTH CAROLINA

This is a capital post-conviction relief (PCR) action pursued by applicant Jerry Buck Inman (hereinafter "Inman").¹ The application was initially filed on June 21, 2012, and last amended on October 16, 2016. This Court has ordered that an evidentiary hearing will be held, without further delay, on August 20, 2018 in Pickens County. In anticipation of the hearing, Respondent requested transportation for applicant, with notice to the Court and to opposing counsel. Applicant's counsel now objects and seeks to have this Court "quash" the letter request for transportation of applicant to his evidentiary hearing and seeks an Order limiting transportation unless this Court authorizes the transportation by formal order. The motion should be denied for all the following reasons:

1. This Court has made clear that there will be no continuances or delays in this matter which has lingered since the initial filing in June of 2012. There is no basis to allow an applicant reprieve from complying with the Court's directive by intentionally failing to attend and present testimony, whether called by his counsel or called by the State. It would be against

¹ Applicant has also been referred to as Jerry Buck "Inmon" in this action. Because he was referred to in all previous proceedings as Jerry Buck Inman, and the initial application has the "Inman" spelling, for consistency sake, Respondent will refer to applicant by the last name "Inman." Respondent also notes in applicant's separate federal litigation, as referenced by his counsel in the motion, his name is spelled "Inman." (Attachment 1, (c)).

the Court's direction, and contrary to normal court procedure, for applicant to frustrate and/or extend the proceedings for future action by asserting allegations of ineffective assistance and involuntary plea then making himself unavailable by refusing the offered transportation. He can refuse to cooperate with both transportation and testimony, but that leads to a failure of proof and/or waiver of the claim as the statements at his voluntary guilty plea cannot be challenged and are conclusive:

...the representations of the defendant, his lawyer, and the prosecutor at such a hearing, as well as any findings made by the judge accepting the plea, constitute a formidable barrier in any subsequent collateral proceedings. Solemn declarations in open court carry a strong presumption of verity. The subsequent presentation of conclusory allegations unsupported by specifics is subject to summary dismissal, as are contentions that in the face of the record are wholly incredible.

Blackledge v. Allison, 431 U.S. 63, 73–75 (1977).

Applicant is bound by his statements at the plea “unless he offers a valid reason why he should be permitted to depart from the apparent truth of his earlier statement.” *Crawford v. United States*, 519 F.2d 347, 350 (4th Cir. 1975), *overruled on other grounds by United States v. Whitley*, 759 F.2d 327 (4th Cir. 1985). Applicant has consistently affirmed that his was a voluntary plea based on his own wishes and desires to plead guilty. (See, for example, Attachments (a) (portion of plea transcript, ROA pp. 925-956) and (b) (affidavit of June 28, 2007)). The decision to confess guilt and waive a jury trial is a decision clearly reserved to the client. *McCoy v. Louisiana*, 138 S. Ct. 1500, 1508, 200 L. Ed. 2d 821 (2018) (“Some decisions ... 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.”). In light of this record, if applicant refuses to

offer testimony or answer questions regarding his verified allegations,² he cannot meet his burden of proof.

To be entitled to relief on his ineffective assistance and involuntary plea claims, an applicant must show deficient representation and prejudice. *Roscoe v. State*, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001) (citing *Hill v. Lockhart*, 474 U.S. 52 (1985)) (“A defendant who enters a plea on the advice of counsel may only attack the voluntary and intelligent character of a plea by showing that counsel’s representation fell below an objective standard of reasonableness and that there is a reasonable probability that, but for counsel’s errors, the defendant would not have pled guilty but would have insisted on going to trial.”). Failure to establish an error in representation affected applicant’s decision will result in inability to show the necessary prejudice. “To satisfy the prejudice prong, [an applicant] must prove, through the presentation of probative and credible evidence, that he would have gone to trial instead of pleading guilty but for counsel’s deficient advice.” *Taylor v. State*, 404 S.C. 350, 362, 745 S.E.2d 97, 103 (2013). To be sure, an applicant can be found not credible in bare assertion that he would not have pled guilty but for counsel error, *see id.*, but failure to make that assertion at all is a complete absence of evidence. Without his testimony to support this claim, applicant should not be permitted to depart from the representations at the time of his plea and relief must be denied. *See id.* Moreover, the absence of his testimony actually gives rise to an adverse inference:

Petitioner has invoked the court’s process to overturn what would otherwise be a final state conviction, and must prove that it should

² In post-conviction relief, an applicant must personally verify the truth of his allegations: “Facts within the personal knowledge of the applicant and the authenticity of all documents and exhibits included in or attached to the application must be sworn to affirmatively as true and correct.” S.C. Code Ann. § 17-27-40. If his sworn statements are at odds with his previous sworn statements – as they are here – there is a heightened need to present explanation to the Court. If he contends his allegations are not verified and sworn, the claims should be stricken for failure to follow the requirements of Section 17-27-40.

be overturned. It is not at all untoward to hold that petitioner must establish the facts that would give rise to the overturning, and if he refuses to put forth facts that are within his knowledge, and which are pertinent to the claims that he has made in habeas, an adverse inference may be drawn.

Bean v. Calderon, 166 F.R.D. 452, 455 (E.D. Cal. 1996). See also, e.g., *Gadson ex rel. Gadson v. ECO Servs. of S.C., Inc.*, 374 S.C. 171, 178, 648 S.E.2d 585, 589 (2007) (“The failure of a defendant to testify raises an inference that his testimony, if it had been submitted, would have been unfavorable to his position.”) (citing *Crocker v. Weathers*, 240 S.C. 412, 126 S.E.2d 335 (1962)). Again, there could be no prejudice to warrant relief.

In sum, whether there is an absence of evidence, or adverse inference, the result will be the same – without his testimony, applicant’s allegations of ineffective assistance and involuntary plea fail. Thus, applicant should be afforded the opportunity to accept transportation and present testimony, or make a knowing and voluntary waiver of that opportunity.

2. In light of the foregoing, an order to “quash” the letter request for transportation is unnecessary and frustrates rather than aids the opportunities afforded the applicant.³ If the applicant refuses transportation, the SCDC transportation team will report that action to the parties and the Court.⁴ However, applicant should be aware that the failure to do so will result in

³ Counsel for applicant asserts “Mr. Inmon waives his right to be present at the evidentiary hearing.” (Motion, p. 2). This Court has previously rejected counsel’s representation in favor of having applicant make a personal statement on his desire to waive his presence. However, whether to be present for observation or to participate in the evidentiary hearing are two separate considerations. Waiver of the opportunity to give testimony is a personal right reserved to the criminal defendant. *McCoy v. Louisiana*, 138 S. Ct. 1500, 1508 (2018) (“Some decisions ... 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.”).

⁴ Though applicant’s counsel alleges a medication problem and avoiding being handcuffed as “causing” his desire to waive attendance, (motion, p. 2), that is not consistent with the offered cause in advance of the last scheduled hearing in November 2016. Applicant’s counsel then offered a physical infirmity due to abdominal medical issues. Applicant’s counsel now offers

an adverse inference and will also cause an inability to present any statement written or recorded from the applicant. *See State v. Terry*, 339 S.C. 352, 356, 529 S.E.2d 274, 277 (2000) (“defendant who has procured his own unavailability by invoking his protection against self-incrimination” not ‘unavailable’ as a witness for purposes of” hearsay exceptions). *Cf. Kansas v. Cheever*, 571 U.S. 87, 94 (2013) (“A defendant ‘has no right to set forth to the jury all the facts which tend in his favor without laying himself open to a cross-examination upon those facts.’”)⁵

two different causes: a five year old self-report of medication issues, (motion, p. 2), and alleged discomfort and “humiliation” in being controlled and watched by correctional officers, (motion, p. 2 and attached email). Granted, there is not a consistent reason being offered, but critically medical infirmity affecting travel is different from chafing at correctional restraints and containment. There is no medical infirmity affecting travel. Moreover, craving reference to applicant’s pending litigation against SCDC is not particularly helpful, as the allegations in that action include he is “strongly considering waiving his appeal,” and has discussed same with his family. (Attachment 1, (c)). That is consistent with his desire to plead guilty and accept punishment. At any rate, his federal complaints reference his present incarceration after a move in September 2017: “Since his arrival at Kirkland, Mr. Inman has experienced difficulties obtaining medications he was previously taking while at Lieber.” (Attachment 1, (c), at para. 193). The stale, five year old information his counsel references in the instant motion stem from a self-report from time at a different facility and are simply not relevant here.

⁵ It should not be forgotten that applicant has already submitted evidence by his verified statements and cannot simply refuse to allow cross-examination with impunity:

... Petitioner has initially sworn [in his verified petition] that, if his counsel had investigated further, the “true” facts would have been apparent. ... For petitioner to now assert the self-incrimination privilege, when defendant seeks to directly test the veracity of petitioner’s assertions, without any adverse impact, gives petitioner the unseemly right to turn on and off his testimony like a water spigot whenever he sees fit. Petitioner lacks such a right, even in criminal proceedings. The colorable, factual allegations of the petition, if true, give petitioner the right to an evidentiary hearing, and petitioner should not be shielded from having to personally defend his sworn, factual assertions made in this proceeding of which he has personal knowledge

Bean, 166 F.R.D. at 455 (internal citation omitted).

(quoting *Fitzpatrick v. United States*, 178 U.S. 304, 315 (1900)); Rule 801 and 802, SCRE (hearsay not admissible without valid exception).

3. Lastly, because applicant's absence will cause a failure in the burden of proof, applicant should, in addition to waiving his presence, waive any claim of ineffective assistance of collateral counsel, whether in an effort to obtain a successive action at a later date or federal habeas review of ineffective assistance of trial counsel claims which were lost by the failure to present evidence. See *Martinez v. Ryan*, 566 U.S. 1 (2012). This is the applicant's one opportunity to present testimony for the state court record. If he fails to do so, he should make that decision with full knowledge the decision is a final one. See generally *Wade v. State*, 348 S.C. 255, 264, 559 S.E.2d 843, 847 (2002) ("An individual under PCR effectively is granted one chance to argue for relief and must do so within a year of his final appeal. These limitations adequately prevent inmates from abusing the PCR process."); see also *Cullen v. Pinholster*, 563 U.S. 170, 181 and 186 (2011) ("review under § 2254(d)(1) is limited to the record that was before the state court that adjudicated the claim on the merits" thus, while "state prisoners may sometimes submit new evidence in federal court, AEDPA's statutory scheme is designed to strongly discourage them from doing so.").

WHEREFORE, having made its response, Respondent, State of South Carolina, respectfully requests the Court deny the motion and continue to allow Respondent the ability to extend applicant the same opportunity afforded all other post-conviction relief applicants to be transported to his hearing and participate in the civil proceedings initiated by him; and, should applicant refuse the offer of transportation, the refusal should be with knowledge of the negative

effect of his decision on these proceedings and other potential collateral actions, state and federal.

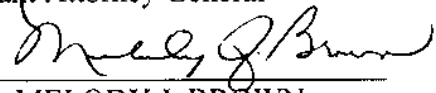
Respectfully submitted,

ALAN WILSON
Attorney General

DONALD J. ZELENKA
Deputy Attorney General

MELODY J. BROWN
Senior Assistant Deputy Attorney General

SHERRIE BUTTERBAUGH
Assistant Attorney General

By: 
MELODY J. BROWN

Office of the Attorney General
Post Office Box 11549
Columbia, South Carolina 29211
Telephone: (803) 734-6305

August 13, 2018
Columbia, South Carolina.

ATTORNEYS FOR RESPONDENTS

**RESPONSE IN OPPOSITION TO MOTION TO QUASH
TRANSPORTATION REQUEST**

ATTACHMENT (a)

*Transcript not Scanned
MB*

2018 AUG 15 A 11:51
CLERK OF COURT
HIGHTON COUNTY
SOUTH CAROLINA

**RESPONSE IN OPPOSITION TO MOTION TO QUASH
TRANSPORTATION REQUEST**

ATTACHMENT (b)

STATE OF SOUTH CAROLINA	)	IN THE COURT OF GENERAL SESSIONS
	)	THIRTEENTH JUDICIAL CIRCUIT
COUNTY OF PICKENS	)	
	)	Case Nos.: 2006-GS-39-2222-2225
State of South Carolina,	)	Warrant Nos.: H-017954-56
	)	
Plaintiff,	)	
v.	)	
	)	AFFIDAVIT OF JERRY BUCK INMAN
Jerry Buck Inman,	)	
	)	
Defendant.	)	

The Affiant, being duly sworn, would state as follows:

1. My name is Jerry Buck Inman and I am over the age of 18 and competent to give this Affidavit.

2. I am aware of the fact that I have been charged with Burglary 1st degree, Criminal Sexual Conduct 1st degree, Kidnapping and Murder in Indictment Nos. 2006-GS-39-2222-2225.

3. I am further aware that on August 22, 2006, I was served with notice of the State's intent to seek the death penalty.

4. I have had lengthy conversations with all of my defense counsel. I have reviewed the documentary Discovery. I have discussed the independent investigation conducted by my defense counsel and my investigators.

5. I have also discussed trial procedure with my counsel. I understand that I have a right to contest my guilt. I understand that I am presumed innocent. I understand that I have a right to remain silent.

6. I have discussed the benefits to me if I were to proceed with trial regarding my guilt or innocence.

7. It is my desire and wish to waive my right to a jury trial for guilt. It is my desire and wish to enter a plea of guilty to the Indictments.

8. I do not wish to contest my guilt. I do not want to put the victim's family through the ordeal of a guilt phase trial. I do not want to put the victim's family through the ordeal of the media attention this case will generate. I do not wish to require the State to bring in witnesses to testify to the facts to prove my guilt. I want to save everybody the time and trouble of a guilt phase trial.

9. It is my desire to schedule this guilty plea at the earliest possible moment.

INMON 128 A 128A 000025

Further, the affiant sayeth not.

SWORN TO BEFORE ME this
28th day of June, 2007.

Danny W. Hyatt
Notary Public for South Carolina
My Commission Expires: 8.20.2013

Jerry Buck Inman
JERRY BUCK INMAN

**RESPONSE IN OPPOSITION TO MOTION TO QUASH
TRANSPORTATION REQUEST**

ATTACHMENT (c)

confinement. He has nothing to fill the vast void that is his current day to day existence. He has thoughts of suicide that he is only able to control by thinking of his children and baby grandson.

186. After the transfer to Kirkland, prison staff have not returned a number of Mr. Finklea's possessions. He has lost all of his electrical devices and when he received his clothes, his new long johns were not among them. Instead, the property control officer kept his new long johns and returned to him two old pairs of long johns that were riddled with holes and practically shredded. Worst of all, Mr. Finklea has not received two Bibles that he read every day first thing in the morning and before going to sleep at night.

Jerry Inman

187. Plaintiff Jerry Inman has spent the past eleven years in solitary confinement.

188. At Lieber, Mr. Inman made friendships with the other Death Row inmates and talked often with his out-of-state family members. He spent hours at a time drawing intricate works of art. Kirkland has stripped him of even these small pleasures and emotional outlets, leaving him to sit alone in the darkness and watch TV all day, every day.

189. Mr. Inman is a quiet man and so the setup of Kirkland is particularly difficult for him. Some inmates hold conversations by yelling, and—to get the officers' attention—inmates must yell and beat on their cell doors. However, Mr. Inman does not yell, so he cannot communicate with any other inmates or get the officers' attention to get his needs met. He has stopped even trying to access the phone.

190. Mr. Inman has also stopped scheduling visits because of how unpredictable and disorganized the visiting process is at Kirkland. His visitors are all from out of state, so it is a major investment of time and money for them to come. Mr. Inman had a Saturday visit that was approved prior to the move to Kirkland. The afternoon before his scheduled visit, the officers told

STATE OF SOUTH CAROLINA)
COUNTY OF PICKENS)

IN THE COURT OF COMMON PLEAS

Jerry Buck Inman, #5226,)
Applicant,)
v.)
State of South Carolina,)
Respondent.)

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

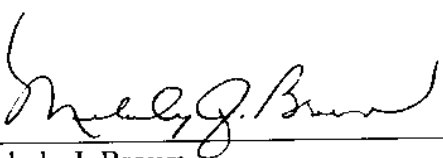
CERTIFICATE OF SERVICE

The undersigned certifies that a copy of the *Response in Opposition to Motion to Quash Transportation Request* was served on applicant's counsel by depositing same in the United States mail, postage prepaid, addressed as follows:

Diana L. Holt Esquire
Post Office Box 6454
Columbia, South Carolina, 29260-6454

E. Charles Grose Jr., Esquire
404 Main Street
Greenwood, SC 29646

This 13th day of August, 2018.


Melody J. Brown
Senior Assistant Deputy Attorney General

STATE OF SOUTH CAROLINA
COUNTY OF PICKENS

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

2018 AUG 20 P 1:37

Jerry Buck Inman, #5226
a/k/a Jerry Buck Inmon,

Applicant,

v.

State of South Carolina,

Respondent.

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

RESPONDENT'S REQUEST FOR
SPECIFIC QUESTIONING TO ESTABLISH
KNOWING AND VOLUNTARY WAIVER

Applicant is a death-sentenced inmate currently residing on Death Row in Kirkland Correctional Institution, part of the South Carolina Department of Corrections. Respondent, State of South Carolina, through the South Carolina Department of Corrections, provided transportation arrangements for Applicant to attend his PCR evidentiary hearing in the Pickens County Courthouse beginning August 20, 2018. Respondent is advised and informed Applicant has declined transportation to the hearing. Respondent has alternatively secured telephone access so that this Court may question Applicant as to his knowing and voluntary waiver of appearance and his right to give testimony in his post-conviction relief action. Respondent requests this Court question Applicant under oath to ensure the record reflects a knowing and intelligent waiver of the right to attend the hearing and the right to give testimony at the hearing. Respondent proposes the following questions:

One: You are allowed to attend the hearing scheduled to begin this morning, August 20, 2018, on the allegations of your application. This Court may even order you to attend. Do you understand that you have been offered transportation to this hearing and the ability to be present at your hearing? Do you wish to waive that right?

[See S.C. Code § 17-27-80].

- Two:** You are also allowed to attend and give your testimony as to the allegations in your application. Are you aware that this Court may find that your failure to testify in support of your allegations results in a failure of proof and/or waiver of your claim(s)?
- [See *Blackledge v. Allison*, 431 U.S. 63, 73–75 (1977); *Crawford v. United States*, 519 F.2d 347, 350 (4th Cir. 1975)].
- Three:** Are you aware that to be entitled to relief on your existing claims of ineffective assistance and involuntary guilty plea, you must show deficient representation and prejudice? Do you understand that you have the burden of proof in this action?
- [See *Roscoe v. State*, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001) (citing *Hill v. Lockhart*, 474 U.S. 52 (1985); Rule 71.1, (e), SCRCP)].
- Four:** Are you aware this Court may find that your failure to testify and establish that an error in your plea counsel’s representation affected your decision to plead guilty results in failure to show the necessary prejudice to obtain relief?
- [See *Taylor v. State*, 404 S.C. 350, 362, 745 S.E.2d 97, 103 (2013).]
- Five:** Do you understand that without your testimony to support your claims, this Court may find you will not be permitted to depart from the representations you gave at your plea?
- [See *Blackledge v. Allison*, 431 U.S. 63, 73–75 (1977); *Crawford v. United States*, 519 F.2d 347, 350 (4th Cir. 1975)].
- Six:** Do you understand that this Court may find the absence of your testimony actually gives rise to an adverse inference? Do you understand an adverse inference will mean the Court may consider the absence of your testimony to be taken as the fact you believe your plea was voluntary and that no mistake of counsel affected your decision?
- [See *Bean v. Calderon*, 166 F.R.D. 452, 455 (E.D. Cal. 1996). See also, e.g., *Gadson ex rel. Gadson v. ECO Servs. of S.C., Inc.*, 374 S.C. 171, 178, 648 S.E.2d 585, 589 (2007)].
- Seven:** Do you understand that this is your one opportunity to present testimony for the state court record? If you fail to do so, your decision should be made with full knowledge the decision is a final one.

[See S.C. Code § 17-27-90; see also *Cullen v. Pinholster*, 563 U.S. 170, 181 (2011)].

Respondent submits the Court should also make additional inquiries as the Court deems necessary; and also allow counsel for Applicant and counsel for Respondent to make additional inquiries as they would deem necessary in light of the answers to the Court's inquiry.

Respectfully submitted,

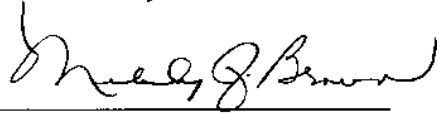
ALAN WILSON
Attorney General

DONALD J. ZELENKA
Deputy Attorney General

MELODY J. BROWN
Senior Assistant Deputy Attorney General

SHERRIE BUTTERBAUGH
Assistant Attorney General

By:



MELODY J. BROWN

Office of the Attorney General
Post Office Box 11549
Columbia, South Carolina 29211
Telephone: (803) 734-6305

August 20, 2018
Columbia, South Carolina.

ATTORNEYS FOR RESPONDENTS

STATE OF SOUTH CAROLINA
COUNTY OF PICKENS

IN THE COURT OF COMMON PLEAS

Jerry Buck Inman, #5226
a/k/a Jerry Buck Inmon,

Applicant,

v.

State of South Carolina,

Respondent.

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

CERTIFICATE OF SERVICE

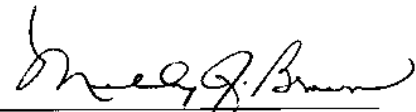
2018 AUG 20 P 2:25
CLERK OF COURT
JERRY BUCK INMAN

The below signed certifies a copy of *Respondent's Request for Specific Questioning to Establish Knowing and Voluntary Waiver* was hand-delivered in the Pickens County Courthouse to Applicant's counsel of record,

E. Charles Grose, Esq., and Diana L. Holt, Esq.

This 20th day of August, 2018.

By:



MELODY J. BROWN

Office of the Attorney General
Post Office Box 11549
Columbia, South Carolina 29211
Telephone: (803) 734-6305

ATTORNEY FOR RESPONDENT

THE STATE OF SOUTH CAROLINA
COUNTY OF PICKENS

Jerry Inmon

Applicant

vs.

State of South Carolina

Respondent

IN THE COURT OF COMMON PLEAS
THIRTEENTH JUDICIAL CIRCUIT

Case No. 2012-CP-39-918

**Second Amended Application for Post-
Conviction Relief
Corrected**

2012 CP 39-918
JERRY INMON
STATE OF SOUTH CAROLINA
JAN 11 2013
5:11 PM

The applicant, Jerry Inmon,¹ amends his application for post-conviction relief as follows:²

- 1) Mr. Inmon is confined at the Lieber Correctional Institution.
- 2) The Honorable Edward W. Miller, presiding judge of the Court of General Session for Pickens County, by special assignment of the Supreme Court, imposed the sentences.
- 3) There were not any co-defendants.
- 4) The State indicted Mr. Inmon for first-degree burglary (2006-GS-39-2222), first-degree criminal sexual conduct (2006-GS-39-2223), kidnapping (2006-GS-39-2224), and murder (2006-GS-39-2225).
- 5) On April 22, 2009, the Honorable Edward W. Miller sentenced Mr. Inmon to death for murder, thirty years' imprisonment for first-degree burglary, and thirty years' imprisonment for first-degree criminal sexual conduct. The sentences are consecutive. Pursuant to S.C. Code § 16-3-1910, Judge Miller did not impose a sentence for kidnapping.
- 6) The sentences were imposed following a guilty plea, entered on August 19, 2008.

¹ The respondent's last name is correctly spelled "Inmon." His last name is spelled "Inman" in prior proceedings and prior court documents in this case.

²

This pleading is based on SCRCForm5, revised 3/2003, found on the South Carolina Judicial Department Website. Mr. Inmon reserves the right to amend his application as provided by law.

7) Mr. Inmon appealed to the Supreme Courts of South Carolina and the United States.

8) On December 28, 2011, the South Carolina Supreme Court affirmed Mr. Inmon's convictions and sentences. *State v. Inman*, 395 S.C. 539, 720 S.E.2d 31 (2011). On October 1, 2012, the Supreme Court of the United States denied Mr. Inmon's petition for a writ of *certiorari*. *Inman v. South Carolina*, 133 S. Ct. 219 (2012).

9) Not applicable because Mr. Inmon appealed.

10) Statement of grounds for relief:

(a) Mr. Inmon was denied the right to effective assistance of counsel—guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution and by Article I, §§ 3 and 14 of the South Carolina Constitution—during the guilt-or-innocence phase of his capital trial.

(b) Mr. Inmon was denied the right to effective assistance of counsel—guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution and by Article I, §§ 3 and 14 of the South Carolina Constitution—during the sentencing phase of his capital trial.

(c) Mr. Inmon was denied the right to effective assistance of counsel—guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution and by Article I, §§ 3 and 14 of the South Carolina Constitution—during the appeal of his capital trial.

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

(e) Mr. Inmon's death sentence was obtained in violation of the Fifth, Sixth, Eighth, and Fourteenth Amendments to the United States Constitution.

(f) The cumulative effect of all of counsels' failures entitle Mr. Inmon to the relief

sought because he was also prejudiced by the synergistic impact of the constitutional failures.

(g) Mr. Inmon was denied the right to a fair trial—as guaranteed by the Fifth, Sixth, Eighth, and Fourteenth Amendments to the United States Constitution and by Article I, §§ 3 and 14 of the South Carolina Constitution—during the sentencing phase of his capital trial because of prosecutorial misconduct.

(h) Mr. Inmon was denied the right to a fair trial—as guaranteed by the Fifth, Sixth, Eighth, and Fourteenth Amendments to the United States Constitution and by Article I, §§ 3 and 14 of the South Carolina Constitution—during the sentencing phase of his capital trial because of the rush to the forgone judicial conclusion that the sentence would be death.

Applicable case law: *Hill v. Lockhart*, 474 U.S. 52 (1985) (*Strickland* standard applies to guilty plea challenges based on ineffective assistance of counsel); *Pauling v. State*, 331 S.C. 606, 503 S.E.2d 468 (1998) (Counsel ineffective in burglary and criminal sexual conduct case for failing to call triage nurse as witness); *Thomas v. State*, 308 S.C. 123, 417 S.E.2d 531 (1992) (Ineffective for failing to interview witnesses who could have contradicted state's evidence); *Ingle v. State*, 25416 (2002) (Ineffective for failing to interview a witness before calling the witness to testify); *Frett v. State*, 298 S.C. 54, 378 S.E.2d 249 (1988) (Ineffectiveness so pervasive that showing of prejudice unnecessary); *State v. King*, 155 S.E. 409, 158 S.C. 251 (1930); *Strickland v. Washington*, 466 U.S. at 668, 695 (“In making this [prejudice] determination, a court hearing an ineffectiveness claim must consider the totality of the evidence before the judge or jury”) (emphasis added); *Wiggins v. Smith*, 123 S.Ct. 2527, 2535-37 (2003) (holding trial counsel’s failure to investigate and present mitigation evidence required new trial where counsel’s failure to investigate was unreasonable under “prevailing professional norms,” as measured in part by the ABA Standards); *Williams v. Taylor*, 529 U.S. at 397 (in assessing

prejudice flowing from deficient performance, reviewing court must consider “the totality of the available mitigation evidence – both that adduced at trial, and the evidence adduced in the habeas proceeding”); *State v. Johnson*, 334 S.C. 78, 93, 512 S.E.2d 795, 803 (1999) (citations omitted) (“cumulative error doctrine provides relief to a party when a combination of errors that are insignificant by themselves have the effect of preventing a party from receiving a fair trial and it requires the cumulative effect of the errors to affect the outcome of the trial”).

Ineffective assistance of appellate counsel where trial counsel well-preserved constitutional and legal issues at trial: *Southerland v. State*, 337 S.C. 610, 524 S.E.2d 833 (1999) (requiring new sentencing trial where appellate counsel failed to raise on appeal a preserved and meritorious issue); *Evitts v. Lucey*, 469 U.S. 387, 105 S.Ct. 830, 83 L.Ed.2d 821 (1985) (to be effective appellate counsel must give assistance of such quality as to make appellate proceedings fair)); and see *Strickland v. Washington*, 466 U.S. 668, 685, 696, 104 S.Ct. 2052, 2063, 2069, 80 L.Ed.2d 674, 692, 699 (1984). *Ring v. Arizona*, 536 U.S. 584 (2002), (holding that the Sixth Amendment requires a jury to find the aggravating factors necessary for imposing the death penalty); and, *Hurst v. Florida*, 577 U.S. ____ (slip op. at 9) (2016), (overruling the holdings in *Spaziano v. Florida*, 468 U.S. 447 (1984) and *Hildwin v. Florida*, 490 U.S. 638, 640–641 (1989) reversing the holding that “the Sixth Amendment does *not* require that the specific findings authorizing the imposition of the sentence of death be made by the jury.”).

- 11) Statement of facts that support each of the grounds set forth in paragraph 10:
 - (a) Trial counsel was ineffective during the guilt-innocence phase for:
 - (1) Trial counsel was ineffective for advising Mr. Inmon to plead guilty and appeal the trial court judge denying his request to be sentenced by a jury when then existing state law did not allow jury sentencing following a guilty plea in a capital case.

(2) Not developing information through experts retained by the defense that Mr. Inmon's sexual misconduct was the result of a rare medical condition that was treatable and controllable with a common drug, and failing to advise the Court, sitting in judgment of Mr. Inmon, of this evidence that supported a verdict of guilty but mentally ill.

(b) Trial counsel was ineffective during the sentencing phase for:

(1) Failing to obtain another mitigation expert witness after Dr. Marti Loring would not continue in Mr. Inmon's case because she was intimidated by the prosecutor who threatened to have her arrested if she testified, and Mr. Inmon was prejudiced by the same.

(2) In the alternative to (11)(b)(1), failing to continue to prepare with Dr. Loring in the event the trial judge reconvened the trial, as in fact occurred, and Mr. Inmon was prejudiced by the same.

(3) In the alternative to 11(b)(1) and 11(b)(2), counsel is informed and believes that trial counsel did obtain another mitigation expert witness but failed to prepare and present that witness to testify and render an expert opinion, and Mr. Inmon was prejudiced by counsel's deficient performance.

(4) Failing to investigate, develop, and/or present mitigation evidence that was available to trial counsel at the time of the sentencing hearing, including but not necessarily limited to social history information and adaptability to incarceration, and Mr. Inmon was prejudiced by the same.

(5) Developing information through experts retained by the defense that Mr. Inmon's sexual misconduct was the result of a rare medical condition that was treatable and controllable with a common drug, and failing to advise the Court, sitting in decision

of what punishment to mete out to Mr. Inmon, of this extraordinarily powerful mitigation evidence that was and is a treatable medical condition Mr. Inmon, and Mr. Inmon was prejudiced by counsels' failures.

(6) Failing to object to the rush to the forgone judicial conclusion that the sentence would be death. This ground is based on the deposition testimony of former Solicitor Robert M. Ariail:

And Judge Miller had an agenda, probably one of the better agendas. And that was: Let's get through this case. You know, I know what the decision – I know what the verdict is going to be. Let's get through it and quit interrupting.

(7) In the alternative to 11(b)(1), (2), (3), (4), (5), and (6), intentionally not presenting powerful, available mitigation evidence in order to create an issue for post-conviction relief. This alternate ground for relief is based on the deposition of testimony of former Solicitor Robert M. Ariail. If Solicitor Ariail is correct, then such conduct amounts to intentional sandbagging for which no strategic justification exists.

(c) Appellate counsel was ineffective for:

(1) Not appealing the trial court judge denying Mr. Inmon his request to plead guilty and have his sentence determined by a jury when that right is protected by the Fifth, Sixth, Eighth, and Fourteenth Amendments to the United States Constitution and trial counsel had preserved that issue for appellate review.

(2) Not appealing Mr. Inmon's motion to continue his sentencing hearing so that he would have sufficient time to obtain another mitigation expert witness after Dr. Marti Loring who refused to participate in Mr. Inmon's case because she was intimidated by the prosecutor.

(d) S.C. Code Ann. § 16-3-20, as written by the General Assembly and construed by

the South Carolina Supreme Court, denied Mr. Inmon 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.

(e) The capital sentencing scheme in South Carolina violates the Constitution because its methods for the imposition and review of capital punishment suffers the same infirmities as the statute rejected as unconstitutional by the United States Supreme Court in *Furman v. Georgia*, 408 U.S. 238 (1972) because:

(1) South Carolina's capital sentencing statute, as written by the General Assembly and construed by the South Carolina Supreme Court, does not perform the constitutionally mandated narrowing function.

(2) South Carolina's sentencing system permits discrimination on the basis of race.

(3) The South Carolina Supreme Court consistently fails to fulfill its statutory and constitutional obligation to conduct meaningful proportionality review in capital cases.

(4) The death penalty is unconstitutional because it is unreliable, arbitrary, and lacks penological purpose.

(g) Both the trial court judge and the South Carolina Supreme Court found prosecutorial misconduct regarding Solicitor Aerial's treatment of Dr. Marty Loring. Dr. Loring was traumatized by this misconduct and was unable to inform the sentencing judge with powerful mitigation evidence known to her that would have resulted in imposition of a life sentence.

(h) This ground is based on the deposition testimony of former Solicitor Robert M.

Ariail:

And then we went to a -- a staged -- that would be my word -- staged intimidation of a witness who was never intimidated. And then we went to a four-month recess or a six-month -- whatever it was -- in the middle of the death penalty trial. And after that, then we tried to recess. The defense has done nothing to prepare for the retrial to start, apparently. That's what it seemed to indicate. And the judge orders it to start anyway. So then we've got to deal with the issue of sabotage from the defense of not bringing this woman back and creating a huge appellate or a PCR issue. So we had to make a decision as to do we seek a subpoena of this woman from out of state? Do we ask the court for the subpoena? Well, how do we go about doing all these things?

Deposition of Robert Ariail at pp. 34-35.

12) Prior to his application for post-conviction relief, Mr. Inmon has not filed any other petitions or applications other than the appeals to the Supreme Courts of South Carolina and the United States as described in paragraph 8.

13) See paragraph 12.

14) None of the grounds set forth in paragraphs 10 and 11 have been presented to this or any other state or federal court.

15) Not applicable.

16) The grounds set forth in paragraph 10 rely on facts beyond those set forth in the record that was before previous courts.

17) Mr. Inmon was represented by counsel during his guilty plea, sentencing hearing, and appeal.

18) Names and addresses of prior counsel:

(a) During guilty plea and sentencing hearing:

James W. Bannister, Esquire
Bannister, Wyatt & Stalvey, LLC
PO Box 10007
Greenville, SC 29603

Symmes W. Culbertson, Esquire
701 Crecent Ave. Greenville SC
Greenville, SC 29603

John W. DeJong, Esquire
214 E. Main St., Ste. B240
Pickens, SC 29671

(b) On appeal:

Robert M. Dudek, Esquire
S.C. Commission on Indigent Defense
PO Box 11589
Columbia, SC 29211

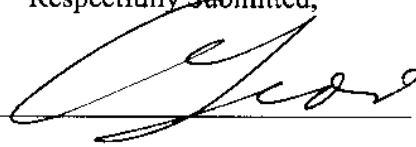
Joseph L. Savitz, III, Esquire
1825 St. Julian Place
Unit 15-D
Columbia, SC 29204

19) This Court should vacate Mr. Inmon's convictions and sentences and order a new trial. In the alternative, this Court should vacate Mr. Inmon's sentences and order a new sentencing hearing.

20) Mr. Inmon is not under a sentence from any other court that he has not challenged.

Respectfully Submitted,

By



Diana Holt
Diana Holt, LLC
Post Office Box 6454
Columbia, South Carolina 29260-6454
Phone: 803-782-1663
Email: DianaHolt@utexas.edu

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

~~October 16, 2016~~

8/20/18

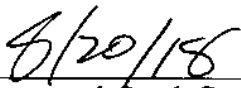
THE STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	THIRTEENTH JUDICIAL CIRCUIT
COUNTY OF PICKENS	)	
	)	Case No. 2012-CP-39-918
Jerry Inmon	)	
	)	Applicant
	)	
vs.	)	Second Amended Application for Post-
	)	Conviction Relief
	)	
State of South Carolina	)	
	)	Respondent
	)	

I certify that I have served a copy of this pleading on the State of South Carolina by placing hand-delivery on August 20, 2018

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

By 

E. Charles Grose, Jr.
The Grose Law Firm, LLC
404 Main Street
Greenwood, SC 29646
(864) 538-4466

 , 2018
Greenwood, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF PICKENS

CLERK OF COURT
PICKENS COUNTY
SOUTH CAROLINA
THE COURT OF COMMON PLEAS
2014 FEB 14 P 10:21 Civil Action No. 2012-CP-39-0918

Jerry B. Inmon,

Applicant,

vs.

State of South Carolina,

Respondent.

THIRD PARTY
MOTION TO COMPEL

TO: JERRY B. INMON AND HIS ATTORNEYS DIANA HOLT, ESQUIRE AND CHARLES GROSE, ESQUIRE:

YOU WILL PLEASE TAKE NOTICE that the Thirteenth Judicial Circuit Solicitor's Office (hereinafter "Solicitor's Office"), by and through its undersigned attorney, will move pursuant to Rule 45 of the South Carolina Rules of Civil Procedure on **March 3, 2014 at 2:00 p.m.** before Judge Alex Macaulay at the **Oconee County Courthouse, 205 W. Main Street, Walhalla, South Carolina 29691** for an order compelling the Applicant to remit payment for the cost of copying the file in the above-referenced matter in accordance with the applicant's subpoena dated October 18, 2013.

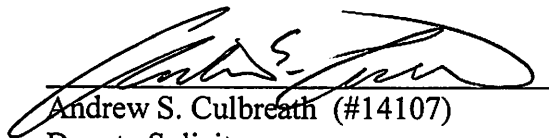
Following the deposition of the Solicitor's Office records custodian on October 29, 2013, counsel for the Applicant requested the file documents be scanned rather than copied. However, based on concerns over the ability to preserve the original organization of the file documents and the projected increased costs for equivalent scanning, a representative of the Solicitor's Office directed that the file be copied in its original form rather than scanned to preserve the organization and labeling of the file documents.

The Solicitor's Office has produced a duplicate copy of the file and has offered to deliver same to Applicant's counsel in either Greenwood or Columbia, S.C., but she has refused to accept delivery of the file or remit payment for the copy costs. A copy of Applicant's subpoena, the invoice for copying to file, a written estimate for the cost of scanning the file, and the affidavit of Mr. Don Wardlaw are attached as Exhibits "A," "B," "C," and "D" respectively.

In an effort to resolve this matter, the Solicitor's Office has offered to pay the difference between the estimated cost of scanning and the actual cost of copying the file. However, counsel for the Applicant rejected the offer. The undersigned certifies that he has attempted to resolve this matter pursuant to Rule 11 of the South Carolina Rules of Civil Procedure.

Thirteenth Judicial Circuit Solicitor's Office

By:



Andrew S. Culbreath (#14107)

Deputy Solicitor

305 E. North Street, Suite 325

Greenville, South Carolina 29601

(864) 467-8398

Attorney for Defendant

February 14th, 2014
Greenville, South Carolina

Exhibit “A”

STATE OF SOUTH CAROLINAISSUED BY THE COMMON PLEAS COURT IN THE COUNTY OF GREENVILLE

Jerry B. Inmon,

Applicant,

v.

SUBPOENA IN A CIVIL CASE

South Carolina

Case Number: 2012-CP-39-918

, Respondent

Pending in PICKENS County

TO: Records Custodian, as designated by Solicitor Walt Wilkins, 13th Judicial Circuit. YOU ARE COMMANDED to appear in the above named court at the place, date and time specified below to testify in the above case.

PLACE OF TESTIMONY	COURTROOM DATE AND TIME

 X YOU ARE COMMANDED to appear at the place, date and time specified below to testify at the taking of a deposition in the above case.

PLACE OF TESTIMONY	DATE & TIME
Greenville County Courthouse 305 E. North Street Greenville County Courthouse Greenville, SC 29601	October 29, 2013 at 9:30 a.m.

 X YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects in your possession, custody or control at the place, date and time specified below (list documents or objects):

*** SEE ATTACHED INFORMATION ***

PLACE: Same as deposition.	DATE AND TIME Same as deposition

 YOU ARE COMMANDED to permit inspection of the following premises at the date and time specified below.

PREMISES	

ANY SUBPOENAED ORGANIZATION NOT A PARTY TO THIS SUIT IS HEREBY DIRECTED PURSUANT TO RULE 30(b)(6), SOUTH CAROLINA RULES OF CIVIL PROCEDURE, TO FILE A DESIGNATION WITH THE COURT, SPECIFYING ONE OR MORE OFFICERS, DIRECTORS, OR MANAGING AGENTS, OR OTHER PERSONS WHO CONSENT TO TESTIFY ON ITS BEHALF, AND SHALL SET FORTH, FOR EACH PERSON DESIGNATED, THE MATTERS ON WHICH HE WILL TESTIFY OR PRODUCE DOCUMENTS OR THINGS. THE PERSON SO DESIGNATED SHALL TESTIFY AS TO MATTERS KNOWN OR REASONABLY AVAILABLE TO THE ORGANIZATION.

ISSUING OFFICER'S NAME, ADDRESS AND PHONE NUMBER

DIANA L. HOLT P.O.Box 6454, Columbia, SC 29260 (803)782-1663

I CERTIFY THAT THE SUBPOENA IS ISSUED IN COMPLIANCE WITH RULE 45(c)(1) AND THAT NOTICE AS REQUIRED BY RULE 45(b)(1) HAS BEEN GIVEN TO ALL PARTIES.

ISSUING OFFICER'S SIGNATURE AND TITLE

(INDICATE IF ATTORNEY FOR PLAINTIFF OR DEFENDANT)  DATE 10-18-2013

PROOF OF SERVICE

SERVED	DATE 10-18-13 864-467-8623 VIA FAX & U. S. MAIL	FEES AND MILEAGE TENDERED TO WITNESS ____ YES ____X_ NO
SERVED ON (PRINT NAME) Solicitor Wilkins		MANNER OF SERVICE Facsimile
SERVED BY (PRINT NAME) DIANA HOLT		TITLE LAWYER

DECLARATION OF SERVER

I certify that the foregoing information contained in the Proof of Service is true and correct.

Executed on 10-18-13

DATE


SIGNATURE OF SERVER

BOX 6454
ADDRESS OF SERVER

Columbia SC, 29260

Rule 45, South Carolina Rules of Civil Procedure, Parts (c) and (d):

(c) PROTECTION OF PERSONS SUBJECT TO SUBPOENAS.

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings and a reasonable attorney's fee.

(2)(A) A person commanded to produce and permit inspection and copying of designated books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial.

(B) Subject to paragraph (d)(2) of this rule, a person commanded to produce and permit inspection and copying may, within 14 days after service of the subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or the attorney designated in the subpoena written objection to inspection or copying or any or all of the designated materials or of the premises. If objection is made, the party serving the subpoena shall not be entitled to inspect and copy materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time in the court that issued the subpoena for an order to compel the production. Such an order to compel production shall protect any person is not a party or an officer of a party from significant expense resulting from the inspection and copying commanded.

(3)(A) On timely motion, the court by which a subpoena was issued, or regarding a subpoena commanding appearance at a deposition, or production or inspection directed to a non-party, the court in the county where the non-party resides, is employed or regularly transacts business in person, shall quash or modify the subpoena if it:

(i) fails to allow reasonable time for compliance; or

(ii) requires a person who is not a party or an officer, director or managing agent of a party to travel more than 50 miles from the county where that person resides, is employed or regularly transacts business in person, except that, subject to the provisions of clause (c)(3)(B)(III) of this rule, such a person may in order to attend the trial be commanded to travel from the county where the subpoena was served to the place within the state where the trial is held; or

(iii) requires disclosure of privileged or otherwise protected matter and exception or waiver applies; or

(iv) subjects a person to undue burden.

(B) If a subpoena:

(i) requires disclosure of a trade secret or other confidential research, development, or commercial information, or

(ii) requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party, or

(iii) requires a person who is not a party or an officer, director or managing agent of a party to incur substantial expense to travel from the county where that person resides, is employed or regularly transacts business in person, the court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance only upon specified conditions.

(d) DUTIES IN RESPONDING TO SUBPOENA.

(1) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.

(2) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

NOTICE OF ITEMS TO BE PRODUCED

ANY AND ALL MATERIALS OF ANY AND ALL TYPES RELATED TO THE INVESTIGATION OF THE DEATH OF TIFFANY MARIE SOUERS, AND TO THE PROSECUTION OF THE CASE, IN YOUR CARE, CUSTODY AND/OR CONTROL. ORIGINAL DOCUMENTS AND EVIDENCE SHOULD BE PRESENTED FOR INSPECTION AT THE DEPOSITION.

Exhibit “B”



REMIT TO

ARC
PO Box 935491
Atlanta, GA 31193-5491

Phone: (404) 873-5911

*1

DATE

NUMBER

Div: 10

11/21/13 788882

B Diana Holt
L P.O. Box 6454
T Columbia, SC 29260-6454
OS GREENVILLE COUNTY COURTHOUSE
I 305 E. NORTH STREET
P SUITE 325
T GREENVILLE SC 29601
O (864) 467-8647
Ordered by: Diana Holt

TERMS: Net 30 days

CUSTOMER P.O.		SHIPPED VIA	ACCOUNT #	ORDER#	SALESPERSON	ORDER DATE	
STATE VS INMAN		Pick-up	50066	955498	1099 HOUSE ACCT	11/14/13	
ORDERED	SHIPPED	QTY	UNIT	ITEM NUMBER	DESCRIPTION	UNIT PRICE	AMOUNT

1	1	EA EACH	2538.26	MINIMUM RUN CHARGE		3000.00	3000.00
PRINTED ALL CONTENTS OF 6 CARTONS OF CASE FILES WITH CD'S/DVD'S & OTHER RECORDINGS & PHOTOGRAPHS.							
1	1	EA EACH	5201	TRANSPORTATION CHARGE		6.5000 *	6.50

THANK YOU FOR YOUR ORDER

Sale amount	3006.50
State of South Carolina \$	180.39

Balance due 3186.89

Due Date: 12/21/13

TERMS: Invoices paid after due date will be subject to a service charge of 1.5% per month (18% annually), or the maximum amount allowed by applicable law, whichever is lower.

www.e-arc.com

806

Exhibit “C”



Minuteman Press
Cambridge Place
1023 Fernwood Glendale Rd. Unit A
Spartanburg, SC 29307
P: 864-542-0400 F: 864-542-0502
www.spartan.minutemanpress.com
spartan@minutemanpress.com

QUOTATION

Date: 13-Jan-2014

Bill To: 13th Judicial Circuit Solicitors Office
Andrew Culbreath
305 East North Street
Suite 325
Greenville SC 29601

Phone: 864-467-8282
Email: ACulbreath@greenvillecounty.org

Ship To: 13th Judicial Circuit Solicitors Office
Andrew Culbreath
305 East North Street
Suite 325
Greenville SC 29601

Phone: 864-467-8282
Email:
ACulbreath@greenvillecounty.org

Scan Inman Case Files (Job ID 50146)

Total: **\$2,250.00**

Component:

Scan Documents - 15,000 Pieces.

Note: Scan in Black only at 300dpi except for color photos, which will be scanned in color. Files will be named based on box/large file name, not on individual file/folder basis. Price based on estimate of 15000 total documents. Final bill would be adjusted based on actual total scans @ \$0.15/scan.

Copy CDs & Convert Cassettes to digital format (Job ID 50147)

Total: **\$150.00**

Component:

None - 0 Pieces.

Note: convert 4 cassettes to digital format onto CDS and duplicate 11 CDs.

Salesperson: Jim Reilly

Order Total **\$2,400.00**

Prices do not include applicable taxes/shipping.

Terms: 50% Deposit, COD Quote valid for 30 days.

Thank you, Minuteman Press: _____

Exhibit “D”

STATE OF SOUTH CAROLINA
COUNTY OF PICKENS

CLERK OF COURT
IN THE COURT OF COMMON PLEAS
PICKENS COUNTY
SOUTH CAROLINA
) Civil Action No. 2012-CP-39-0918

Jerry B. Inmon,

Applicant,

vs.

State of South Carolina,

Respondent.

2014 FEB 14 P 1:22

AFFIDAVIT OF DON WARDLAW

PERSONALLY APPEARED BEFORE ME, Mr. Don Wardlaw, who, having been duly sworn, deposes and says as follows:

1. I am currently employed as the General Manager for ARC Document Solutions in Greenville South Carolina. I have held this position for approximately six years.

2. On or about October 29, 2013 I was contacted by an employee of the Thirteenth Circuit Solicitor's Office who asked if my company had the capability to scan a large file and, if so, would I be willing to come to their office to review the file and provide a quote for scanning the file. I confirmed that our company did have the capability to either scan or copy the file, and agreed to review the file and provide a quote.

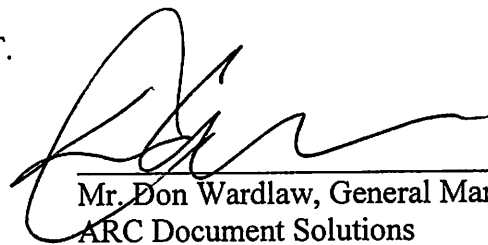
3. On or about October 29, 2013 I traveled to the Solicitor's Office and reviewed the file of State v. Jerry Inman. The file consisted of six (6) banker's boxes of written file materials, color photos, several audio cassette tapes, DVDs, and CDs. The documents were organized into dozens of smaller internal files with specific labels, and several documents were affixed with document flags or "sticky" notes.

4. After reviewing the files, I informed Deputy Solicitor Andrew Culbreath that a scanned duplication of the file would not reflect the "sticky" notes and document flags attached to some of the documents, and that indexing the internal files in their current organizational format would be more costly due to the amount of time and work required. I was then informed that Mr. Culbreath wanted me to duplicate the file as closely as possible to its original organizational form, and to copy the file rather than scan it.

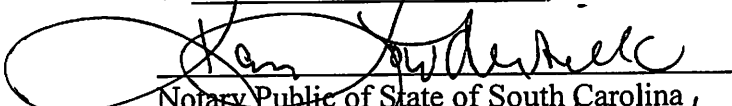
5. My initial quote to scan the files was for \$3,000.00 plus tax based on a rough estimate of the six banker's boxes of documents. After going through the files in more detail, I realized that I had underestimated the volume of the project. I could have scanned the files for the same price (\$3,000.00), but indexing the files would have made the price much higher. Based on the time involved for the project, our price for this project should have been closer to \$5,000.00. However, I honored my initial flat rate estimate of \$3,000.00 to copy the file.

6. I completed the copy project, delivered the original file and duplicate copy to the Solicitor's Office, and submitted an invoice on November 21, 2013 to attorney Diana Holt for \$3,186.89. To date, I have not received payment on the invoice.

FURTHER, AFFIANT SAYETH NOT.


Mr. Don Wardlaw, General Manager
ARC Document Solutions

Sworn to and subscribed
before me this the 14th day
of Feb, 2014.


Notary Public of State of South Carolina
My commission expires: 10/18/14

STATE OF SOUTH CAROLINA)
CLERK OF COURT)
COUNTY OF PICKENS)
SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS
THIRTEENTH JUDICIAL CIRCUIT

CASE NO.: 2012-CP-39-0918

Jerry B. Inmon

2014 FEB 14 P 1:21

Plaintiff,

vs.

State of South Carolina

Defendant.

**MOTION AND ORDER INFORMATION
FORM AND COVERSHEET**

Plaintiff's Attorney:
Andrew S. Culbreath, Bar No. 14107
Address:
305 E. North Street Ste 325
Greenville SC 29601
Phone: (864) 467-8647 Fax (864) 467-8270
E-mail: aculbreath@greenvillecounty.org
Other: _____

Defendant's Attorney:
Diana Holt, Bar No. _____
Address:
P.O. Box 6454
Columbia, SC 29260
Phone: (803) 782-1663 Fax (803) 787-0374
E-mail: dianaholt@utexas.edu
Other: _____

- ☒ **MOTION HEARING REQUESTED** (attach written motion and complete **SECTIONS I and III**)
☐ **FORM MOTION, NO HEARING REQUESTED** (complete **SECTIONS II and III**)
☐ **PROPOSED ORDER/CONSENT ORDER** (complete **SECTIONS II and III**)

SECTION I: Hearing Information

Nature of Motion: Motion to Compel

Estimated Time Needed: 30 minutes

Court Reporter Needed: ☒ YES / ☐ NO

SECTION II: Motion/Order Type

- ☒ Written motion attached
☐ Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.

Signature of Attorney for ☐ Plaintiff / ☐ Defendant

14 Feb 14
Date submitted

SECTION III: Motion Fee

- ☐ PAID - AMOUNT: \$ _____
☒ EXEMPT:
(check reason) ☐ Rule to Show Cause in Child or Spousal Support
☐ Domestic Abuse or Abuse and Neglect
☐ Indigent Status ☐ State Agency v. Indigent Party
☐ Sexually Violent Predator Act ☒ Post-Conviction Relief
☐ Motion for Stay in Bankruptcy
☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRPC)
☐ Proposed order submitted at request of the court; or,
reduced to writing from motion made in open court per judge's instructions
Name of Court Reporter: _____
☐ Other: _____

JUDGE'S SECTION

- ☐ Motion Fee to be paid upon filing of the attached order.
☐ Other: _____

JUDGE CODE _____

Date: _____

CLERK'S VERIFICATION

Collected by: _____ Date Filed: _____

☐ MOTION FEE COLLECTED: \$ _____

☐ CONTESTED - AMOUNT DUE: \$ _____

STATE OF SOUTH CAROLINA 2014 FEB 20 AM 11:41 COURT OF COMMON PLEAS
THIRTEENTH JUDICIAL CIRCUIT

COUNTY OF PICKENS

CLERK OF COURT
PICKENS COUNTY
SOUTH CAROLINA

Case Number: 2012-CP-39-00918

JERRY INMAN,

Applicant,

vs.

STATE OF SOUTH CAROLINA ,

Respondent.

)
)
)
) Response to Third Party Motion to Compel and
) Applicant's Motion to Compel the Thirteenth
) Circuit Solicitor's Office to Comply with
) Subpoena as Previously Agreed
)
)
)

This matter is before the Court on the third party motion of the Thirteenth Circuit Solicitor's Office (hereinafter "Solicitor's Office") to compel the Applicant, Jerry Inmon, to remit payment for the cost of copying the Solicitor's file (hereinafter "Motion"). Granting this motion would require the Office of Indigent Defense to remit payment.

Mr. Inmon responds to the Motion as follows and moves the Court for an order compelling the Solicitor's Office to comply with Mr. Inmon's subpoena as previously agreed, which means producing a scanned copy of the file rather than photocopies.

I. Introduction.

Nowhere in America can someone be forced to pay for something they did not order and refused to receive, and that even includes indigent defendants in capital cases. The Solicitor's Office agreed to provide Mr. Inmon with a *scanned copy* of its file. Mr. Inmon agreed to pay the costs of *scanning* the file. The Solicitor's Office retained control of the project and unilaterally directed its provider to copy its file rather than scanning it. This Court should enforce the original agreement between the Solicitor's Office and Mr. Inmon.

II. Factual Background.

The following facts are not disputed.

“Following the deposition of the Solicitors Office records custodian on October 29, 2013, counsel for *the Applicant requested the file documents be scanned rather than copied.*” Motion, p. 1 (emphasis added).

The Solicitor’s Office retained control over the project and contracted its preferred provider, ARC Document Solutions (“ARC”) in Greenville, South Carolina, “to scan a large file.” Motion, Exhibit D, ¶ 2.

Subsequently, “the Solicitor’s Office [unilaterally] directed that the file be copied in its original form rather than scanned.” Motion, p. 2 and Exhibit D, ¶ 4.

After Mr. Inmon declined to pay for a product he didn’t order, the Solicitor’s Office contacted Mr. Inmon’s preferred provider, Minuteman Press in Spartanburg, South Carolina, to obtain a quote for scanning the file. Motion, p. 2 and Exhibit C.

Minuteman Press’ quote not only complies with Mr. Inmon’s original agreement with the Solicitor’s Office but is also more reasonable. *Compare* Motion Exhibit B with Exhibit C.

The Solicitor’s Office has not taken any steps to honor its original agreement with Mr. Inmon to have its file scanned. Mr. Inmon offered to let ARC make it right by scanning the original as agreed. The State has not responded to that suggestion as of yet.

III. Response to Solicitor’s Office Motion to Compel.

Because Mr. Immon is indigent, the Office of Indigent Defense is responsible for reimbursing his litigation costs. Although “the Solicitor’s Office has offered to pay the difference between the estimated costs of scanning and the actual costs of copying the file,” Motion p. 2, Mr. Inmon still will have to scan the materials, resulting in an exorbitant cost of

approximately \$5,000.00 to the Office of Indigent Defense for a product that will be much inferior to scans of the originals.

Before deciding whether the Office of Indigent Defense should incur these costs, the Court should provide that state office an opportunity to be heard. We strive to be good stewards of the people's money.

Mr. Inmon additionally believes this matter should be handled through a conference call, rather than requiring counsel to incur unnecessary legal fees traveling to the hearing.

IV. Mr. Inmon's Motion to Compel.

As seen, Mr. Inmon requested the Solicitor's Office provide a scanned copy of its file. The Solicitor's Office retained control of the project and unilaterally directed its preferred provider to deviate from the agreement. Mr. Inmon's preferred and trusted provider can complete the project, as requested, for a reasonable fee. The Court, therefore, should issue an order compelling the Solicitor's Office to comply with Mr. Inmon's subpoena and the original agreement to produce a scanned copy of its file.

V. Rule 11, SCRPC Certification.

Had the Solicitor's Office communicated with Mr. Inmon prior to changing the nature of the project, these motions could have been avoided. Subsequent communication between the parties has not resolved the matter.

VI. Conclusion.

Prior to ruling on the Solicitor's Office's motion to compel, this Court should provide the Office of Indigent Defense an opportunity to be heard. The Court should not require the Office of Indigent of Defense to incur an exorbitant cost.

The Court should issue an order compelling the Solicitor's Office to comply with Mr. Inmon's subpoena and the original agreement to produce a scanned copy of its file.

IT IS SO MOVED.

Respectfully Submitted,

By 

Diana Holt
Diana Holt, LLC
Post Office Box 6454
Columbia, South Carolina 29260-6454
Phone: 803-782-1663
Email: DianaHolt@utexas.edu

E. Charles Grose, Jr.
The Grose Law Firm, LLC
404 Main Street
Greenwood, SC 29646
Phone: 864-538-4466
Email: Charles@groslawfirm.com

February 17, 2014

STATE OF SOUTH CAROLINA
COUNTY OF PICKENS

CLERK OF COURT
PICKENS COUNTY
SOUTH CAROLINA

JERRY INMAN,

Applicant,

VS.

STATE OF SOUTH CAROLINA,

Respondent.

Case Number: 2012-CP-39-00918

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

Andrew C. Culbreath, Esquire
305 E. North Street, Ste 325
Greenville, SC 20601

Hugh Ryan, Esquire
Office of Indigent Defense
P.O. Box 11433
Columbia, SC 29211-1433

By

E. Charles Grose, Jr.
The Grose Law Firm, LLC
404 Main Street
Greenwood, SC 29646
(864) 538-4466

February 18, 2014
Greenwood, South Carolina

2014 FEB 20 AM 11 44

STATE OF SOUTH CAROLINA)
CLERK OF COURT)
COUNTY OF Pickens)
PICKENS COUNTY)
SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS
13th JUDICIAL CIRCUIT

CASE NO.: 2012-CP-39-0918

Jerry B. Inman)
Plaintiff,)

**MOTION AND ORDER INFORMATION
FORM AND COVERSHEET**

vs.)

State of South Carolina)
Defendant.)

Plaintiff's Attorney:
Andrew S. Culbreath, Bar No. 14107
Address:
305 E. North Street Ste 325, Greenville, SC 29601
Phone: 864-467-8647 Fax 864-467-8270
E-mail: aculbreath@greenvillecounty.org Other:

Defendant's Attorney:
E. Charles Grose, Jr., Bar No. 66063
Address:
404 Main Street, Greenwood, SC 29646
Phone: 864-538-4466 Fax 864-538-4405
E-mail: charles@groselawfirm.com Other:
chasgrose@gmail.com

- ☐ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)
☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)
☐ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)

SECTION I: Hearing Information

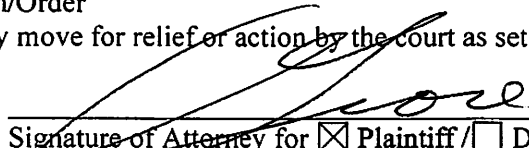
Nature of Motion: Response to Motion to Compel & Motion to Compel

Estimated Time Needed: _____ Court Reporter Needed: ☐ YES/ ☐ NO

SECTION II: Motion/Order Type

- ☐ Written motion attached
☐ Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.


Signature of Attorney for ☒ Plaintiff/ ☐ Defendant

Feb. 17, 2014
Date submitted

SECTION III: Motion Fee

- ☐ PAID - AMOUNT: \$ _____
☒ EXEMPT: (check reason) ☐ Rule to Show Cause in Child or Spousal Support
☐ Domestic Abuse or Abuse and Neglect
☐ Indigent Status ☐ State Agency v. Indigent Party
☐ Sexually Violent Predator Act ☒ Post-Conviction Relief
☐ Motion for Stay in Bankruptcy
☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP)
☐ Proposed order submitted at request of the court; or,
reduced to writing from motion made in open court per judge's instructions
Name of Court Reporter: _____
☐ Other: _____

JUDGE'S SECTION

- ☐ Motion Fee to be paid upon filing of the attached order.
☐ Other: _____

JUDGE CODE _____

Date: _____

CLERK'S VERIFICATION

- Collected by: _____ Date Filed: _____
☐ MOTION FEE COLLECTED: \$ _____
☐ CONTESTED - AMOUNT DUE: \$ _____

STATE OF SOUTH CAROLINA) COURT OF COMMON PLEAS
COUNTY OF PICKENS) THIRTEENTH JUDICIAL CIRCUIT
PICKENS COUNTY
SOUTH CAROLINA) Case Number 2012-CP-39-00918

JERRY B. INMAN,)
Applicant,) *Ex Parte* ORDER
vs.)
STATE OF SOUTH CAROLINA,)
Respondent.)

On March 6, 2014, this matter came before the Court by way of the Thirteenth Circuit Solicitor's Office third party motion to compel payment for copies of the Solicitor's file and Mr. Inman's cross motion to compel the Thirteen Circuit Solicitor's Office to comply with the subpoena. Before a formal motion hearing occurred, the parties and the Court participated in a telephone conference in an effort to resolve the matter without a hearing. Andrew Culbreath represented the Solicitor's Office. Diana Holt and Charles Grose represented the Applicant, Mr. Inman. Hugh Ryan represented the Office of Indigent Defense.

Based on the motions, attachments, and arguments of counsel, I find that counsel for the Applicant served a subpoena upon the Solicitor's Office on October 18, 2013, commanding that the original file be produced for inspection and copying. On October 29, 2013, counsel for the Applicant deposed the records custodian for the Solicitor's Office. Upon conclusion of the deposition, counsel for the Applicant and Solicitor's Office verbally agreed to have the file scanned rather than copied. The Solicitor's Office maintained control of the file materials and contacted ARC Document Solutions ("ARC") in Greenville, South Carolina to discuss their costs and capabilities regarding scanning and copying. After this discussion, the Solicitor's Office, without consulting Applicant's counsel, directed that the file be copied in its original form rather than scanned electronically to avoid any potential concern that a scanned copy would not fully

1182

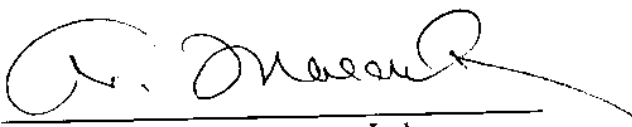

comply with the subpoena. ARC completed the copy job and submitted an invoice to the Applicant's counsel in the amount of \$3,186.89. Counsel for the Applicant declined to pay for or take possession of the copied documents because the Solicitor's Office and Applicant's counsel had verbally agreed to scan rather than copy the file. The Solicitor's Office then filed this Third Party Motion to compel seeking an order authorizing the Office of Indigent Defense to pay ARC's invoice.

This Court finds that the Applicant's verbal request for a scanned version of the file rather than a copy would not violate the intent of the subpoena, and the Solicitor's Office should have provided a scanned copy of its file as previously agreed.

NOW THEREFORE, IT IS SO ORDERED that:

- (1) The Office of Indigent Defense, on behalf of Applicant Inman, shall immediately remit payment of the outstanding \$3,186.89 invoice directly to ARC;
- (2) Counsel for the Applicant has previously utilized the services of Minuteman Press in Spartanburg, South Carolina, and has chosen to have this company handle the file scanning in this case. Therefore, the file will be delivered to Minuteman Press in Spartanburg, South Carolina, for scanning in accordance with the January 13, 2014 quote of Minuteman Press; and
- (3) The Solicitor's office will be responsible for payment of up to \$2,400 to the Applicant's preferred provider, Minuteman Press, once the file has been scanned. Payment of less than the \$2,400 is authorized if the cost of scanning the file is ultimately less than \$2,400.

IT IS SO ORDERED.


ALEXANDER S. MACAULAY, Judge

April 8, 2014
Walhalla, South Carolina

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF PICKENS)

Jerry Buck Inmon, #5226,

aka Jerry Buck Inman

2016 JAN 11 PM 4 48

Applicant,

v.

CLERK OF COURT
PICKENS COUNTY (Capital PCR Action)
SOUTH CAROLINA

MOTION TO COMPEL
DISCOVERY

State of South Carolina,

Respondent.

Respondent, by and through the undersigned attorneys, hereby moves, pursuant to the South Carolina Rules of Civil Procedure, for an Order of this Court compelling Applicant to fully comply with Respondent's discovery requests for the following reasons:

1. Applicant has failed to file Supplemental Responses to Respondent's Request for Production of Documents and Things;
2. Applicant has not provided Respondent with any documents or things requested in its Request for Production of Documents and Things in his Supplemental Discovery Responses;
3. Applicant has not provided Respondent with any witness' statements or affidavits in possession of Applicant in his Supplemental discovery responses;
4. Applicant has not provided Respondent with copies of any documents or records contained in trial counsel's file [in Applicant's possession] that relate to the claims asserted in the Applicant's PCR application, or which will be asserted in any amended PCR application, whether helpful or detrimental to Applicant's claims;
5. Applicant has not provided Respondent with a privilege log in his Supplemental

discovery responses listing any documents, records, notes, etc. over which he claims attorney-client privilege, attorney work-product privilege, or any other privilege.

For the above stated reasons, Respondent requests this Court issue an Order compelling Applicant to **fully comply** with discovery and provide Respondent with Supplemental Responses to Respondents Requests for Production of Documents and Things, provide Respondent with copies of any statements or affidavits of witnesses in possession of Applicant; provide Respondent with any documents and things requested in its Request for Production of Documents and Things; provide Respondent with copies of any documents, notes, or records from trial counsel's file in possession of Applicant *that relate to the claims asserted in Applicant's PCR application or will be asserted in any amended PCR application*, and provide Respondent with a privilege log appropriately listing those documents, records, notes, etc., in possession of Applicant over which he claims he is privileged from producing.

RESPONDENT SO MOVES.

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. MCINTOSH
Chief Deputy Attorney General

DONALD J. ZELENKA
Senior Assistant Deputy Attorney General

J. ANTHONY MABRY
Assistant Attorney General
P. O. Box 11549
Columbia, South Carolina 29211
(803) 734-6305

January 7, 2016

BY:



ANTHONY MABRY
ATTORNEYS FOR RESPONDENTS

STATE OF SOUTH CAROLINA

COUNTY OF

Pickens

2016 JAN 11 PM 1 48

IN THE COURT OF COMMON PLEAS

13th JUDICIAL CIRCUITCASE NO.: 2012-CP-39-918

CLERK OF COURT

PICKENS COUNTY

SOUTH CAROLINA

MOTION AND ORDER INFORMATION
FORM AND COVERSHEET

vs.

State of South Carolina

Defendant.

Plaintiff's Attorney: <u>E. Charles Grose</u> , Bar No. _____ Address: <u>404 Main St., Greenwood SC 29646</u> Phone: _____ Fax _____ E-mail: _____ Other: _____		Defendant's Attorney: <u>Anthony Mabry</u> , Bar No. <u>11973</u> Address: <u>P.O. Box 11549, Columbia SC 29211</u> Phone: <u>803-734-6305</u> Fax <u>803-734-4035</u> E-mail: _____ Other: _____	
☐ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) ☒ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) ☐ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)			
SECTION I: Hearing Information			
Nature of Motion: _____		Court Reporter Needed: ☐ YES/ ☐ NO	
Estimated Time Needed: _____			
SECTION II: Motion/Order Type			
☒ Written motion attached ☐ Form Motion/Order I hereby move for relief or action by the court as set forth in the attached proposed order.			
Signature of Attorney for ☐ Plaintiff / ☐ Defendant <u>[Signature]</u>		Date submitted <u>January 7</u> , 20 <u>16</u>	
SECTION III: Motion Fee			
☐ PAID - AMOUNT: \$ _____ ☒ EXEMPT: (check reason)			
☐ Rule to Show Cause in Child or Spousal Support ☐ Domestic Abuse or Abuse and Neglect ☐ Indigent Status ☒ State Agency v. Indigent Party ☐ Sexually Violent Predator Act ☒ Post-Conviction Relief ☐ Motion for Stay in Bankruptcy ☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP) ☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions Name of Court Reporter: _____ ☐ Other: _____			
JUDGE'S SECTION			
☐ Motion Fee to be paid upon filing of the attached order. ☐ Other: _____		JUDGE CODE _____ Date: _____, 20____	
CLERK'S VERIFICATION			
Collected by: <u>[Signature]</u>		Date Filed: _____, 20____	
☐ MOTION FEE COLLECTED: \$ _____ ☐ CONTESTED - AMOUNT DUE: \$ _____			

STATE OF SOUTH CAROLINA)
COUNTY OF PICKENS)
Jerry Buck Inmon, #5226,)
aka Jerry Buck Inman)
Applicant,)
v.)
State of South Carolina,)
Respondent.)

IN THE COURT OF COMMON PLEAS

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

MOTION TO COMPEL

2016 FEB 3 AM 8 43
CLERK OF COURT
PICKENS COUNTY
SOUTH CAROLINA

Respondent, by and through the undersigned attorneys, hereby moves, for an Order of this Court compelling Applicant to fully comply with this Court's oral Scheduling Order:

1. Applicant has failed to provide Respondent with the Amended Application for Post-conviction relief as ordered or directed by the Court. This Court orally ordered the Amended Application be filed on or before January 4, 2016;
2. Respondent has waited a sufficient time for Applicant to file the Amended Application for Post-Conviction Relief, even well past the deadline ordered by this Court;
3. Respondent cannot adequately prepare for the trial/merits hearing in this matter where it does not know what allegations Applicant intends to rely or proceed on at the merits hearing.
4. Respondent has attempted to resolve this matter without filing this Motion by e-mail; however, Applicant has not provided Respondent with his Amended Application for post-conviction relief (PCR).

For the above stated reasons, Respondent moves and requests this Court issue an Order compelling Applicant to **fully comply** with its Scheduling Order and provide Respondent with his

Amended Application within ten (10) days or this action shall be dismissed with prejudice.

RESPONDENT SO MOVES.

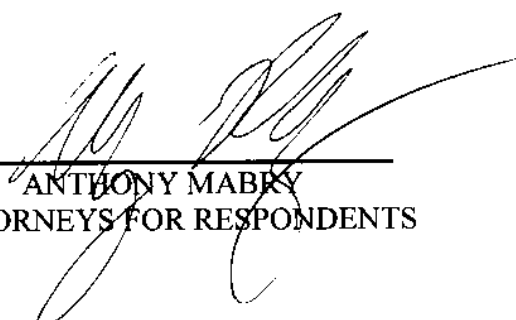
Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. MCINTOSH
Chief Deputy Attorney General

DONALD J. ZELENKA
Senior Assistant Deputy Attorney General

J. ANTHONY MABRY
Assistant Attorney General
P. O. Box 11549
Columbia, South Carolina 29211
(803) 734-6305

BY: 

ANTHONY MABRY
ATTORNEYS FOR RESPONDENTS

January 26, 2016

STATE OF SOUTH CAROLINA)
COUNTY OF PICKENS)
Jerry Buck Inmon, #5226,)
aka Jerry Buck Inman)
Applicant,)
v.)
State of South Carolina,)
Respondent.)

IN THE COURT OF COMMON PLEAS

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

CERTIFICATE OF SERVICE

CLERK OF COURT
PICKENS COUNTY
SOUTH CAROLINA

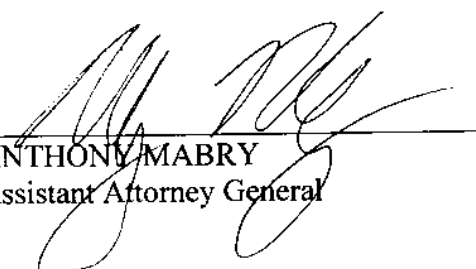
2016 FEB 3 AM 8 43

I, Anthony Mabry, certify that I have served Petitioner's MOTION TO COMPEL by depositing one copy to his counsel of record in the United States mail, postage prepaid, addressed as follows:

Diana L. Holt, Esquire
Diana L. Holt, LLC
P. O. Box 6454
Columbia, SC 29260-6454

E. Charles Grose, Jr., Esquire
The Grose Law Firm
404 Main Street
Greenwood, SC 29646

This 26th day of January, 2016.


ANTHONY MABRY
Assistant Attorney General

STATE OF SOUTH CAROLINA

COUNTY OF PICKENS

2016 FEB 3 AM 8 43

THE COURT OF COMMON PLEAS

13th JUDICIAL CIRCUIT

CLERK OF COURT

PICKENS COUNTY

CASE NO.: 2012-CP-39-918Jerry Buck Inmon

SOUTH CAROLINA

Plaintiff,)

vs.)

State of South Carolina

Defendant.)

MOTION AND ORDER INFORMATION
FORM AND COVERSHEET

Plaintiff's Attorney:

E. Charles Grose, Jr., Bar No. _____

Address:

404 Main St., Greenwood, SC 29646

Phone: _____

Fax _____

E-mail: _____

Other: _____

Defendant's Attorney:

Anthony Mabry, Bar No. 11973

Address:

P.O. Box 11549 Columbia, SC 29211Phone: (803) 734-6305Fax: (803) 734-4035E-mail: amabry@sca9.gov

Other: _____

- ☐ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)
☒ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)
☐ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)

SECTION I: Hearing Information

Nature of Motion: _____

Estimated Time Needed: _____

Court Reporter Needed: ☐ YES ☐ NO

SECTION II: Motion/Order Type

☒ Written motion attached☐ Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.

Signature of Attorney for ☐ Plaintiff ☒ DefendantJan. 26, 2016
Date submitted

SECTION III: Motion Fee

☐ PAID - AMOUNT: \$ _____☒ EXEMPT:

(check reason)

☐ Rule to Show Cause in Child or Spousal Support☐ Domestic Abuse or Abuse and Neglect☐ Indigent Status☐ State Agency v. Indigent Party☐ Sexually Violent Predator Act☒ Post-Conviction Relief☐ Motion for Stay in Bankruptcy☐ Motion for Publication☐ Motion for Execution (Rule 69, SCRCP)☐ Proposed order submitted at request of the court; or,

reduced to writing from motion made in open court per judge's instructions

Name of Court Reporter: _____

☐ Other: _____

JUDGE'S SECTION

☐ Motion Fee to be paid upon filing of the attached order.☐ Other: _____

JUDGE CODE _____

Date: _____

. 20

CLERK'S VERIFICATION

Collected by: _____

Date Filed: _____, 20

☐ MOTION FEE COLLECTED: \$ _____☐ CONTESTED - AMOUNT DUE: \$ _____

SCCA 233 (11/2003)

Jerry Buck Inman

State of South Carolina

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

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), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRPC; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other
- ☐ **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: Court does not have jurisdiction pursuant to rule 245(a) SCACR, the material rights of the parties are involved. Attorney Grose to prepare formal order.

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

Additional Information for the Clerk :

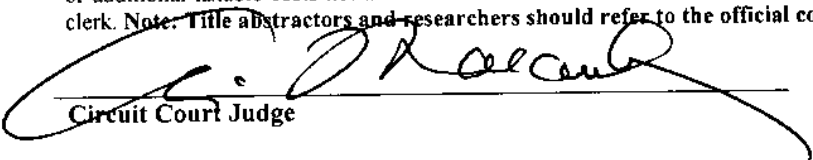
INFORMATION FOR THE JUDGMENT INDEX

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)
n/a	n/a	\$n/a
		\$
		\$

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.


Circuit Court Judge

2063
Judge Code

3/3/16
Date

For Clerk of Court Office Use Only

This judgment was entered on the day of , 2016 and a copy mailed first class or placed in the appropriate attorney's box on this 7 day of Mar., 2016 to attorneys of record or to parties (when appearing pro se) as follows:

Diana Holt

Charles Grose, Jr.

ATTORNEY(S) FOR THE PLAINTIFF(S)

Donald Zelenka

Sherrie Butterbaugh

ATTORNEY(S) FOR THE DEFENDANT(S)

Harold P. Welborn

CLERK OF COURT

Court Reporter: Renee H. Tollison

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.

2016 MAR 7 PM 4:37
CLERK OF COURT
JACKSON COUNTY
SOUTH CAROLINA

JG2

Jerry Buck Inman vs. South Carolina State of

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.
- ☐ ACTION DISMISSED (CHECK REASON):

☐ Rule 12(b), SCRPC;☐ Rule 41(a), SCRPC (Vol. Nonsuit);☐ Rule 43(k), SCRPC (Settled);☐ Other:
- ☐ ACTION STRICKEN (CHECK REASON):

☐ Rule 40(j) SCRPC;☐ Bankruptcy:
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
☐ Other:
- ☐ 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: X☐ See attached order; ☐ Statement of Judgment by the Court:

Form 4 Order

Court Reporter:

PRESIDING JUDGE -

A copy mailed first class this 7th, March 2016, to attorneys of record or to parties (when appearing pro se) as follows:

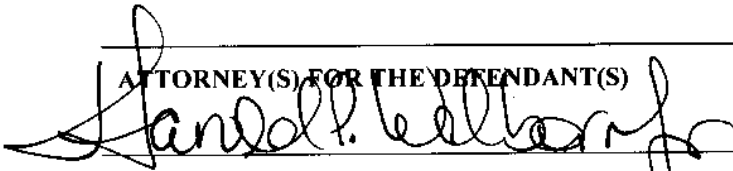
- ☒ Robert Michael Dudek PO Box 11589 Columbia, SC 29211
- ☒ Diana L. Holt Diana Holt, LLC PO Box 6454 Columbia, SC 29260-6454
- ☒ E Charles Grose Jr. 404 Main Street Greenwood, SC 29646

emailed

Karen Christine Ratigan PO Box 11549 Columbia, SC 29211

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)



Harold P Welborn, Jr. - Clerk of Court

Jerry Buck Inmon, # 5226
a/k/a Jerry Buck Inman
APPLICANT(S)

State of South Carolina

RESPONDENT(S)

Submitted by: The 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.
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- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☒ Other: **See attached Order**
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRPC; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other
- ☐ **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

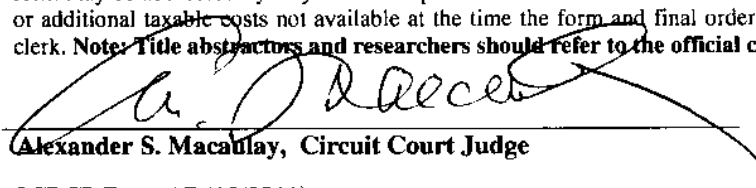
This order does not end the case.

Additional Information for the Clerk : Stay of Proceeding pending Writ of Cert

INFORMATION FOR THE PUBLIC 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.

 Alexander S. Macaulay, Circuit Court Judge	63 Judge Code	3/4/16 Date

SCRCP Form 4C (10/2011)

THE STATE OF SOUTH CAROLINA
COUNTY OF PICKENS

Jerry Buck Inmon,
Applicant,

vs.

State of South Carolina,
Respondent.

IN THE COURT OF COMMON PLEAS
FOR THE THIRTEENTH JUDICIAL
CIRCUIT

Case No. 2012-CP-39-00918

Order

2016 MAR 8 AM 11 33
CLERK OF COURT
PICKENS COUNTY
SOUTH CAROLINA

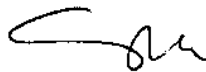
This Court convened a hearing on March 3, 2016, concerning all pending motions, including, *inter alia*, Respondent's Motion to Compel the filing of an Amended Application, Motion to Compel Discovery, and to determine an evidentiary hearing date. At the hearing the Applicant, Jerry Buck Inmon, was represented by Diana L. Holt, Esquire, and E. Charles Grose, Jr., Esquire, and the State was represented by Donald J. Zelenka, Senior Assistant Deputy Attorney General, and Sherrie A. Butterbaugh, Assistant Attorney General.

As a threshold issue, this Court had to determine whether it could continue to consider such matters "in the first instance, without material prejudice to the rights of the parties," by reason of the State's filing in the Original Jurisdiction of the Supreme Court, pursuant to SCACR Rule 245:

"... a Petition for Extraordinary Writ of *Certiorari* from the Order of the PCR Court denying Respondent's Motion to Unseal and Disclosed *ex parte* funding motions, requests, and orders issued in this capital PCR action until this date and disclosed to Respondent the content of all *ex parte* discussions between Applicant [or his attorneys] and the PCR Court; and to provide Respondent with notice and an opportunity to be present and heard at any future *ex parte* funding requests or hearings."

Respondent's Petition for Extraordinary Writ of *Certiorari*, dated December 29, 2015, ("Petition"), at p. 1.

1 of 3



The State argued this Court retained jurisdiction. Mr. Inmon disagreed. The Respondent asserted that they had not filed a notice of appeal pursuant to Rule 201 (or SCACR Rule 243 [Post-conviction relief certiorari proceedings]) and, therefore, under the appellate rules, jurisdiction was not divested by the filing of the extraordinary writ of certiorari in the original jurisdiction pursuant to SCACR Rule 245. The Respondent further stated they did not seek a stay under Rule 241 and therefore was no automatic stay of proceedings in this Court.

The Court directed the Respondent to Rule 245, SCACR, which expressly provides, in pertinent part, that:

(a) **When Appropriate.** The Supreme Court will not entertain matters in its original jurisdiction when the matter can be determined in a lower court in the first instance, without material prejudice to the rights of the parties.

(Emphasis supplied).

By its Petition, the State succinctly states the material effect of this Court's Order, dated November 16 2015, denying the State's Motion to unseal Mr. Inmon's *ex parte* funding requests and orders.

The denial of Petitioner's/State's Motion has denied Petitioner a substantial right, as Petitioner is entitled to know of any *ex parte* motions, requests, meetings, orders, etc., where this is a civil action and the PCR Court is the fact finder. Petitioner is also entitled to know of any *ex parte* funding requests, motions, orders, etc. so that it may adequately prepare for the PCR hearing scheduled in June of 2016. Any appeal of this issue after the merits hearing would moot this issue.

Petition at p.4 (emphasis supplied).

Moreover, as has been recognized in Non-capital PCRs, not a Capital PCR brought pursuant to S.C. Code Ann. § 17-27-160 (2014), as here:

" . . . it would appear that there is a substantial probability of prejudice which would result from a public hearing in at least two respects . . . disclosure of . . . defendants' defense strategy . . . [that would] violate the

guarantee of equal protection. ”

Ex Parte Lexington County, 314 S.C. 220, 442 S.E.2d 589 (1994). This Court is obligated to “safeguard the rights of litigants,” *State v. Langford*, 400 S.C. 421, 429, 735 S.E.2d 471, 475 (2012), and may not act in a manner that could cause “material prejudice to the rights of the parties.”

Based on the foregoing, the representations of the parties and Rule 245, SCACR, the Court finds and concludes that until the matters addressed in the State’s Petition for an Extraordinary Writ of *Certiorari* to the South Carolina Supreme Court are resolved, this Court cannot proceed without prejudice to the rights of the parties.¹

IT IS SO ORDERED.


ALEXANDER S. MACAULAY
Presiding Circuit Court Judge

March 4, 2016

Walhalla, South Carolina

2016 MAR 8 AM 11 33
CLERK OF COURT
PICKENS COUNTY
SOUTH CAROLINA

¹ The Court is advised that as of this date no Order had been entered concerning the pending Extraordinary Ordinary Writ of *Certiorari* in the Supreme Court of South Carolina.

Jerry Buck Inman vs. South Carolina State of

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.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a),
SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other: _____
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j) SCRPC; ☐ Bankruptcy:
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
☐ Other: _____
- ☐ **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:

X ☐ See attached order;

☐ Statement of Judgment by the Court:

2016 MAR 8 AM 11 33
CLERK OF COURT
PICKENS COUNTY
SOUTH CAROLINA

Court Reporter:

PRESIDING JUDGE -

A copy mailed first class this 8th, March 2016 to attorneys of record or to parties (when appearing pro se) as follows:

✓ **Robert Michael Dudek** PO Box 11589 Columbia, SC 29211
Diana L. Holt Diana Holt, LLC PO Box 6454 Columbia, SC 29260-6454
E Charles Grose Jr. 404 Main Street Greenwood, SC 29646

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Harold P Welborn, Jr. - Clerk of Court

STATE OF SOUTH CAROLINA) COURT OF COMMON PLEAS
) 2012-CP-39-00918
COUNTY OF PICKENS)
)
)
)
)
JERRY BUCK INMAN,)
 APPLICANT,)
)
vs.) TRANSCRIPT OF RECORD
)
STATE OF SOUTH CAROLINA,)
 RESPONDENT.)

)

August 20, 21, 22, 23, 2018
Pickens, South Carolina

B E F O R E:

THE HONORABLE ALEXANDER S. MACAULAY, JUDGE

A P P E A R A N C E S:

E. CHARLES GROSE, JR., ESQ
DIANA L. HOLT, ESQ
Attorneys for the Applicant

MELODY J. BROWN, ESQ
SHERRIE BUTTERBAUGH, ESQ
DeSHAWN H. MITCHELL, ESQ
Attorneys for the Respondent

CHERYL A. SMITH
Circuit Court Reporter

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(RW) - Denotes Respondent's Witness

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EXHIBITS

<u>NO</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EVD</u>
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P R O C E E D I N G S

Monday, August 20, 2018

(WHEREUPON, proceedings commenced at 9:38 a.m.)

THE COURT: All right. This is the case of -- rather it's a Pickens County capital PCR term of court, and our case is Jerry Buck Inman, Number 5226, also known as Jerry Buck Inman with an A, versus the State of South Carolina, 2012-CP-39-918.

Make sure I have all the parties and their representatives here. The applicant, Mr. Inman, is represented by Ms. Holt and Mr. Grose; is that correct?

MR. GROSE: Yes, sir.

MS. HOLT: Yes, sir.

THE COURT: The State of South Carolina is represented by Ms. Brown.

MS. BROWN: Melody Brown, Your Honor.

THE COURT: I have -- Mr. Zelenka is not here, so -- oh, he is here. I didn't see you. Mr. Zelenka, Ms. Butterbaugh ---

MS. BUTTERBAUGH: Ms. Butterbaugh.

THE COURT: Butterbaugh.

MS. BUTTERBAUGH: Yes, sir.

THE COURT: I'm sorry. Please excuse me.

And anyone else?

1 MR. MITCHELL: Mr. Mitchell, DeShawn Mitchell.

2 THE COURT: All right. Mr. Mitchell.

3 Now, I have been furnished with copies of the request
4 to transport, a motion to quash the attorney general's
5 request to transport, and a response in opposition to
6 motion to quash transport. And I understand that the
7 applicant, Mr. Inman, is not here. And, Ms. Brown, I
8 understand you want to address that.

9 MS. BROWN: Yes, sir. And the Court is absolutely
10 right. We have been informed by SCDC that an offer of
11 transportation was made this morning and it was declined.
12 We moved -- or we sent a request for transportation as we
13 do in every PCR case, and then there was a motion to quash
14 and we did a response in opposition. At waiver here is
15 not simply, though, the inmate's right to be here to
16 observe the proceedings, but to actually give testimony.

17 So there are two waivers at issue, Your Honor, and
18 that's what we outlined in our response and why we were
19 concerned not to give him that opportunity for
20 transportation.

21 Now, he's already submitted sworn statements to the
22 Court. That's in his personally signed verification which
23 was notarized on June 19th of 2012, the first PCR
24 application. And that's required by the statute. S.C.
25 Code 17-27-40 and 50 require that verification.

1 As we gave notice in our response in opposition, Your
2 Honor, it's August 13th, it was filed August 15th, there
3 are a number of arguments to be made by his refusal to be
4 transported, waiver of the claim and adverse inference,
5 failure in the burden of proof. But, Your Honor, a lot of
6 those arguments are dependent on evidence of a knowing and
7 voluntary waiver of the right to be present, the right to
8 give testimony, the right to participate in the action
9 that Mr. Inman began. Therefore, we respectfully request
10 that the Court make an inquiry of Mr. Inman and to pose
11 specific questions to establish a knowing and voluntary
12 waiver.

13 We have in the alternative of transportation arranged
14 a telephone conference, and Mr. Inman can be taken to a
15 phone or a phone be available for his participation at
16 around 10:00 this morning if the Court would allow that.
17 In anticipation, Your Honor, we have Respondent's Request
18 for Specific Questioning, and if I may, Your Honor, I
19 would like to present this to the Court with a copy to
20 opposing counsel.

21 THE COURT: Certainly. I mean, it has been provided
22 to you.

23 MR. GROSE: Not until now.

24 MS. BROWN: Your Honor, it's no surprise. It's
25 everything in our response.

1 MR. GROSE: I prefer to read it for myself.

2 THE COURT: All right.

3 MS. BROWN: And we've done this in a Request to
4 Charge form, Your Honor, with the authority for the
5 question underneath each of the questions that we've
6 authored.

7 THE COURT: Just for the record, if I'm not mistaken,
8 this is the second scheduled final hearing. The first was
9 last year, I think, in 2017 in November, and I believe I
10 had a heart attack or something of that nature. I ended
11 up with about three stents. So, I mean, y'all were kind
12 enough to continue it for that.

13 But I understand, at that time, arrangements were
14 made for -- in anticipation of the hearing going forward
15 for a telephone conference, and it was by agreement of
16 both parties. And that would have been a matter of having
17 the applicant testify or at least be present to testify by
18 telephone. Has that been discussed between the parties?
19 I notice you mentioned it this morning.

20 MS. BROWN: No, sir. I do believe that you're
21 correct. It was a November 2016 hearing.

22 THE COURT: Oh, '16. Is it that long ago?

23 MS. BROWN: And there was a telephone conference that
24 was agreed to at that time. These questions simply stem
25 from their motion to quash our offer to transport.

1 THE COURT: Well, is there any reason not to follow
2 the same procedure that was done, what was it, November
3 the what? '16?

4 MS. BROWN: I just have November 2016.

5 THE COURT: All right. We'll just go with that,
6 though.

7 It is agreed that, at that time, it was the parties
8 realized that there was going to be a problem about his
9 presence. I think he did have some sort of medical
10 complaint at the time. But the fact is, that was an
11 acceptable remedy for him not being present. Is that
12 correct from the State?

13 MS. BROWN: Well, I understood that he would be
14 available by the telephone. He may not want to give
15 testimony, I can't speak to that, but available by ---

16 THE COURT: I'm just asking about the telephone was
17 supposed to be available and it would be acceptable.

18 MS. BROWN: Yes, sir. That's my understanding.

19 THE COURT: Is that your understanding, Mr. Grose?

20 MR. GROSE: My understanding was is that he was going
21 to be available by telephone so that you could question
22 him about his desire to be present.

23 THE COURT: Let's start this again. Was that the
24 agreement, that it would be by telephone, whatever use of
25 the telephone would be?

1 MR. GROSE: I agree with that.

2 THE COURT: Relevant to the hearing, of course.

3 MR. GROSE: I agree with that, but I don't think
4 there was any agreement about testimony before.

5 THE COURT: What would it be if it would not be
6 testimony? He would be under oath, wouldn't he?

7 MR. GROSE: Well, he would be under oath for ---

8 THE COURT: Didn't we have an arrangement made to
9 have somebody there to swear him? At least that was my
10 understanding.

11 MR. GROSE: I think we had agreed that you could
12 swear him over the phone, but ---

13 THE COURT: I would think he'd be entitled to
14 confrontation.

15 MR. GROSE: But it was -- the agreement was ---

16 THE COURT: Well, I don't understand. What are we
17 trying to do here? I'm trying to see if we can move
18 something along that has been on the docket now for six
19 years. And if you've got something to -- well, you've got
20 something to add?

21 MR. GROSE: I've got a letter from him I'd like to
22 mark as Applicant's Exhibit Number 1.

23 THE COURT: Of course, of course.

24 MR. GROSE: And, actually, I have some e-mails I'd
25 like to mark as Number 2.

1 THE COURT: Let me look at them. Since I'm a party
2 to those, I want to be sure it's complete.

3 MR. GROSE: And I'd like to address my exhibits
4 before they respond, if that's all right.

5 THE COURT: Well, let me see what you have there
6 first.

7 MR. GROSE: All right. I'm handing up Applicant's
8 Exhibits 1, 2 and 3, which the attorney general has had an
9 opportunity to review.

10 Exhibit Number 1 is a letter from Mr. Inman stating
11 that he does not want to be present here today. It also
12 -- you know, he understands that this will be going
13 forward in his absence. And, you know, just as he has
14 participated in the proceedings all along, he knows that
15 Your Honor will be rendering a judgment here regarding the
16 allegations in his application and, you know, he's
17 prepared to accept that.

18 Exhibit Number 2 begins with some e-mail
19 correspondence involving the parties and Your Honor, and
20 then also an e-mail to me and Ms. Holt from legal counsel
21 at the Department of Corrections indicating the procedures
22 that they would follow were Mr. Inman to decide to refuse
23 transportation, that they would not force him to be
24 transported. We had communicated to Mr. Inman that that
25 was the department's position. Based on the pleadings

1 that they have filed in this court, I infer that the
2 Attorney General's Office had communicated with the
3 Department of Corrections and understood that that's what
4 would happen per their procedures.

5 Exhibit Number 3 should be all the e-mails involving
6 the exchange between Your Honor and the parties. If it's
7 not, I'm happy to supplement.

8 THE COURT: Well, I think I am going to supplement.
9 And I ask you to supplement them because it doesn't have
10 all the ones that I'm interested in, which do show the
11 Court's participation in trying to maintain some ---

12 MR. GROSE: Well, I mean, we think, you know, the
13 issue was sort of moot because of ---

14 THE COURT: Well, I do, too ---

15 MR. GROSE: -- the department's policy.

16 THE COURT: --- at this juncture.

17 MR. GROSE: Yeah.

18 THE COURT: I think that we're going to be
19 addressing, what is it -- and if you'll forgive me, it
20 might be somewhat unusual, but there were motions heard,
21 and I think that I just denied them both on behalf of the
22 State and the defendant. I think the State looked for a
23 summary judgment, and you, as well, sought just to have it
24 decided as a matter of law.

25 MR. GROSE: Well, certain issues, yes, sir. Not all

1 of the issues.

2 THE COURT: Well, those issues, if I'd granted the
3 motion for summary judgment either for the State or your
4 motion to, what is it, remand it, which would be a grant
5 of a PCR.

6 MR. GROSE: Well, for us it would have been a grant
7 of PCR. For them it would have just ended several of the
8 claims, but we still would have had to have proceeded with
9 other claims. I don't believe their summary judgment
10 motion covered all the claims.

11 THE COURT: But yours did.

12 MR. GROSE: Well, I don't know that it covered all of
13 them.

14 THE COURT: Is what -- I mean, is that not the
15 crucial issue in this case?

16 MR. GROSE: Well, I think that there's ---

17 THE COURT: And what we're talking about is the
18 effect of Hurst vs. Florida.

19 MR. GROSE: Well, that is one issue in this case.
20 There is also issues with regard to the failure to present
21 available mitigation evidence, and that would require a
22 hearing.

23 THE COURT: Let me see now. If I remand it for a
24 jury determination of the sentence ---

25 MR. GROSE: Right. That would moot our other claims.

1 Yes, sir.

2 THE COURT: That's what I'm saying. I'm sure you're
3 familiar with the Gordian knot.

4 MR. GROSE: The what?

5 THE COURT: The Gordian knot, Alexander the Great.

6 MR. GROSE: I'm not sure that I am, Judge.

7 THE COURT: Well, there's a -- Middle East was a
8 potentate that tied his cart to a tree, and he did it with
9 a very elaborate knot. And the story was that whoever
10 could untie the knot would be the conqueror of the world
11 at that time. Of course, all of the candidates came
12 forward, and they never could untie the knot. Then
13 Alexander of Macedonia came to the area, and he heard the
14 legend, so he tried, and couldn't untie it. So he drew
15 his sword, and he cut through the Gordian knot, and he
16 conquered the world known at that time.

17 So I would suggest rather than try to untie all these
18 complicated things, that it's probably beyond my capacity
19 much more than my pay scale, which is nothing, that maybe
20 we might see if there is something that -- a result that
21 would cut through the knot. If nothing else, regardless
22 of however I rule today, we're not going to have Mr. Inman
23 in the court this morning.

24 MR. GROSE: That's correct.

25 THE COURT: So why waste the State's time? And, of

1 course, I have nothing else to do being retired until next
2 week.

3 All right. So now what do you want? Do you have
4 some questions, first of all, about the exhibits?

5 Oh, wait a minute. I do want to impose upon you to
6 have my exhibit.

7 MS. BROWN: Your Honor, if I may.

8 THE COURT: Yes, ma'am.

9 MS. BROWN: I have a few comments to make sure that
10 the record is clear, if I could.

11 THE COURT: Certainly.

12 MS. BROWN: The exhibit that was handed to you
13 purports to be a letter from Mr. Inman. I would suggest,
14 Your Honor, that some of the writing in that particular
15 letter actually reflects a misunderstanding or at least
16 not a full understanding of the opportunity to give
17 testimony at this particular hearing, his only opportunity
18 to give testimony. The e-mails, of course, that are
19 between all parties I do not contest, but the other
20 e-mails I was not a party to. I did flip through them.
21 But it's ---

22 THE COURT: You were a party to all of mine.

23 MS. BROWN: All of yours. Yes, sir.

24 THE COURT: Well, that's the one I'm going to be
25 putting in.

1 MS. BROWN: Uh-huh.

2 And the other exhibit, I believe it is maybe 3, are
3 e-mails back and forth between appellant's counsel and
4 SCDC. It's really of no moment if they're talking about
5 transportation because it's actually the same that's in my
6 response in opposition to the motion to quash.

7 But, again, our request for questions stems from the
8 fact that there are two waivers at issue: the waiver to
9 be present and the waiver to give testimony. The waiver
10 of the right to give the testimony, to have that
11 opportunity to give testimony and not ---

12 THE COURT: Well, let me ask you something. And I'm
13 certainly not committing myself to anything but other than
14 I try to use what time I have in a fashion that might seek
15 a resolution. What that you are so concerned about would
16 not be covered if I should grant the motion of the
17 applicant and have a resentencing hearing? Not a -- yeah.
18 A resentencing hearing before a jury.

19 MS. BROWN: Yes, sir. If we need to defend the
20 remainder of the allegations in the application, then we
21 need to be able to make the argument that there is a
22 failure of burden of proof.

23 THE COURT: Why couldn't you make the argument at the
24 resentencing if I do that?

25 MS. BROWN: Well, it would be in this action alone.

1 And, of course, we have the right to appeal.

2 THE COURT: This action is, what, 2012-CP-39-918.

3 MS. BROWN: And we have the legal arguments why that
4 procedure would not grant relief in postconviction relief,
5 most notably because the same procedure has been used and
6 upheld in a number of cases: Stephen Corey Bryant.

7 THE COURT: That was the case in Hurst vs. Florida.
8 They had to overrule the one that they had been relying
9 on.

10 MS. BROWN: They did, but Hurst was a Florida statute
11 not applicable to ours. You cannot superimpose.

12 THE COURT: Well, does not our statute provide that
13 if the State does not agree to a jury hearing with a plea
14 and a jury trial, that they cannot have a jury trial on
15 the sentence alone?

16 MS. BROWN: Our statute provides that if there is
17 a ---

18 THE COURT: I didn't ask you that. I'm just asking,
19 is that not the effect?

20 MS. BROWN: No, sir. Our statute affects ---

21 THE COURT: I thought that's what Judge -- who was
22 the trial judge? Judge Hill? No.

23 MS. BROWN: Judge Miller.

24 THE COURT: Judge Miller. Is that not what Judge
25 Miller ruled under the statute?

1 MS. BROWN: There's a difference between
2 fact-finding, and that's where -- that's the problem that
3 I have in responding to the Court.

4 THE COURT: Well, obviously, the fact that a person
5 suffered a death sentence is something of consequence.

6 MS. BROWN: And our state has a procedure in place.
7 It's a clear statute.

8 THE COURT: And who does it?

9 MS. BROWN: And who does it?

10 THE COURT: Yeah. Yes, ma'am.

11 MS. BROWN: Well, Mr. Inman waived it. And that's
12 why one reason it's very important for him to be here.

13 THE COURT: Well, how could he waive something that
14 hadn't been decided at that time?

15 MS. BROWN: Because our statute was clear, and that's
16 what he waived.

17 THE COURT: We'll see.

18 MS. BROWN: And he was quite -- he went over it, he
19 was quite informed on that. But, again, that underscores
20 the importance.

21 THE COURT: Well, again, these are good arguments.
22 All right. Go ahead and finish your argument then.

23 MS. BROWN: Well, I think the important thing is if
24 we're here as Your Honor had mentioned before, we're here
25 on all the claims, and we can't forgive ---

1 THE COURT: Well, you say that we can't proceed
2 without the applicant, so I'm trying to make good use of
3 the time that we have.

4 MS. BROWN: Well, if they waive those claims that are
5 remaining, then, Your Honor, I believe that we're in the
6 position that you're talking about if there's an adverse
7 inference or failure of proof.

8 THE COURT: All right. Now, which -- what claims are
9 they making that you find that cannot be decided if the
10 case is -- PCR is granted so that a jury determination
11 would be made?

12 MS. BROWN: The ineffective assistance of counsel
13 claim and involuntary plea will always go back to what the
14 inmate, the applicant, has asserted and what he believes
15 at this point in time.

16 MR. GROSE: Your Honor, we will withdraw the claims
17 regarding the involuntary plea. We don't feel like we
18 were going to be -- there was two of them, the advice to
19 plead guilty and appeal the issue. Having reviewed the
20 record and reviewed the Supreme Court's opinion in this,
21 Mr. Bannister preserved that issue and appellate counsel
22 was the one who abandoned it. We are not going to be able
23 to make the factual basis for the guilty but mentally ill
24 claim, so we can withdraw that now because we're going to
25 fail on proof on that. We're not going to fail on proof

1 as far as mitigation.

2 So as far as the ---

3 THE COURT: Well, mitigation is something that would
4 come out if whoever is going to make the determination.

5 MR. GROSE: That's correct.

6 THE COURT: Either the record is replete with all the
7 mitigation that could possibly be made, or there is some
8 warning of mitigation.

9 MR. GROSE: Right. And I think that what Your
10 Honor's getting at and what the attorney general is
11 overlooking is, is that the PCR statute allows you to
12 grant summary relief on any one issue in the pleadings.
13 And, you know, our position is, is Mr. Inman waived his
14 right to a jury trial, but when he pled guilty, he did not
15 waive the right to raise any issues with regard to
16 sentencing. It was -- he very clearly, through counsel
17 and other factual matters that were put in the record,
18 requested an opportunity for jury sentencing and was
19 relying on Blakely that our Supreme Court has never
20 addressed. And now, of course, Hurst has come in and
21 added more jurisprudence to that Apprendi/Ring line of
22 cases.

23 THE COURT: Well, Hurst did more than just add
24 something to it ---

25 MR. GROSE: I agree.

1 THE COURT: --- because I think they said it's a
2 substantial right.

3 MR. GROSE: I agree. I think Hurst was a huge
4 development.

5 THE COURT: I don't think we have any sort of
6 perspective effect of Hurst.

7 I trust you think the state statute is
8 constitutional.

9 MS. BROWN: Absolutely.

10 THE COURT: All right. Very good.

11 MS. BROWN: And more importantly to this -- and to
12 this particular issue, Mr. Inman's waiver. So applicant's
13 argument is just underscored.

14 THE COURT: Where in the waiver did it -- and I read
15 the waiver. It was, I think, part of the transcripts,
16 part of your motion -- or it wasn't part of your motion
17 that he was told he had the right to a jury make his
18 determination as to death.

19 MS. BROWN: He was advised of how the statute
20 operates and how he could do it.

21 THE COURT: Whoa. Where does it say that you have
22 the right of have the jury decide a death penalty?

23 MS. BROWN: Judge Miller actually said you can ---

24 THE COURT: Well, I missed that. Would you ---

25 MS. BROWN: He goes forward, and he says ---

1 THE COURT: Would you show me that, please.

2 MS. BROWN: Certainly, Your Honor.

3 THE COURT: Certainly. Thank you.

4 MS. BROWN: Beg the Court's indulgence. Just a
5 moment, please, Your Honor.

6 THE COURT: Certainly. Let's go off the record so we
7 can get all this together.

8 (Off the record.)

9 THE COURT: Well, this is in addition to your
10 attachment. Maybe I do need to see it. I have, what is
11 it, the ---

12 MR. GROSE: This is the August 19, 2008, hearing, and
13 the pages that she refers to are in the record of appeal.
14 But you probably have that as a standalone transcript, if
15 I recall how they were circulated.

16 MS. BROWN: And particularly, Your Honor, on
17 page 954.

18 THE COURT: Okay. I do have that, I think.

19 MS. BROWN: At Line 17 the Court says, "You're giving
20 the right up, and you're requesting that the Court be the
21 fact-finder and the determiner of the sentence."

22 THE COURT: Where does he say that you had the right
23 to have the jury do it?

24 MS. BROWN: There is back-and-forth throughout this
25 particular one.

1 THE COURT: Well, show me one, and then we'll look at
2 it.

3 MS. BROWN: Sure.

4 THE COURT: All right. Now, you say -- so 954. 954
5 is left out.

6 MS. BROWN: 952?

7 MR. GROSE: It's probably 45 -- 44 on the ---

8 THE COURT: 45. But I -- excuse me. My -- excuse
9 me.

10 MR. GROSE: I'm sorry.

11 THE COURT: We have to have one person talking at a
12 time. And if you'll forgive me, usually I talk to get
13 something I need, not what something someone wants to
14 present to me.

15 MR. GROSE: All right. Yes, sir.

16 THE COURT: Mine goes from 953 to 955.

17 MR. GROSE: I can let you have my copy of 954.

18 THE COURT: Thank you.

19 It's interesting, the transcript -- portions of the
20 transcript that was provided me, it consists of page 925
21 through 951, only have the odd pages. I do not have 926,
22 928, 929 -- I mean 928, 930, which this is rather
23 interesting because I did not see the -- what was on 954
24 as to a jury verdict, but also noticed that . . .

25 MR. GROSE: Your Honor, I can give you pages 925 to

1 930.

2 THE COURT: But I don't have 952 either as to what
3 preceded his understanding of a conditional plea in South
4 Carolina.

5 MR. GROSE: Your Honor, do you have 931?

6 THE COURT: Let's see.

7 MS. BROWN: Your Honor, we brought a full copy of the
8 record. I believe it may be helpful to hand that up.

9 THE COURT: Well, it would be good if you could hand
10 up just the one that you handed up earlier ---

11 MS. BROWN: Absolutely.

12 THE COURT: --- or at least submitted with your -- is
13 complete from 925 -- would be 924 through -- I've got 954
14 now.

15 All right. Let's go off the record and see if we
16 can't get this down to some sort of manageable . . .

17 (Off the record)

18 (WHEREUPON, Applicant's Exhibit Numbers 4, 5 and 6 were
19 marked for identification.)

20 MS. BROWN: Your Honor, we would also rely on
21 page 930, which talks specifically about a jury compared
22 to the judge making fact findings.

23 THE COURT: Oh, that's in there?

24 MR. GROSE: And, actually, at that point, around 930
25 and 931, Mr. Bannister explains to the judge that he

1 believes that this is an issue for appeal, and he renews
2 his request for a jury to determine the sentence. And
3 there is a discussion about what ---

4 THE COURT: I'm looking at 931. Please understand,
5 you only gave me the odd number pages. So I have 930 -- I
6 mean, I have 931. I don't have 930. And that's what I'm
7 trying to do, get copies now. So unless you have
8 something new to add, let ---

9 MR. GROSE: Well, I do have a few things I'd like you
10 to consider in connection with this.

11 THE COURT: All right. Go ahead. We're back on the
12 record then.

13 MR. GROSE: I think she's been taking the record.

14 THE COURT: I know it. She's better than I am.

15 MR. GROSE: Judge, I would like to hand up
16 Applicant's Exhibits 4, 5 and 6, which are all documents
17 from the record.

18 MS. BROWN: They're already in the record on appeal
19 in Volume 3.

20 MR. GROSE: And if I could hand those up, and I would
21 also -- what those are, Exhibit Number 4 is a motion that
22 was filed after the guilty plea renewing the request for
23 jury sentencing. Then when the sentencing hearing began
24 without a jury at approximately page 17 on the record, and
25 I can get that for Your Honor if it would be more

1 convenient, Mr. Bannister, again, renewed his request for
2 jury sentencing. Then following the trial, there was a
3 new trial motion, which is Exhibit 5, that was ruled on in
4 Exhibit 6 where they, once again, requested a jury
5 sentencing trial.

6 And then the Supreme Court said in the opinion in
7 Inman that the guilty plea doesn't waive issues regarding
8 sentencing because the sentencing is a separate procedure.
9 Oftentimes that might be the only thing that is contested
10 in a capital case, and, indeed, there's plenty of
11 noncapital cases where parties contest the sentence that
12 was imposed by the Court.

13 So our position is, is the guilty plea did not waive
14 the ability to challenge this issue constitutionally, and
15 there's even more stuff we can go through, some of which
16 was prior to the day of the guilty plea. And I can't --
17 and Mr. Bannister did a fantastic job with ---

18 THE COURT: That's the one thing that came through
19 the record and I read was he was tenacious and he was
20 operating under the old rule about objections or ---

21 MR. GROSE: Right.

22 THE COURT: I was surprised that maybe his father
23 taught him how to -- the old school ways. They're not
24 preserved, in other words.

25 MR. GROSE: If we get him in here and we go through

1 his time sheets, you'll see how thorough he was in
2 researching this.

3 THE COURT: Right. Now, Mr. Grose, I'm trying to do
4 the best that I can with the record that I have ---

5 MR. GROSE: Yes, sir.

6 THE COURT: --- to see if there is a way to have this
7 matter resolved without having to go through all sorts of
8 little exercises. All right.

9 MS. BROWN: Your Honor, I would bring to the Court's
10 attention the opinion from the Supreme Court that even if
11 Mr. Inman had preserved his challenge ---

12 THE COURT: Well, they say he did not.

13 MS. BROWN: They said even if Mr. Inman preserved his
14 challenge ---

15 THE COURT: Well, excuse me ---

16 MS. BROWN: --- to the appeal he specifically
17 abandoned -- and remember, there are two ways to have the
18 issue raised on appeal through the review that's mandatory
19 under statute in capital proceedings and to preserve the
20 issue there. So if he had preserved it, it really
21 wouldn't matter because this issue has been decided
22 against his position citing State vs. Allen at
23 386 S.C. 93.

24 So the State of South Carolina has already decided
25 this particular issue against him. Preservation wouldn't

1 have meant a difference.

2 But to go back to where we are in this postconviction
3 relief proceeding, it's the information that Your Honor
4 needs to make a full and fair resolution of this.

5 THE COURT: You mean I'm not to consider the law?

6 MS. BROWN: We have -- we have ---

7 THE COURT: Excuse me.

8 MS. BROWN: Pardon me?

9 THE COURT: Just answer my question.

10 MS. BROWN: Certainly.

11 THE COURT: I am not to consider the law?

12 MS. BROWN: Well, the law would have been decided by
13 the State of South Carolina as far as procedure, but there
14 are facts, Your Honor.

15 THE COURT: Excuse me. Did they have Hurst vs.
16 Florida at the time?

17 MS. BROWN: It was not a Hurst vs. Florida decision.

18 THE COURT: How could they have it then?

19 MS. BROWN: That would be a new decision. But it's
20 not applicable here, so we still don't get around the
21 postconviction relief.

22 THE COURT: Well, they relied on -- Hurst relied on
23 several of their own decisions from other states. You
24 have to forgive me. I had to be a quick study on this
25 particular matter. But go ahead and finish your argument.

1 MS. BROWN: Absolutely, Your Honor.

2 On fact-finding, Your Honor, what we see is
3 Mr. Bannister interrupting the plea several times and
4 Judge Miller going back to Mr. Inman's entry of the plea,
5 and that's important because it's Mr. Inman's decision.

6 THE COURT: Excuse me. As long as you have taken the
7 position that our statute is constitutional, then, what is
8 it, I think we have a direct conflict here that can't be
9 resolved, if that is your position.

10 MS. BROWN: That is my position that the Court has
11 already looked at it and the Supreme Court. We're bound
12 by it.

13 THE COURT: Very good.

14 MR. GROSE: Can I -- I'm sorry.

15 MS. BROWN: And, Your Honor, if I could just finish.

16 THE COURT: Please, Mr. Grose, sit down. This isn't
17 North Carolina.

18 MS. BROWN: Your Honor, what I wanted to point out is
19 what we had gone back to a while ago about this factual
20 tension in the record. Judge Miller was attempting to
21 have the plea colloquy with Mr. Inman. Mr. Bannister
22 interrupted several times. Judge Miller went back and was
23 very careful to describe what our ---

24 THE COURT: Listen. Please, on this I respect his
25 colloquy on his rights. In fact, it's one of the finest

1 I've seen, complete except he was doing it under the old
2 law.

3 MS. BROWN: Well, Your Honor, he did give Mr. Inman
4 the opportunity to have that jury. He could have the
5 jury, profess guilt and go forward.

6 THE COURT: Well, he had already ruled that he wasn't
7 entitled to it because he considered it was a conditional
8 plea under the statute.

9 MS. BROWN: But, your honor, he ruled on -- yes, sir.
10 He ruled on procedure, not that you couldn't get to the
11 jury. It's been done before. State vs. Sigmon in
12 Greenville, they just go up and say, "Yes. We have to go
13 through this particular phase so we can have you decide
14 sentencing." It's been done in several cases.

15 THE COURT: In other words, a plea was entered,
16 guilty plea was entered, and then they let the jury --
17 impanel the jury to determine the sentence.

18 MS. BROWN: No, sir. They impaneled ---

19 THE COURT: Well, that's what I'm looking for.

20 MS. BROWN: But, Your Honor, we're confusing
21 procedure with getting to the jury. You can still get to
22 the jury, but you do it this way, Your Honor. You impanel
23 the jury and you say, "We're guilty." You go through the
24 first phase, and the jury is impaneled for the second
25 phase. That is by the procedure. And it could have been

1 done here.

2 THE COURT: Except the State objected.

3 MS. BROWN: Judge Miller -- well, the State had to
4 accept the guilty plea. You can't have a guilty plea
5 without the State consenting to it.

6 THE COURT: Or objected to, what is it, having -- to
7 accept the guilty plea and then have a jury being
8 impaneled, which is also provided under the statute.

9 MS. BROWN: Judge Miller offered that. He said, "You
10 can impanel the jury. The jury can make all the
11 determinations."

12 THE COURT: I need to see that.

13 MS. BROWN: Absolutely, Your Honor.

14 MR. GROSE: While she's getting that ---

15 MS. BROWN: On page 930 it's that it would be a
16 bifurcated proceeding with a jury that would hear the
17 guilt phase, and also the jury would hear then, if a
18 guilty verdict was returned ---

19 THE COURT: Well, that's the law when you don't
20 accept a plea.

21 MS. BROWN: That's right. But you get the
22 impanelment of the jury. Again, it's procedure, not
23 getting to the -- it's a way to have a jury determination
24 of sentencing if that's what you wish.

25 And it was so contentious, Your Honor, during the

1 plea that the Court said, "If it's a big issue, then I'm
2 not going to accept the plea," which would have resulted
3 in jury sentencing. On 960 at Line 18 the Court said,
4 "Maybe I shouldn't accept this if you don't understand."
5 But he went through, he talked directly to Mr. Inman. And
6 by page 963, Your Honor, Mr. Inman himself, who was the
7 one who has the right to make this decision, not counsel,
8 said, "I just want to enter the plea and get it over with.
9 Just go on from here with the sentencing phase." He
10 understood it would be before a judge, and it's important
11 for Mr. Inman to tell us if he understood that the way
12 that the record certainly says he does.

13 THE COURT: Thank you.

14 All right. Now, Mr. Grose.

15 MR. GROSE: Thank you. Let me mark this as
16 Applicant's Exhibit Number 7.

17 (WHEREUPON, Applicant's Exhibit Number 7 was marked for
18 identification.)

19 MR. GROSE: If I could hand up State's [sic] Exhibit
20 Number 7, and this may or may not already be in the
21 record. It's certainly part of the file downstairs. That
22 was the memorandum that Mr. Bannister filed before the
23 hearing on the motion to determine the mode of trial.

24 And just responding to what the State argued with
25 regards to the opinion in Inman, while they did cite some

1 cases from South Carolina that had addressed that issue,
2 none of those cases addressed the Blakely decision and, of
3 course, as you pointed out, they couldn't have addressed
4 the Hurst decision. And Mr. Bannister also cited some
5 cases in that memorandum from Colorado.

6 THE COURT: He did cite Ring.

7 MR. GROSE: Huh?

8 THE COURT: He did cite Ring.

9 MR. GROSE: He did cite Ring. Yes, sir. He cited
10 Apprendi and Ring. Our court -- and he cited Blakely.
11 Our court had never ruled on Blakely, and, of course, they
12 hadn't had an opportunity to rule on Hurst.

13 And so I think our court has not been presented with
14 the Blakely argument. They've certainly not been
15 presented with the Hurst argument. And as you said, after
16 Hurst, it's a whole new ball game.

17 MS. BROWN: Your Honor, if I could make ---

18 THE COURT: Yes, ma'am.

19 MS. BROWN: --- a very brief, little comment about
20 Hurst itself. Florida doesn't apply Hurst to all of its
21 cases. There have been Florida cases that say once you
22 make a waiver, you enter a guilty plea, Hurst does not
23 apply. That's consistent with our statute.

24 Thank you, Your Honor.

25 THE COURT: You're welcome.

1 MR. GROSE: The difference between those cases is, is
2 that Mr. Bannister and Mr. Inman preserved that issue
3 here.

4 THE COURT: All right. Is there anything else, at
5 this point, that would interfere with the Court taking a
6 record -- a record, Freudian slip -- a recess to
7 reconstruct the record that is, again, mushrooming? And
8 it's not -- for an old man, it's not easy to keep track of
9 where even my car is parked, much less exhibits in, what
10 is it, organized fashion -- less than organized fashion.

11 MS. BROWN: I would just ask for a bit of guidance
12 because we do have SCDC personnel standing by to see if
13 Your Honor would like to have Mr. Inman brought to the
14 telephone. And if you would just give me some guidance
15 what to tell them, I'll be happy to tell them to wait for
16 an hour or whatever the Court would deem correct.

17 THE COURT: Well, obviously, I'm not ready to decide
18 any matter at this time. I need a little bit more
19 information in order to do that. You can tell them that
20 you've got a slow judge and give him an hour or so and
21 you'll get back to them, but don't do anything that would
22 interfere with their process right now.

23 MS. BROWN: Thank you, Your Honor.

24 THE COURT: All right. We'll stand at ease for some
25 time subject to the Court.

1 (WHEREUPON, a recess is taken at 10:26 a.m.)

2 (WHEREUPON, Court's Exhibit Number 1 was marked for
3 identification.)

4 (WHEREUPON, proceedings reconvened at 11:04 a.m.)

5 THE COURT: All right. We're back on the record in
6 Inman vs. State, 2012-CP-39-918.

7 While we took a break, I realized -- or after we took
8 a break, I realized that probably need to make some
9 observations of why I was interested in Hurst vs. Florida.
10 I don't know -- well, maybe Mr. Zelenka, did you ever try
11 any murder cases under the old law before Furman vs.
12 Georgia?

13 MR. ZELENKA: No, I didn't.

14 THE COURT: All right. Well, at that time,
15 Mr. Goolsby, assistant attorney general, and myself went
16 down to Aiken County to try a case in, I think it was,
17 1970, and it was under the old law. And I think -- which
18 is rather interesting to me because under the old law, the
19 only person who -- or only entity that could sentence a
20 person to death in South Carolina, since we're talking
21 about precedence and all that, was a jury.

22 And in this particular case, an outlaw motorcycle
23 gang from North Charleston, of course, went up to
24 Belvedere in Aiken County, which is affectionately known
25 as Horse Creek Valley, and in a term, this is how young I

1 was and how new this was, they went up to rip off the
2 American Motorcycle Association. Not the American Medical
3 Association. In other words, the nonoutlaw group.

4 And there were two couples there. I think there's
5 five -- six people all involved. I think it was the
6 leader and then five members of the gang. There were four
7 people there, two couples in the AMA clubhouse. They tied
8 them up, and then they went about ripping them off, taking
9 their motorcycles, their equipment and everything else.
10 And they brought a trailer, you know, with them as well as
11 their motorcycles to load up the loot. And then they
12 went, they were getting ready to leave, and all of the
13 five members went outside and getting on their motorcycles
14 so they can get away. But the leader went back, and he
15 cut the throats of all four people. The two men died and
16 the two ladies survived. And they were caught.

17 And at that time, Luke Williamson was the solicitor
18 and he was a little aged and he only had one assistant,
19 and he asked the attorney general for some help. And so
20 he sent Burt Goolsby and Alex Macaulay down there. Of
21 course, I was right out of law school, brand-new
22 assistant. And we tried the case.

23 But the lawyer for the leader realized under our law
24 at that time in as much as only the jury could give the
25 death sentence, he pled the leader guilty before Judge

1 Spruill, the father. And, of course, he had to accept the
2 plea. But there by that, he could not be sentenced to
3 death, because only the jury could do it.

4 And so we tried the accomplices, I guess you'd say.
5 But, of course, under the law, hand of one, hand of all
6 and all of that, they were convicted of murder. And they
7 were instructed as to the three possible sentences that a
8 jury could unanimously find, and they were not guilty,
9 guilty, guilty with a recommendation of mercy. In other
10 words, if they did not recommend mercy and just found them
11 guilty, then it was an automatic death sentence.

12 And the jury returned a verdict of guilty as to the
13 five accomplices. And they were young. They were
14 teenagers and young 20s. In other words, they were
15 obviously under the influence of this leader. The leader
16 also knew how to play the sentence.

17 And so they were all sentenced to death. And I'll
18 never forget Judge Spruill actually had tears coming down
19 his cheek when he sentenced them. But then Furman vs.
20 Georgia came out, and they struck down all of the capital
21 punishment statutes at that time, and we redid all and
22 adopted the one we have now.

23 And I found it ironic, because later I tried a case,
24 I think, or maybe I'm just familiar with it, where the
25 question of mercy came up as to whether it was consistent

1 if a jury could find mercy or would be entitled to a
2 charge on mercy consistent with the one that, you know,
3 you're not to be influenced by bias, prejudice, caprice,
4 public opinion, anything of that nature. And it was
5 determined that, yes, mercy was consistent with that
6 charge against him, sort of other influence that you might
7 have, because mercy was outside the question of justice.

8 And I say this because I noticed that State's Exhibit
9 Number 1, apparently, is the letter where the applicant
10 says that I understand that this hearing has to be held to
11 meet all legal requirements for the appeal process, but I
12 received a sentence for crimes I knowingly committed, and
13 I accepted that.

14 Well, those five members of that gang didn't accept
15 the guilt because they said, "We weren't inside. We
16 didn't do it." You know, the concept of hand of one, hand
17 of all. Of course, the leader couldn't have killed four
18 people unless they had been trussed up and immobilized so
19 he could go back in.

20 But anyway, they were -- when Furman came out, all of
21 the death sentences were commuted. And the interesting
22 thing about it is Greenville News had an article or a
23 series of articles on people who had been sentenced to
24 death and were later pardoned, and I found three of those
25 names. And I'm sure the other two, also, because they

1 were, as I say, young people.

2 But I say all of this because when you talk about
3 precedent and all, it depends on when the precedent is.
4 And that was something else that was addressed in Hurst,
5 that they -- I think the State, in that case, said that,
6 you know, not only has the state court sustained death
7 sentences under that scheme, but the United States Supreme
8 Court has and other jurisdictions had sustained the same
9 type of -- well, it sustained, and this is why it's so
10 important to me. Hurst, the fact that the Sixth Amendment
11 actually compels a jury verdict in order to impose the
12 death sentence, that, what is it, they said that all of
13 those other cases were wrong, and they overruled their own
14 decisions in doing so. And I might note it was an 8-1
15 decision. I think only one justice descended on
16 concurring opinions, but also to me, my following of
17 things not so much importance, even Justice Scalia joined
18 in that opinion.

19 But that's a little background. And I have no
20 interest in this case other than what is done is done in
21 the proper fashion, which means that, like is said in a
22 book somewhere, what is required of us, love, mercy, do
23 justice and walk humbly.

24 And with all that said, I would like to proceed to
25 see if there's anything can be accomplished this morning.

1 If nothing else, maybe have the issues down for a decision
2 later if we decide that -- when I say "we," I'm talking
3 about the Court -- decide whether the -- it's essential
4 that the applicant be here or not. Obviously, the only
5 way we could dismiss with that requirement would be if the
6 Court should decide, at this time, that the applicant is
7 not necessary and that the law is such that at least --
8 and you will have to forgive me. For example, Attorney
9 General Goolsby obviously went to the Court of Appeals,
10 and I told him I wanted him to have a job. So I'm not
11 perfect, but I do try to do the right thing for the right
12 reasons, and if I'm in error, there's another place for it
13 to be corrected.

14 But with that said and regardless of what I do here
15 today, I would like to go ahead and proceed and see if
16 there is anything we can address.

17 And I might, if you'll forgive me, refer to the
18 morning in a sense that where we were when I did take a
19 break. And I think, Ms. Brown, you did have the floor at
20 that time.

21 And what I've done over the break, I have organized,
22 and I did also put my copies of the e-mails, and I think
23 that you have only the e-mails between the parties and the
24 Court, and that would be Court's Exhibit 1 are what brings
25 us here today.

1 And I also -- I mean, I understand how these things
2 happen, made your transcript a little more complete by
3 putting in the odd numbered pages as well, because I
4 didn't even realize that that's what the problem was. But
5 when you started talking about a particular page, it
6 wasn't there.

7 So your Attachment B to your motion to quash is now
8 complete. I trust you'll suffer that amendment. The only
9 thing I did was add the even pages starting with 924 and,
10 let's see, 956. And I added -- and with your odd numbered
11 pages.

12 MS. BROWN: Your Honor, the only thing that I had as
13 an actual attachment -- well, actually, all I had was a
14 certificate of service to my motion. I believe applicant
15 presented some exhibits this morning in response to the
16 motion.

17 THE COURT: Well, no. This is Attachment B to the
18 response in opposition to motion to quash.

19 MS. BROWN: Oh, okay.

20 THE COURT: So, I mean, this is one of your earlier
21 -- I think it was the one I received in the mail.

22 MS. BROWN: Oh, I see, Your Honor.

23 THE COURT: This is the Attachment B to that motion
24 to quash, and it only had the odd numbered pages ---

25 MS. BROWN: I see.

1 THE COURT: --- not the even numbers. So I put the
2 even numbered pages.

3 MS. BROWN: Thank you, sir.

4 THE COURT: I just want to make that clear for the
5 record. And unless there's not objection -- unless there
6 is an objection, I trust the record will suffer those
7 amendments.

8 Now, yes, ma'am.

9 MS. BROWN: The request that we submitted this
10 morning, of course, was for the specific questioning. And
11 where we are right now with SCDC is it's my understanding
12 that Mr. Inman is available by phone. He has chosen to be
13 by the phone. That, of course, will be something I would
14 request Your Honor consider, again, so we can tell SCDC
15 whether to return Mr. Inman and not allow him to speak.

16 THE COURT: Well, I understand. So what you have now
17 is Mr. Inman available and apparently willing to be
18 interviewed by phone.

19 MS. BROWN: Yes, sir.

20 THE COURT: And I say "interviewed" because I'm not
21 sure how we're going to swear somebody long distance. I
22 think that if you have somebody, a notary there who can
23 swear him would be fine, if that's the case.

24 What do you say, Mr. Grose, if we decide to go that
25 way? If we decide to go that way.

1 MR. GROSE: We have no objection as to questioning
2 about, you know, whether or not he's voluntarily waived
3 his presence. We don't want that to blur into questioning
4 about substantive issues, though.

5 THE COURT: The only thing is, I will say this, if I
6 remember my order that denied the summary judgment and
7 dismissed the petition to -- not to remand it for trial or
8 a sentencing hearing, I did say that I also was interested
9 whether or not there would be questions as to the
10 voluntariness of any waiver. And I think, at this time,
11 Ms. Brown, what do you say? Is that not really the
12 critical, crucial question in this case at this time, that
13 it doesn't seem any question about, what is it, the
14 applicant's admission or acceptance of guilt, but whether
15 or not that might have been made knowingly, intelligently,
16 freely and voluntarily?

17 MS. BROWN: The acceptance for the judge to be the
18 fact-finder I think is a critical issue that we need
19 Mr. Inman for.

20 THE COURT: Well, that, I think, is, what is it --
21 that's -- again, I think that goes to the question of
22 whether a judge can, on his own or without a jury's
23 verdict, sentence someone to death.

24 MS. BROWN: Well, Your Honor, there may be two
25 decisions. One is structural and one is factual. Did

1 Mr. Inman understand that the judge would sentence him,
2 and did Mr. Inman want the judge to sentence him?

3 THE COURT: Well, okay. Well, then -- again, what
4 I'm trying to do is put us in the posture of -- since we
5 have everybody here and the opportunity to hear from the
6 applicant as to where I was when I had the motion for
7 summary judgment and I had the motion to, what is it,
8 grant relief to remand it. Of course, if I remand it,
9 then that would have to be determined at the time.

10 All right. I think I see what you're saying, and I
11 think I'll go with that in the sense that, all right, I'll
12 hear argument from counsel on those two questions, whether
13 or not the structural scheme that we have here in South
14 Carolina is not unconstitutional, meaning violated the
15 Sixth Amendment and then, I guess, the Eighth and all the
16 other, but also whether or not his waiver of it was
17 voluntary.

18 All right. By doing this at the more of a summary
19 judgment stage rather than a full hearing, and if I can't
20 make that decision, then, of course, we'll reconvene, but
21 we'll reconvene with notices to how we're going to
22 proceed. We're either going to have the applicant
23 present, even if -- by the way, the Supreme Court has been
24 very kind to me. They said it's a PCR and I'm not limited
25 by venue, that I can hear this anywhere in South Carolina.

1 I don't know if I can go to Taccoa in South Carolina. So
2 we could end up, what is it, the NCCI.

3 MS. BROWN: We have had that happen before.

4 THE COURT: Well, I'm saying that that's -- you know,
5 even in my limited capacity, I could see that being one of
6 the things that could happen.

7 All right. Mr. Grose, what do you have to say?

8 MR. GROSE: Dealing with the second ---

9 THE COURT: The two things. What I'm trying to do is
10 decide -- give me one that we can agree on. In other
11 words, I will hear argument on the constitutionality of
12 the statute.

13 MR. GROSE: Right.

14 THE COURT: All right. And then the second, I would
15 like to hear something -- and, again, it's going to have
16 to be in the way of a sworn testimony as to if there's a
17 -- the record would reflect sufficient evidences of the
18 question of being a freely, voluntarily, knowingly and
19 intelligently made waiver.

20 MR. GROSE: Can I address the second question first?

21 THE COURT: You can address everything, but I'm just
22 trying to give you something to aim at.

23 MR. GROSE: Right. With regard to Your Honor's
24 second question, you can't ignore the record that's
25 already there.

1 THE COURT: No. Of course not.

2 MR. GROSE: And the record that's already there
3 reflects that this matter was litigated, you know, in a
4 hearing on the mode of trial. Judge Miller issued an
5 order. Then when the guilty plea took place, counsel
6 entered an objection and requested ---

7 THE COURT: All right. Let's do this also. I was --
8 as I said, I was not only impressed with Judge Miller's,
9 what is it, colloquy with the applicant, the defendant at
10 that time, but he covered all of the constitutional issues
11 that we usually do in a plea.

12 MR. GROSE: Right.

13 THE COURT: No question about it. And at the same
14 time, I also have great appreciation of the defense
15 attorney, I think, Mr. Bannister ---

16 MR. GROSE: Yes, sir.

17 THE COURT: --- in preserving any -- his objections
18 throughout. He seemed to be consistent, is almost canned
19 after the law. But he didn't miss any points, so I don't
20 know if there's any waiver of that. So those two things
21 I'm satisfied with.

22 MR. GROSE: Okay. And what I think was happening in
23 that colloquy is Judge Miller was saying I have this
24 statute I have to follow, and Mr. Bannister was saying ---

25 THE COURT: By the way, could you -- is that in any

1 of the smaller versions of the transcript that I might
2 have? You say he entered an order. I didn't realize he
3 had a written order.

4 MR. GROSE: I believe there was a written order
5 regarding -- it was all the -- I can ---

6 THE COURT: Now, there were postconviction orders. I
7 know that. But, I mean, I'm talking about at the point of
8 the trial, can you give me something that would identify
9 that point where he made his decision as to the
10 interpretation of the statute?

11 MR. GROSE: I can hand you Judge Miller's three-page
12 order dated October 15th from November 27th. And that
13 disposed of a number of motions that were heard on the
14 same day.

15 MS. BROWN: Your Honor, I believe it's referenced in
16 our procedural history that that particular order was the
17 one that went up to our state Supreme Court and United
18 States ---

19 THE COURT: Well, could you do this? Could you give
20 me the transcript where he relied on his instruction to
21 the defendant?

22 MS. BROWN: Yes, sir.

23 THE COURT: By the way, I see Judge Hill refers to
24 the case of In RE: Greenville News.

25 MR. GROSE: You've heard of that one?

1 THE COURT: I have heard of that one.

2 Is that where we first met?

3 MS. HOLT: (Nods head affirmatively.)

4 MR. GROSE: While they are looking for that, I would
5 just say that I don't think that that order was what was
6 actually on appeal to the Supreme Court.

7 THE COURT: This order?

8 MR. GROSE: Right. What was on appeal to the Supreme
9 Court was whether or not the guilty plea was conditional
10 or not.

11 MS. BROWN: There were two appeals.

12 MR. GROSE: Well, there was an interlocutory appeal
13 that was dismissed because it was interlocutory. So I,
14 again -- and there was an appeal to the Supreme Court and
15 to the United States Supreme Court on that, but that was
16 dismissed because it was interlocutory. It was not ruled
17 on.

18 THE COURT: Again, I'm just looking for the colloquy
19 between the Court and the defendant explaining his ruling
20 on the statute.

21 All right. We're off the record.

22 (Off the record.)

23 (WHEREUPON, Applicant's Exhibit Number 8 was marked for
24 identification.)

25 MR. GROSE: Can we go on the record briefly?

1 THE COURT: Sure.

2 MR. GROSE: Mr. Zelenka and I conferred, and, at this
3 time, I'm going to hand you what's been marked as
4 Applicant's Exhibit Number 8, which, a moment ago, there
5 was discussion about an appeal of the November 27th order,
6 and that's the order from the Supreme Court dismissing
7 that without prejudice.

8 THE COURT: But they don't address the issues.

9 MR. GROSE: That's correct.

10 THE COURT: Give me something that addresses the
11 issue.

12 MR. GROSE: Well, we're actually --

13 THE COURT: I'm just looking at the transcript.

14 By the way, we're off the record.

15 (Off the record.)

16 THE COURT: All right. The reason I asked for the
17 statute, I just wanted to be sure I was -- remembered the
18 language. And this is from Section 16-3-20(B): If trial
19 by jury has been waived by the defendant and the State, or
20 if the defendant pleads guilty, the sentencing proceeding
21 must be conducted before the judge.

22 Now, that is the language relied upon by the State
23 and that the defendant understood.

24 MR. GROSE: Well, this is the language that Mr. Inman
25 was challenging the constitutionality of.

1 THE COURT: So you're not saying he understood.

2 MR. GROSE: I think what the record reflects was is
3 that he knew that that was the procedure under the
4 statute, and he was making a constitutional challenge to
5 that, which is ---

6 THE COURT: Let's be fair. I don't know if he has a
7 degree in law, so he was relying on his attorney.

8 MR. GROSE: And his lawyers -- his lawyers -- you
9 know, actually, when you look at this, you know,
10 September 14, 2007, hearing, you know, his lawyers wanted
11 to enter the guilty plea that day and have a jury
12 impaneled to sentence him at an appropriate time in the
13 future. Judge Miller denied that request and denied the
14 motion with regard to the mode of trial.

15 When they came back in August of the following year
16 to enter the guilty plea, there had been Judge Miller's
17 order in between, there had been the appeal to the South
18 Carolina Supreme Court that was denied without prejudice,
19 there had been an appeal to the US Supreme Court where
20 cert was denied. So then when they come back in August of
21 2008 to enter the guilty plea, there's a discussion on the
22 record about whether the plea is a conditional plea, what
23 Mr. Inman understood about what the procedure was.

24 But there was an objection placed on the record by
25 Mr. Bannister that Mr. Inman still stood by and that he

1 believed it was appealable, the issue about whether or not
2 he was entitled to the jury trial. And at that time, a
3 central part of the argument was is that our Supreme Court
4 had never addressed Blakely, and other states that had had
5 found that you couldn't deny somebody the right to a jury
6 trial in that posture.

7 Then following the entry of the guilty plea, there
8 was a motion to reconsider the November 2007 order which
9 was another request for the judge to impanel the jury.
10 And then when the sentencing without a jury started in
11 September of 2008, one of the very first things that was
12 put on the record was a renewal of that motion, and then
13 it was, again, renewed in the motions for a new trial.

14 So the record is -- and, of course, Mr. Inman's
15 entitled to the assistance of counsel, and he had
16 assistance of counsel that preserved this issue in 2007,
17 2008 and 2009. So I think the record before Your Honor
18 is, is that Mr. Inman pled guilty, but he continued to
19 renew his request for jury trial sentencing.

20 THE COURT: Very well. Yes, ma'am.

21 MS. BROWN: Your Honor, two cases I would like to
22 reference for the Court. The first was a case that came
23 out of the United States Supreme Court just last term,
24 it's a 2018, McCoy vs. Louisiana. It's at 138 Supreme
25 Court 1500. That case has a very important line in it:

1 Some decisions are reserved for the client, notably
2 whether to plead guilty, waive the right to a jury trial,
3 testify on one's behalf, and forgo an appeal. Mr. Inman
4 could make a voluntary waiver, and we submit that he did
5 knowing the structure, knowing the judge would sentence
6 him.

7 The other thing I'd like to point out is a case from
8 Florida I referenced earlier that even Florida doesn't
9 apply this logic when there is a guilty plea, a waiver of
10 the right to trial. And the most recent case that we
11 found is Hutchinson vs. State.

12 THE COURT: Is this Florida?

13 MS. BROWN: Yes, sir. It's at 243 So. 3d 880 from
14 March 2018.

15 Just in the head notes alone, I'll just read from
16 that instead of the body, the actual opinion: Relief
17 under Hurst vs. Florida is not available for defendants
18 who waive a penalty-phase jury and defendant's waiver of a
19 penalty-phase jury was knowing, intelligent and voluntary.

20 THE COURT: That's pretty much what I was asking.

21 MR. GROSE: And the difference is, is that Mr. Inman
22 did not waive a penalty-phase jury. He continued to ask
23 for it even after the guilty plea.

24 THE COURT: Through his attorney.

25 MR. GROSE: Through his attorney, yes. Which ---

1 THE COURT: All right. First of all, the one that
2 I'm interested in is the -- I'm looking for my pen now.
3 That's the nice thing about trying a case from the
4 beginning during the hearing.

5 All right. Now, what's the U.S. Case? McCoy?

6 MS. BROWN: That is McCoy vs. Louisiana. It is at
7 138 S.Ct. 1500.

8 THE COURT: And that's what year?

9 MS. BROWN: 2018.

10 THE COURT: 2018.

11 MS. BROWN: Yes, sir.

12 THE COURT: Thank you.

13 MS. BROWN: And the Florida case, it does it like it
14 is petition for certiorari. It looks like it was docketed
15 July 27, 2018. That's the Florida case that I read
16 secondly.

17 THE COURT: Okay. What is it?

18 MS. BROWN: Hutchinson vs. State of Florida.

19 THE COURT: And what's the cite?

20 MS. BROWN: 243 -- I think it's Southern, So. 3d 880,
21 2018.

22 THE COURT: 243 Southern ---

23 MS. BROWN: Third. Uh-huh.

24 THE COURT: Third. Okay.

25 MS. BROWN: 880. A 2018 case, Your Honor.

1 THE COURT: Got you. Both of these are 2018; is that
2 right?

3 MS. BROWN: Yes, sir.

4 (Pause in proceedings.)

5 MS. BROWN: Your Honor, if I could just point out
6 something. There's a little bit of confusion, some
7 hesitation from our part because this wasn't a particular
8 allegation that's made in the amendment. We have
9 Ground 10(d), 11(d) that attacks 16-320, and our response,
10 Your Honor, was that this is a freestanding claim that
11 could not have been raised at trial or on direct appeal.
12 So I apologize for being a little bit late coming to this
13 because I was trying to figure out how exactly it fit into
14 the litigation. But this is a Simmons barred issue, Your
15 Honor, attacking the constitutionality ---

16 THE COURT: You mean we bar the Sixth Amendment by a
17 State decision?

18 MS. BROWN: Our court has limited the jurisdiction of
19 postconviction relief court in 17-27-20, and that is that
20 issues that can be raised on a direct appeal had to be
21 raised in direct appeal. In postconviction relief, the
22 only way to get to it is an ineffective assistance of
23 counsel claim, and that's the long-standing Simmons
24 doctrine.

25 Now, Your Honor, of course, there's always original

1 writ -- Federal original writ habeas.

2 THE COURT: That's what I was curious about. I mean,
3 I'm not sure how long Simmons would last on a direct
4 appeal, a substantial Federal question to the Supreme
5 Court. Go ahead.

6 MR. GROSE: Well, two ---

7 THE COURT: Let me hear -- Mr. Grose, let's sit down
8 and I want to finish hearing Ms. Brown.

9 Yes, ma'am.

10 MS. BROWN: Yes, sir. So we would still stand by the
11 fact that if it's a freestanding claim, it cannot be
12 reached. If it's ineffective assistance of counsel,
13 that's a separately pled and a separately proven claim.

14 I do note that Florida, in addition to saying that
15 it's a difference when it's a guilty plea, has also found
16 that Hurst is not even retroactive. And that would be
17 Mansfield vs. State of Florida. And all I have available,
18 at this time, Your Honor, is a Westlaw cite. I'll be
19 happy to give that to you.

20 THE COURT: Wait a minute. You mean a substantial
21 right is not retroactive?

22 MS. BROWN: That is what the Supreme Court of Florida
23 has found, Your Honor.

24 And please don't forget that we've always taken the
25 position that we need to go by the statute and the

1 jurisdictional limitations, but there is an original writ
2 that's available to the Supreme Court. For Your Honor's
3 concern that some issues may not be reachable, there's
4 always that original writ that's not suspended. But we do
5 have the restrictions of the postconviction relief
6 statute, and this falls under a Bard issue. It's a
7 freestanding claim that can't be reached, Your Honor.

8 MR. GROSE: I have two responses.

9 THE COURT: We wasted all this time. How many years
10 now?

11 MR. GROSE: No. All that's wrong, Judge.

12 THE COURT: Excuse me. All right. I'm trying to
13 find Hutchinson vs. Florida, and I can't find it, at least
14 not -- is it State of Florida, maybe?

15 MS. BROWN: Your Honor, I can -- if we may approach
16 the bench we can show you what we have.

17 THE COURT: Well, you can probably give it to
18 Mr. Welborn and he can copy it. Or what you've got -- oh,
19 you've got it on your machine.

20 MS. BROWN: Yes, sir.

21 THE COURT: Well, I find Michael D. Hutchinson vs.
22 State of Florida, it looks like 1999.

23 MS. BROWN: We have Jeffrey Hutchinson. It's
24 H-U-T ---

25 THE COURT: All right. Well, I don't have Jeffrey.

1 I'll see if I can find Jeffrey.

2 MS. BROWN: Okay.

3 THE COURT: It is with a J or a G?

4 MS. BROWN: J-E-F-F-R-E-Y. And Hutchinson, Your
5 Honor, is H-U-T-C-H-I-N-S-O-N.

6 THE COURT: I had that. And he's got a P in his
7 name.

8 MS. BROWN: I've got Jeffrey Glenn.

9 THE COURT: All I find is -- huh?

10 MS. BROWN: Jeffrey Glenn, Your Honor.

11 THE COURT: Well, the State of Florida vs. Jeffrey P.
12 Hutchinson. It looks like it's a 2010 case.

13 MS. BROWN: Are you at 243 So. ---

14 THE COURT: No, ma'am. I was doing it by the case
15 name.

16 MS. BROWN: Oh, okay.

17 THE COURT: But I'll try that then.

18 By the way, I'm a Luddite, so it's going to take me a
19 while. All right. But it's 243?

20 MS. BROWN: 243 So. 3d.

21 THE COURT: Southern third.

22 MS. BROWN: 880.

23 THE COURT: Okay. It looks like something's coming
24 up.

25 MS. BROWN: Yes, sir.

1 Again, Your Honor, we're a little off guard on this,
2 but we are aware that there are cases in the Eighth
3 Circuit, the 11th Circuit and Ninth Circuit that similarly
4 find that that's not applicable retroactive. It's not
5 retroactive. Those, of course, would be Federal Court of
6 Appeals.

7 (Pause in proceedings.)

8 MS. BROWN: Your Honor, doing a little additional
9 research, we can also add ---

10 THE COURT: Let me take what I've got.

11 MS. BROWN: Oh, yes, sir.

12 THE COURT: I wish you'd sent all this to me before,
13 then we might not be here with me hunting and pecking on
14 my little machine.

15 (Pause in proceedings.)

16 THE COURT: All right. What I've got on my machine,
17 apparently I can't get a copy of it, is from Hutchinson
18 vs. State.

19 And I think you said Hurst was not retroactive,
20 Ms. Brown?

21 MS. BROWN: Your Honor, Hutchinson stands for Hurst
22 relief is not available for a defendant who waived a
23 penalty-phase jury, but it's not retroactive from the
24 second case that we mentioned.

25 THE COURT: Well, I was just reading what they said

1 in Hutchinson: While Hurst is retroactive to defendants
2 whose sentences became final after Ring was decided, Hurst
3 relief is not available to defendants who have waived a
4 penalty-phase jury.

5 Now, as I understand it, this trial was both
6 post-Ring and prior to Hurst.

7 MS. BROWN: Yes, Your Honor.

8 THE COURT: So, apparently, Hurst -- Hutchinson is
9 retroactive to those cases.

10 MR. GROSE: Hurst is, yes, sir.

11 THE COURT: I mean, I'm just reading what they said.

12 All right. Now ---

13 MR. GROSE: Can I respond to two things they said
14 about sort of the jurisdictional thing?

15 (Pause in proceedings.)

16 THE COURT: All right. I think your McCoy vs.
17 Louisiana may be closer because that's talking about a
18 knowing, intelligently, freely and voluntary waiver.

19 MS. BROWN: Yes, Your Honor.

20 THE COURT: But, again, look at it and see.

21 But, apparently, in this particular case, it's not
22 governed by Hutchinson vs. Florida because it was -- the
23 sentences became final after Ring and before Hurst.

24 All right. Let's see. It's 12:30. I don't know
25 about y'all, but I've had a long morning.

1 We're off the record.

2 (WHEREUPON, a recess is taken at 12:32 p.m.)

3 (WHEREUPON, proceedings reconvened at 1:52 p.m.)

4 THE COURT: Thinking a little bit about how we'd like
5 to proceed, Mr. Grose, you being the applicant, the moving
6 party, the morning session was somewhat uncoordinated. Do
7 you have any suggestions how you'd like to proceed or how
8 we should proceed this afternoon?

9 MR. GROSE: You know, Your Honor had asked us to
10 answer two questions, and I don't think we've gotten very
11 far in trying to answer those questions, and I'd like to
12 take a stab at doing that.

13 THE COURT: That's exactly what I was looking for.
14 Thank you.

15 Any suggestions from the respondent before the
16 opportunity arises as far as suggestions?

17 MS. BROWN: As far as going forward?

18 THE COURT: Yes, ma'am.

19 MS. BROWN: Perhaps we could take the listing of
20 witnesses to be called and when we would do that so we can
21 coordinate.

22 THE COURT: That will give us a good start. Yes.
23 That will be fine.

24 All right. Applicant, your witnesses?

25 MR. GROSE: We're going to call -- and they are aware

1 of this, but we plan on calling the three trial lawyers.

2 THE COURT: Who were the three lawyers?

3 MR. GROSE: Jim Bannister, Symmes Culbertson and John
4 Dejong.

5 We plan on calling Marti Loring. I'm sorry. Before
6 I go on to that, we also plan on calling Joey Savitz.

7 THE COURT: Just a minute. Jim Bannister, and who
8 was the second one?

9 MR. GROSE: Symmes Culbertson.

10 THE COURT: Oh, Symmes, yeah.

11 MR. GROSE: Yeah. And John Dejong.

12 THE COURT: Okay.

13 MR. GROSE: And Joey Savitz, Dr. Marti Loring.

14 THE COURT: Marti, M-A-R-T?

15 MR. GROSE: T-I. M-A-R-T-I.

16 THE COURT: L-O-R-I-N-G?

17 MR. GROSE: Yes, sir.

18 Dr. Donna Maddox, and Dr. Louis Viamonte,
19 V-I-A-M-O-N-T-E.

20 THE COURT: Doctor -- do that again for me.

21 MR. GROSE: V-I-A ---

22 THE COURT: Wait a minute. What's the first name?

23 MR. GROSE: Louis was the first name, L-O-U-I-S.

24 THE COURT: All right. The second?

25 MR. GROSE: V-I-A-M-O-N-T-E.

1 THE COURT: V-I-A-M-O-N-T-E. Okay.

2 That's the list of yours?

3 MR. GROSE: That's the list, yes, sir.

4 THE COURT: Well, of course, it looks like the
5 applicant will be also -- you're not proposing him.

6 MR. GROSE: We're not proposing him at this point,
7 Your Honor.

8 THE COURT: Okay. I'll wait to see if I hear his
9 name.

10 All right. Anyone else?

11 MR. GROSE: That's ---

12 THE COURT: All right. Now, do we have any
13 evidentiary matters that we need to discuss as far
14 relevance to be considered? I mean, as a -- by this time,
15 I trust that y'all have been through just about
16 everything.

17 MR. GROSE: I don't think so. Although, I would be
18 remiss, there are some depositions that were taken in
19 Georgia, and we're going to introduce those because those
20 are witnesses that are outside the subpoena power of South
21 Carolina.

22 THE COURT: And who are they? Oh, they're video
23 depositions?

24 MR. GROSE: No.

25 Tracey Myers-Enderson.

1 THE COURT: T-R-A-C ---

2 MR. GROSE: E-Y.

3 THE COURT: Meyers, M-Y ---

4 MR. GROSE: M-E-Y-E-R-S.

5 THE COURT: M-E-Y-E-R-S.

6 MR. GROSE: Dash Enderson, E-N-D-E-R-S-O-N.

7 Trina Lucus. T-R-I-N-A, L-U-C-U-S.

8 Michael, and I'm going to spell his last name,

9 B-E-D-N-A-R-Z.

10 THE COURT: B-E-D-N-A ---

11 MR. GROSE: R-Z.

12 Michael Baker, B-A-K-E-R.

13 THE COURT: Baker, B-A-K-E-R.

14 MR. GROSE: Donald Geary, G-E-A-R-Y.

15 THE COURT: What's the last name?

16 MR. GROSE: Geary. It's spelled G-E-A-R-Y.

17 THE COURT: Okay.

18 MR. GROSE: Alan Traylor, T-R-A-Y-L-O-R; Roger

19 Lindsay, L-I-N-D-S-A-Y; and David Blake, B-L-A-K-E.

20 THE COURT: David Blake.

21 MR. GROSE: Blake. Yes, sir.

22 THE COURT: All right. Anything else?

23 MR. GROSE: No, sir.

24 THE COURT: Now, were y'all present at these
25 depositions?

1 MS. BROWN: A representative from our office, yes,
2 sir.

3 THE COURT: Are there any surprises?

4 MS. BROWN: No, sir. We have copies of these
5 depositions. The only thing -- and we won't object to
6 them coming in, but we would like to reserve under Simpson
7 v. Moore the right to present anything additional since
8 they were discovery depositions and not de bene esse, but
9 don't object to them coming in.

10 THE COURT: Okay. Very well.

11 And is that it?

12 MR. GROSE: Yes, sir. From us.

13 THE COURT: All right. From the State?

14 MS. BROWN: Well, as Your Honor has mentioned,
15 Mr. Inman would certainly be one. And depending on the
16 rest of the case, perhaps Mr. Bob Ariail and perhaps
17 Ms. Betty Strom.

18 THE COURT: All right. Any sort of evidentiary
19 matters that might need to be presented?

20 MS. BROWN: Nothing that I think is being apparent.
21 We do have an objection to just plain reports that were
22 not part of the lower court record, but new reports, we
23 would object to the reports coming in as hearsay,
24 cumulative. But we would make those objections as they're
25 offered.

1 THE COURT: What sort of reports that would be
2 hearsay?

3 MR. GROSE: I don't know what she's talking about
4 other than the fact that we have, you know, given her
5 reports from two expert witnesses.

6 THE COURT: Will they be testifying?

7 MR. GROSE: They will be testifying.

8 THE COURT: Were they available at the depositions?

9 MR. GROSE: Huh?

10 THE COURT: Were their reports available at the
11 depositions?

12 MR. GROSE: Well, Dr. Maddox was deposed, and at her
13 deposition, she testified that there was still work that
14 needed to be done, so her report was done after that. And
15 Dr. Viamonte is a new witness on a narrow issue, so -- but
16 they have the reports.

17 THE COURT: Well, that's what I was going to ask you.
18 Do you have the reports?

19 MS. BROWN: Yes, sir. We do.

20 THE COURT: Okay. Well, that's just it. And if you
21 have an objection to their admissibility, I guess, you
22 reserve that.

23 MS. BROWN: Thank you.

24 THE COURT: All right. Very good. But that's all?

25 MS. BROWN: Yes, sir.

1 THE COURT: Now going back to all of this
2 information, how do we proceed this afternoon?

3 MR. GROSE: I think that we need to try to get
4 through those two answers, answer those two questions that
5 you posed this morning. And I can proceed in either
6 order.

7 THE COURT: Well, I'll tell you what. I'm going to
8 let you all decide how you want to proceed.

9 MR. GROSE: Okay.

10 THE COURT: Admittedly, I have been with this case,
11 well, since the beginning, but I don't know if I've gotten
12 very far with it. So let's let you proceed, without
13 objection, that the applicant will proceed with his case.

14 MS. BROWN: Well, Your Honor, I wonder if I could
15 perhaps ask the Court to inquire exactly which issues we
16 are going forward on so I can track the information as
17 it's presented.

18 THE COURT: Very well. Name the two issues or how
19 you wish to proceed.

20 MR. GROSE: Well, my understanding was is we were
21 coming back from lunch to try to deal with the two
22 questions that you asked.

23 THE COURT: And what are the questions I asked? It's
24 difficult to remember where my car is parked, much less
25 what I said before lunch.

1 MR. GROSE: Well, one had to do -- and I'm not going
2 to be able to articulate them the same way you did, but
3 one had to do with regard to the law that was in play
4 regarding the constitutionality of our statute, and the
5 other had to do with sort of the factual background as to
6 whether or not that that was waived.

7 THE COURT: All right. Constitutionality of
8 Section 16 ---

9 MR. GROSE: I believe it's 320(B).

10 THE COURT: 320(B)?

11 MR. GROSE: Yes, sir.

12 THE COURT: Of course, you'd stay in the light of
13 Hurst vs. Florida?

14 MR. GROSE: Well, and the line of cases from Ring to
15 running into Hurst. But yes, sir.

16 THE COURT: That would -- they're all included in
17 Hurst as it's addressed.

18 MR. GROSE: Yes, sir.

19 THE COURT: All right. And then the other is its
20 applicability.

21 MR. GROSE: The other would have to do with the
22 record that's before the Court and whether the factual
23 record that's present before Your Honor has shown that
24 that issue was not waived at the trial.

25 THE COURT: How about that was not -- how about --

1 all right. All right. If applicable. Was there a waiver
2 of ---

3 MR. GROSE: And I don't know if this is correct or
4 not, but I took from this morning that Your Honor's
5 perhaps revisiting the issues that were raised in our
6 summary judgment motion.

7 THE COURT: I think, again, that I haven't looked at
8 it, but if I remember the basis of the summary judgment
9 denial was that it was -- there were questions as to the
10 subjective waiver.

11 MR. GROSE: Right. And I don't remember the exact
12 basis of the order. I can pull it up.

13 THE COURT: All right. Here we are. All right.
14 This is the order dated August 22, 2016, the Court denying
15 and dismissing respondent's motion for summary judgment
16 or, in the alternative, motion to dismiss pursuant to
17 Rules 12(b)(6) and 56, South Carolina Rules of Civil
18 Procedure, and applicant's cross motion for summary
19 disposition granting PCR and remanding for jury
20 sentencing.

21 The revision that the Court's addressing is the first
22 paragraph at page 404: In light of the Hurst decision,
23 the record raises issues of whether there be -- or there
24 could be and was there a freely, voluntary and knowingly
25 waiver of substandard standard not previously recognized

1 or a right not in existence at the time of the state trial
2 court -- state court trial, Section 17-27-45(B). More
3 particularly was the waiver of the right to a jury trial
4 voluntarily and knowingly made inasmuch as it was without
5 the benefit of considered advice of competent attorneys,
6 reference Sweet vs. State, 255 S.C. 293, 178 S.E.2d 657,
7 1971, who persistently declined to abandon those grounds
8 for appeal.

9 Any questions, Mr. Grose?

10 MR. GROSE: I don't think so. Although, there was
11 actually two grounds in our motion for disposition, and
12 one had to do with ---

13 THE COURT: I thought we were addressing the one that
14 says if there was a waiver of the right. The other was
15 whether there's a constitutional right under Hurst vs.
16 Florida that would apply to Section 16 or exercise of
17 Section 16-3-20(B).

18 MR. GROSE: Okay. And I think that there is a
19 constitutional right for jury sentencing under ---

20 THE COURT: Well, I'm talking about questions.
21 You're to give us the answer.

22 MR. GROSE: Okay.

23 THE COURT: All right. But those are the two
24 questions ---

25 MR. GROSE: Yes, sir.

1 THE COURT: --- whether there's a constitutional
2 right, and if there's a constitutional right, if it was
3 freely, voluntarily, knowingly and intelligently waived.

4 Okay. You may proceed.

5 MR. GROSE: All right. And I had understood that you
6 wanted argument on this this afternoon.

7 THE COURT: Well, I want to know -- yes. When I say
8 "argument," I'm not talking about a little green light or
9 a yellow light and a red light. I'm talking about tell me
10 what you're relying on.

11 MR. GROSE: Okay.

12 THE COURT: I mean, it's -- I think we all know what
13 the case is about.

14 MR. GROSE: Right.

15 THE COURT: And how do you want to -- how do you
16 think it should be resolved?

17 MR. GROSE: Well, I still think that these present
18 legal issues for the Court to decide.

19 THE COURT: It still presents what?

20 MR. GROSE: That this is a legal issue for the Court
21 to decide. And part of that is based on the line of
22 cases, and part of it is based on the record as it evolved
23 in this case and the unique way that it evolved in this
24 case. And I'd like to start by talking about the record,
25 but I can talk about the law.

1 THE COURT: You start the way you want to. I'm here
2 at your sufferance.

3 MR. GROSE: All right. Thank you, Judge.

4 This morning we went through and, I guess, got
5 organized for Your Honor sort of the chronology of events
6 that happened in this case. And initially, there was a
7 motion filed by Mr. Inman with regard to the mode of
8 trial. Prior to the hearing on that motion, that motion
9 was expanded with a memorandum that relied on Apprendi,
10 relied on Ring vs. Arizona and relied on Blakely vs.
11 Washington. It also relied on some cases from Colorado
12 and, I believe, South Dakota that had addressed the
13 Apprendi-Ring-Blakely issue that Mr. Bannister was
14 arguing. And Judge Miller convened a hearing, and during
15 that hearing, this was argued fairly intensely by both
16 sides, and Judge Miller, I think, was looking at our
17 statute.

18 THE COURT: That hearing was when? November?

19 MR. GROSE: That hearing was in I believe it was July
20 or September of 2007. The order that came out of that
21 hearing was November of 2007. And we had referenced both
22 of those today.

23 There was also -- at some point, either at that
24 hearing or prior to the guilty plea, there was an
25 affidavit that Mr. Inman executed which, while we didn't

1 discuss that this morning, that's one of the exhibits that
2 the State attached to the pleading that they filed last
3 week. And, you know, it explained, you know, his desire
4 not to have a guilt-phase jury proceeding.

5 When they got to the guilty plea -- and before we get
6 to the guilty plea, after the November order, there was an
7 effort that we talked about for the South Carolina Supreme
8 Court to review that under the Apprendi-Ring-Blakely
9 analysis. They dismissed that as an interlocutory appeal
10 and dismissed it without prejudice. And there was an
11 attempt to cert that up to the Supreme Court of the United
12 States, and cert was denied on that.

13 When we got to the guilty plea in August of 2008,
14 Mr. Bannister, once again, put on the record whether or
15 not -- or he put on the record that he believed that the
16 statute requiring the judge to conduct a sentencing
17 hearing following a guilty plea was unconstitutional under
18 the Apprendi-Ring-Blakely analysis at that point.

19 And, you know, as I read the colloquy, Judge Miller
20 basically said, "I'm going to stand by my current order.
21 The statute says what it says, and that's what we're going
22 to do. The procedure that we're going to follow is if he
23 pleads guilty, I'm going to do the sentencing."

24 There was actually a discussion between Mr. Bannister
25 and Judge Miller about, you know, whether or not what

1 effect that Mr. Bannister's objections were going to have
2 as far as preserving that issue for appeal. Judge Miller
3 did not express an opinion on that. Mr. Bannister thought
4 that it would preserve that issue.

5 The plea went forward. And as I said, Mr. Inman had
6 multiple reasons for why he wanted to enter a guilty plea,
7 but he was still, through counsel, requesting the jury
8 sentencing hearing.

9 Then following the guilty plea, in order to preserve
10 the record, Mr. Bannister, once again, filed a motion. It
11 was couched as reconsidering the November 27th order, but
12 it was also asking that Judge Miller impanel a jury to
13 have a jury trial. And at that point, it's my
14 understanding that the clerk's office was in the process
15 of preparing to have a jury summoned, so that still could
16 have been carried out.

17 Then when we got to the September -- I believe we
18 started on September 8, 2008. When we got to the
19 sentencing hearing, Mr. Bannister, again, put on the
20 record that Mr. Inman was asking to have a jury sentence
21 him. And so, yes, through counsel, but at the plea and a
22 post-plea motion, at the beginning of the sentencing
23 hearing and then for a fourth time after the judge imposed
24 the sentence, Mr. Inman, in a new trial motion, renewed
25 his request and his argument that the Court erred by not

1 impaneling a jury for sentencing.

2 In there, sort of a red herring got thrown in this
3 case. And I don't know exactly how it got started but I
4 think it got started by the Solicitor's Office suggesting
5 that if he pled guilty and reserved the right to appeal
6 the mode of sentencing, that that was a conditional plea.
7 Well, our Supreme Court basically said, no, that's not
8 right, you know. Because in the opinion, our Supreme
9 Court noted that Mr. Inman wasn't reserving a right to
10 contest his guilt or, for example, to contest a search and
11 seizure, or to contest the admissibility of his statement.
12 He wasn't reserving the right to appeal anything that
13 would have put him back in square one with an entirely new
14 trial before the guilty plea.

15 And they pointed out, you know, that the statute
16 requires an automatic appeal of the sentence, and, of
17 course, by that point, we had a large body of both capital
18 and noncapital case law in this state that allows for
19 appeals of sentencing issues that don't disrupt the
20 conviction, whether it's by trial or by jury.

21 THE COURT: So you're saying that any plea or any
22 proceeding had on these indictments were for murder, and
23 that that was to be processed under the statute, and that
24 the applicant took exception to the statute's
25 applicability at the time of trial.

1 MR. GROSE: To the statute's constitutionality at the
2 time of trial. Yes, sir.

3 And so at the point where this case goes up on direct
4 appeal, the record is pretty clear that Mr. Inman has
5 asserted and never abandoned his request that a jury be
6 impaneled for sentencing. The opinion, as Ms. Brown
7 pointed out, does talk about that issue having been
8 abandoned on appeal, but that was appellate counsel who
9 abandoned the issue and not Mr. Inman.

10 And in our pleadings, Grounds 10(c) and Paragraph
11 11(c)(1) raise allegations of ineffective assistance of
12 appellate counsel for not presenting that argument to the
13 Supreme Court that Mr. Bannister and Mr. Inman had spent a
14 very long and lengthy and methodical period of time
15 preserving that issue for appeal.

16 And so now you jump forward and, you know, between
17 the time that Mr. Inman's direct appeal was decided and
18 when, you know, before today, obviously, the Supreme Court
19 of the United States decided Hurst vs. Florida. And so we
20 have additional grounds in our application for
21 postconviction relief that raises the fact that Hurst vs.
22 Florida would be a binding constitutional decision that is
23 retroactive.

24 And, in fact, our summary judgment motion, we raised
25 two grounds for Your Honor to decide in that. The first

1 ground was the ineffective assistance of appellate counsel
2 for not appealing the Apprendi-Ring-Blakely issue, and we
3 submit that that's an entirely legal issue because the
4 Supreme Court of South Carolina would have been deciding
5 that issue on the record that Mr. Bannister and Mr. Inman
6 made from 2007, 2008 and 2009 when they litigated that
7 issue.

8 And the second issue that was before Your Honor on
9 that motion has to do with Hurst vs. Florida. And what I
10 would like to do, if I could, at this point, unless you
11 have any questions, is I'd like to kind of go through the
12 evolution of those cases and why I think that, as matters
13 of law, Mr. Inman is entitled to prevail on both of those
14 grounds.

15 THE COURT: Well, let me ask you, do you agree with
16 the State that Hurst is not retroactive?

17 MR. GROSE: I do not. First of all, as you pointed
18 out earlier, Florida has applied Hurst retroactive to
19 Ring, and under that analysis, even if it only goes back
20 to Ring, Mr. Inman would have benefit of that. Another
21 state, I believe it was Delaware, but another state that
22 doesn't really have a lot of capital cases has applied it
23 retroactive.

24 The reason -- one of the reasons that I think that it
25 should be applied retroactive is because it breaks ground

1 as far as what the Sixth Amendment trial right applies to,
2 that that goes beyond what Ring had held.

3 THE COURT: Okay.

4 MR. GROSE: But certainly, regardless of the
5 retroactivity argument, Apprendi, Ring and Blakely do
6 apply to Mr. Inman. And as Your Honor is aware, you know,
7 Apprendi held that, you know, the facts that a judge is
8 going to take into account in sentencing have to be
9 decided by a jury. And Ring came along after that in
10 Arizona where they had a procedure where the judges were
11 the ones who determine whether or not somebody was not
12 only eligible for the death penalty, but also whether or
13 not the death penalty should be imposed.

14 And I think we argued this in our summary judgment
15 motion that Ring, at the time that the Supreme Court
16 decided that, was very limited to the fact of determining
17 whether or not somebody is eligible for the death penalty,
18 that a jury and not a judge has to make the additional
19 findings with regard to aggravating circumstances.

20 Ring was also specific that, at that point, they were
21 not dealing with the issue -- issues that arise with
22 regards to the imposition of the death penalty. Although,
23 as they sometimes do, that's sort of a telegraph of what
24 issues are to become -- to come next because our United
25 States Supreme Court is usually very limited to just

1 addressing the single issue that they have to address in
2 that case.

3 After Ring, Blakely came along next, and that had to
4 do with the judge making findings of fact that haven't
5 been found by a jury in order to apply an enhancement.
6 And so you can plead guilty, you can admit to the elements
7 of crime, but if there is a fact that the judge can
8 consider that enhances the penalty, that enhancement has
9 to be decided by the jury. And there is no other more
10 dramatic area of our law where you have from the
11 determination of guilt of murder to the enhancement for
12 the death penalty.

13 And Hurst came along, and it kind of helps break it
14 down into different areas. And Hurst not only talked
15 about eligibility for the death penalty. Hurst talked
16 about the decisions that have to be made for imposition of
17 the death penalty.

18 So after somebody is convicted of murder, a
19 fact-finder has to determine whether or not aggravating
20 factors are present. And I think conceded at our hearing
21 on the summary judgment motion and concede today that when
22 you have somebody like Mr. Inman, who also pleads guilty
23 to a burglary and a criminal sexual conduct, you -- and
24 kidnapping, I believe, that you already -- the State has a
25 head start as far as determining those aggravating factors

1 based upon what's admitted in the guilty plea, but there's
2 still an additional finding that has to be made that the
3 murder was committed during the commission of those
4 crimes. And when you look at Judge Miller's sentencing
5 order, he did make that additional finding of fact.

6 And you've handled more capital cases than I have,
7 and so you're very much aware that the decision-making
8 process does not end there. In South Carolina, the jurors
9 have to consider the statutory mitigating circumstances,
10 they have to consider nonstatutory mitigating
11 circumstances, they get to consider victim impact
12 evidence, they get to consider the criminal history of the
13 defendant and information about the defendant's character.
14 And once all of that, the aggravating circumstance and all
15 those other five or so factors that I listed are
16 considered, there still has to be that individualized
17 determination that the death penalty is the appropriate
18 enhancement of that crime for this particular defendant
19 before the Court in this particular case.

20 THE COURT: What's the standard of proof and finding
21 of that fact?

22 MR. GROSE: I think our courts have been somewhat
23 silent on what the standard of proof is on all of that.

24 THE COURT: What's the judge's or the Court's
25 standard of proof?

1 MR. GROSE: I think it's whatever the Court is
2 persuaded by.

3 THE COURT: Preponderance?

4 MR. GROSE: Huh?

5 THE COURT: Preponderance? Clear and convincing?

6 MR. GROSE: You have to have a preponderance of the
7 evidence for a determination of intellectual disability,
8 which is not an issue in this case and never has been. I
9 would argue that ---

10 THE COURT: Well, that's a mitigating circumstance.

11 MR. GROSE: And that's what I'm saying. I mean, the
12 aggravating circumstances have to be found beyond a
13 reasonable doubt.

14 THE COURT: Well, that's what I was asking.

15 MR. GROSE: And I would think that information about
16 a defendant's record and the defendant's character would
17 have to be determined beyond a reasonable doubt.
18 Mitigation is whatever value you assign to it.

19 THE COURT: Because aggravation elevates the crime of
20 murder to capital.

21 MR. GROSE: Well, it's aggravation that makes
22 somebody eligible for it.

23 THE COURT: I said -- but -- okay. I mean, if the
24 door is closed at the bottom of the stairs, you're never
25 going to get up the steps. If the door is open, then you

1 have to start climbing.

2 MR. GROSE: Right.

3 THE COURT: And the climbing of the stairs is like
4 beyond preponderance, clear and convincing, beyond a
5 reasonable doubt.

6 MR. GROSE: Well, and in the Hurst opinion, the
7 Supreme Court talked not only about the factual
8 determinations that have to be made to be eligible for the
9 death penalty, they also talked about what I'm talking
10 about as far as imposition of the death penalty. And
11 that, I think, is significant here for a lot of reasons.

12 I think it, you know, gets to this question as to
13 whether or not it's a, you know, binding, constitutional
14 decision that would have to be applied retroactively, and
15 I think that it is. But even if you look at it just as an
16 extension of Ring, Ring very clearly realized there -- you
17 know, in Ring, we're dealing with the eligibility for the
18 death penalty, but there's also issues about jury
19 determination for the implementation of the death penalty.
20 And, you know, I think that that's one of the factors
21 that, you know, militates in favor of Hurst being
22 retroactive at least to Ring as was found by the Florida
23 Supreme Court.

24 And so -- and that's why -- partly why I argue that,
25 you know, these are legal issues for the Court to

1 determine because this record is so clear that Mr. Inman,
2 through his counsel, was requesting to plead guilty and
3 have jury sentencing, and it's very clear from this record
4 that Mr. Bannister not only believed that issue was
5 something that could be appealed as a sentencing issue, he
6 took extraordinary steps to preserve that issue for
7 appeal. And it's really one of the more, I guess,
8 impressive records as far as their preservation that I
9 viewed, and I also think it was -- they tried to portray
10 some things as contentious, but I don't think it was as
11 contentious as much as Judge Miller was giving
12 Mr. Bannister and Mr. Inman every opportunity to make this
13 record even after he had said this is how I intend to
14 proceed.

15 You know, I think that everybody recognized that this
16 was, you know, an important issue. And that's why I say,
17 you know, Mr. Inman should be treated differently from
18 people who, you know, have waived their right to jury
19 sentencing and plead guilty because he was taking so many
20 steps to not waive that so that he could preserve that
21 issue for additional review.

22 THE COURT: Ms. Brown?

23 MS. BROWN: Thank you, Your Honor.

24 There are three categories that I want to touch on.
25 One is facts, one is procedural law and the last is

1 substantive law.

2 Your Honor, the record already shows, and we believe
3 that the further evidence in this case will only support
4 and reinforce that Mr. Inman wanted to be sentenced by the
5 judge. He made the waiver personally knowing that he
6 would be sentenced. Under our statutory provision, that
7 is the way he would be sentenced when he pled guilty, and
8 he knew that, and he wanted to be sentenced by the judge.
9 That's the factual part.

10 Procedural, he made reference to ---

11 THE COURT: Excuse me.

12 MS. BROWN: Yes, sir.

13 THE COURT: Your affidavit of Jerry Buck Inman that
14 was submitted, does it have more than one page?

15 MR. GROSE: It does, Your Honor. And I have -- let's
16 see. Mine's copied on two sides of the paper, but the
17 second page is ---

18 THE COURT: Do you have a copier to copy the second
19 page? Just the second page, please.

20 (Pause in proceedings.)

21 THE COURT: So it does end at Paragraph 9; is that
22 correct?

23 MR. GROSE: Yes, sir.

24 MS. BROWN: A little short paragraph on the back,
25 Your Honor. Yes, sir.

1 THE COURT: I hate to ask, but what's the source of
2 this affidavit?

3 MS. BROWN: That came to us in discovery, I believe.

4 THE COURT: All right. In other words, the affiant
5 -- or the defendant, rather, at the time prepared the
6 affidavit.

7 MS. BROWN: Yes, sir. If you'll notice at the
8 bottom, it says Inman, 128A12.

9 THE COURT: Right.

10 MS. BROWN: That denotes that it came to us in
11 discovery.

12 THE COURT: I've got you. Very good. Thank you.

13 MS. BROWN: And, Your Honor, as you look at that and
14 as you've looked at the record, certainly, Mr. Inman
15 wanted to be sentenced by the judge. He made that waiver
16 knowing he would be sentenced by the judge.

17 THE COURT: Does the affidavit say anywhere in the
18 sentence?

19 MS. BROWN: He says that he wants to plead guilty.

20 THE COURT: But that's ---

21 MS. BROWN: And when he pled guilty, he understood,
22 according to the colloquy ---

23 THE COURT: But why didn't he say sentence ---

24 MS. BROWN: Because ---

25 THE COURT: Excuse me. I'm just looking at

1 Paragraph 8, for example. "I want to save everybody the
2 time and trouble of a guilt phase of a trial." Why didn't
3 he say "sentence phase"?

4 MS. BROWN: I think it's very incredibly important
5 why Mr. Inman needs to be here to tell you that, Your
6 Honor. Because certainly, the record -- the record
7 shows ---

8 THE COURT: Well, I'll tell you what we'll do. We'll
9 talk to him tomorrow under oath, and if we want to put the
10 State and everybody else at the expense and inconvenience
11 of bringing him here to ask that question, we will.

12 MS. BROWN: Okay.

13 THE COURT: But, I mean, if the fact is that he has
14 an answer for not putting it in there that he meant to put
15 in there, then that means it wasn't knowingly.

16 MS. BROWN: And I believe when you look at that
17 affidavit and you look at the very complete colloquy, he
18 understood exactly what was going on.

19 THE COURT: This is not the colloquy. I've told you
20 I was impressed with that.

21 MS. BROWN: Yes, sir.

22 THE COURT: But that's the same colloquy that any
23 good judge would go through on a plea of guilty, not a
24 waiver of constitutional rights.

25 MS. BROWN: And specifically, though, to have the

1 judge to sentence him. And we believe that, again, the
2 facts will only support even further in this evidentiary
3 hearing ---

4 THE COURT: But you don't find the sentence phase in
5 this.

6 MS. BROWN: Well, Your Honor, that is ---

7 THE COURT: Just answer the question. You want to
8 take the paper again and look at it and find the word
9 "sentence"? It has "guilt phase."

10 MS. BROWN: Your Honor, I can't answer the question
11 posed because that's in discovery. It's another piece of
12 the information.

13 THE COURT: Well, I'm just asking. It's been
14 submitted as a part of this record.

15 MS. BROWN: It is submitted as a part of our motion.

16 THE COURT: And I'm asking you, and all you have to
17 do is say "yes" or "no." Do you find anywhere, in this
18 affidavit of nine paragraphs, where it talks about
19 sentence phase of the trial?

20 MS. BROWN: Well, Your Honor, if he wants to plead
21 guilty, that's what happens, and that's why we're using
22 it.

23 THE COURT: Well, I didn't -- you don't -- I hate to
24 treat you like a witness, but the procedure is you answer
25 the question and then you can explain your answer.

1 MS. BROWN: And, Your Honor, I've tried to.

2 THE COURT: And the question is, do you -- anywhere
3 in this affidavit as to why he wants to plead guilty
4 regarding the guilt -- regarding my guilt or innocence as
5 much as I had to plea and enter a plea of guilty to the
6 indictments, and to avoid the time and trouble of a
7 guilt-phase trial, do you find anywhere it says the word
8 "innocence" or "sentence"?

9 MS. BROWN: No.

10 THE COURT: Now explain it. That's all I ask.

11 MS. BROWN: Your Honor, I can't explain it other than
12 it is a portion of the record, and I do believe that it is
13 -- when you read it in connection with the colloquy, it's
14 very clear that Mr. Inman himself wanted the judge to
15 sentence him.

16 THE COURT: I understand. That's what you say the
17 record -- now, all I need to do is read it and it will
18 jump out at me that says, yes, I want you to sentence me.

19 MS. BROWN: Well, he says -- the Court -- and, you
20 know, I agree with you on the colloquy. I think it's
21 very, very good. And part of the colloquy is you're
22 giving that right up and you're requesting that the Court
23 be the fact-finder.

24 THE COURT: What's the right? What right is he
25 giving up?

1 MS. BROWN: He is specifically addressing the
2 fact-finder.

3 THE COURT: Well, you said he's giving that right up.
4 Now, what's the right he's giving up?

5 MS. BROWN: You have the right to a jury trial. He
6 gave up that right.

7 THE COURT: That's right. Every defendant has the
8 right to a jury trial.

9 MS. BROWN: Right, Your Honor. And that's why we're
10 going back to Hurst and Ring.

11 THE COURT: But in a capital murder trial, you have
12 the right to a jury trial on the sentence unless the State
13 objects.

14 MS. BROWN: If you plead guilty, you do not have the
15 right to a jury ---

16 THE COURT: Well, that's not what the statute says.
17 You can plead guilty and still have the right to a jury
18 trial unless the State objects. In other words, both the
19 State and the defense have to agree. And that's what
20 happened in this case, is it not?

21 MS. BROWN: I'm not sure that I understand the
22 question. If he didn't plead guilty, yes, sir. He could
23 have stood before an impaneled jury and said "I am
24 guilty," and the jury could have still participated at
25 sentencing. So I'm not really sure. There are ways to do

1 that. They opted not to do that. The statute doesn't
2 allow them to do what they want to do. It didn't in the
3 trial phase, it didn't in the plea itself, it didn't on
4 appeal and it doesn't now.

5 And, Your Honor, Hurst is Ring. Hurst is Ring. And
6 it goes back to the structure itself. This particular
7 issue is already settled in State v. Downs, 361 S.E. 141,
8 2004.

9 THE COURT: Just a moment, ma'am.

10 MS. BROWN: Oh, sure.

11 (Pause in proceedings.)

12 THE COURT: All right. Do you have a copy of
13 Section 16-3-20(B)?

14 MS. BROWN: Yes, sir.

15 THE COURT: And the operative sentence in this case
16 is found in the middle of the paragraph under (B)
17 beginning: If trial by jury has been waived by the
18 defendant and the State, or if the defendant pleaded
19 guilty, the sentencing proceeding must be conducted before
20 the judge;" is that correct.

21 MS. BROWN: Yes, sir.

22 THE COURT: And you say somewhere in his colloquy
23 that was addressed.

24 MS. BROWN: On page 954 of the record, Your Honor ---

25 THE COURT: Yes, ma'am. You got it?

1 MS. BROWN: -- you're giving that right up and you're
2 requesting ---

3 THE COURT: What is the right he's giving up?

4 MS. BROWN: To be sentenced by the jury.

5 THE COURT: Well, let me see it then, because I can't
6 find page 954.

7 MS. BROWN: If I may?

8 THE COURT: Please.

9 MS. BROWN: I have already circled -- I'm sorry, Your
10 Honor. I didn't do that right now.

11 THE COURT: Oh, no. Not at all. Thank you.

12 MS. BROWN: That was just something I had there.

13 THE COURT: Very good. Thank you. In fact, if you
14 could, Mr. Welborn, make a copy of that page, please.

15 THE CLERK: Yes, sir.

16 THE COURT: And any more on that issue? Any more on
17 that question?

18 MS. BROWN: Yes, sir. Earlier on today, Your Honor,
19 we were talking about that colloquy, and I believe that it
20 was mentioned in previous argument that it was
21 contentious. We're not saying contentious. We're saying
22 that Mr. Bannister ---

23 THE COURT: Excuse me? What?

24 MS. BROWN: Contentious, I believe, was the word the
25 applicant used.

1 THE COURT: Contentious. All right.

2 MS. BROWN: But what happened was you had Mr. Inman
3 making the waiver, Mr. Bannister trying to preserve an
4 issue, but the judge said if it's a problem, I won't
5 accept it. So he was very careful about those two kind of
6 competing interests at that point because he had to know
7 that Mr. Inman wanted to be sentenced by the judge to
8 plead guilty and do that. That's what he was very much
9 keyed in on.

10 But, Your Honor, again, our capital procedure is
11 different than other states. Every state that has capital
12 proceedings has something a little bit different. Our
13 procedure is not like Arizona under Ring, and Hurst in
14 Ring. That's it. That's why Hurst is not retroactive.
15 That's why there's not a whole lot of movement except in
16 the very narrow situation that would be under Hurst itself
17 like the Florida statute, and we're not.

18 In State vs. Downs 2004, our Supreme Court said the
19 capital sentencing procedure invalidated in Ring does not
20 exist in South Carolina. That line of cases doesn't
21 affect us because of our procedure. And, in fact, the
22 Fourth Circuit has found a Virginia statute, which is
23 similar to ours, is fine. It's not unconstitutional. It
24 requires judge sentencing when a defendant pleads guilty
25 in a capital case.

1 And, Your Honor, that goes back to our procedural
2 posture. Hurst is Ring. It could have come up on direct
3 appeal. It can't be revisited as a freestanding claim.
4 It's procedurally barred.

5 Now, Your Honor mentioned 17-27-45(B). That's if
6 there is a new rule of law that comes out that's
7 applicable. We've done that in more cases and that sort
8 of thing. But that's a different procedure.

9 THE COURT: I missed that point.

10 MS. BROWN: If it is a new rule of law, then we won't
11 be applying a statute of limitations bar unless it's not
12 raised within one year of the new rule coming into effect.
13 That allows you to go forward if it's a new rule of law.

14 THE COURT: Oh, you're talking about the PCR statute.

15 MS. BROWN: Yes, sir. Yes, sir.

16 THE COURT: Okay. I'm sorry. I thought we were
17 still on the criminal statute.

18 MS. BROWN: The reason this is barred is because the
19 claim was available on direct appeal. It can't be a
20 freestanding claim.

21 THE COURT: How could you appeal something that
22 hadn't been decided?

23 MS. BROWN: Because it's not a new rule. Hurst is
24 Ring. Ring was available. Ring was actually argued.

25 THE COURT: Hurst adopted Ring ---

1 MS. BROWN: It is based on Ring.

2 THE COURT: --- or applied it for the first time to
3 capital cases.

4 MS. BROWN: To a procedure in Florida.

5 THE COURT: I'm just -- if I'm wrong, I'm wrong.

6 MS. BROWN: Well, actually, Your Honor, you make a
7 good point because it goes back to the procedure. If you
8 have a jury trial, then you have jury sentences. If you
9 don't have a jury trial, you waive jury trial, it is not
10 unconstitutional for the judge to be the fact-finder. It
11 goes back to the procedure. Did you waive a jury trial or
12 did you not? And, of course, if you plead guilty, you
13 waive the right to a jury trial. And that's where we are
14 here. It's a waiver. And, Your Honor, that goes back to
15 a little bit of the substantive law that you cannot get
16 relief under our statute. We don't have that kind of
17 statute.

18 THE COURT: I understand.

19 Now that I have a copy of page 954, I did look a
20 little bit further, and I might need 953, too. I'm sorry,
21 Mr. Welborn.

22 MR. GROSE: And, Judge, I think you need to start at
23 least at 952.

24 THE COURT: Well, could you do 952?

25 The reason I did, because you keep talking about the

1 right that he's waiving, and, of course, he's talking
2 about a jury's verdict. All 12 members of the jury would
3 have to agree to a verdict. Do you understand that?

4 Yes, sir.

5 Do you understand that if one of the 12 people
6 couldn't make up their mind, that the law would require
7 that the sentence would be life? Do you understand that?

8 Yes, sir.

9 And you're giving up that right and requesting the
10 right that -- if the jury could not agree, it would be a
11 life sentence, and you're giving up that right and
12 requesting that the Court be the fact-finder and
13 determiner of the sentence; is that right?

14 Now, what he's talking about that if they couldn't
15 agree would be the sentencing phase, right?

16 MS. BROWN: It was either a jury or the judge.

17 THE COURT: No. He was talking about you're giving
18 the right for a jury to decide the sentencing phase.

19 MS. BROWN: He was fully explaining the rights, and
20 that was waived, Your Honor.

21 THE COURT: Well, I'm just asking. So you're saying
22 that that right he's giving up is the sentencing phase.

23 MS. BROWN: It is a jury -- once you impanel a jury,
24 it's for both phases.

25 THE COURT: In essence, is that now what you're

1 saying? Again, yes or no. You're saying that the right
2 that he was giving up knowingly, intelligent, freely and
3 voluntarily was a right for the jury to determine his
4 sentence.

5 MS. BROWN: Yes. Because he was pleading guilty.
6 Once you plead guilty, the jury's not involved.

7 MR. GROSE: Judge, can we go off the record about
8 scheduling just for a second?

9 THE COURT: All right. Just a minute.

10 Is that all right, Ms. Brown?

11 MS. BROWN: Sure, Your Honor

12 THE COURT: Very good. Thank you.

13 (Off the record.)

14 THE COURT: All right. Now where were we? I've got
15 page 952. So I was going to look at it, but you can go
16 ahead and continue.

17 MS. BROWN: And I think we did mention State vs.
18 Downs, and I would hope that the Court what review that
19 just briefly because it does address the Ring argument
20 that we were talking about. And when Hurst is based on
21 Ring our statute doesn't -- isn't affected by Ring, it
22 can't be affected by Hurst either, and our Supreme Court
23 has already made that expression in State vs. Down. And,
24 of course, we have that expression again in ---

25 THE COURT: State vs. Downs before Hurst?

1 MS. BROWN: Yes, sir. 2004.

2 THE COURT: So they anticipated Hurst.

3 MS. BROWN: If it's based on Ring and Ring was
4 applicable to Arizona, Arizona is not us, it couldn't
5 apply, Your Honor.

6 THE COURT: You're absolutely right about that. My
7 sister taught at Arizona State for 20 or 30 years, and
8 it's not us. It's a lot drier up there.

9 MS. BROWN: Yes, sir.

10 And I did want to mention that Downs is, of course,
11 in the appeal opinion in State vs. Inman in this
12 particular case, and it's on the very -- the very point
13 that we're talking about today. Even if it was not
14 abandoned on appeal, the issue would have afforded no
15 relief because that issue had been decided against the
16 position offered. So all of this works together, Your
17 Honor, that not only is it procedurally barred, it is not
18 -- it would be without merit if you could reach it on a
19 freestanding claim.

20 THE COURT: All right. Anything else, Mr. Grose?

21 MR. GROSE: Your Honor, I think that when you look at
22 the additional pages that Your Honor requested, you know,
23 it's apparent that the requirement or the request for the
24 judge to impanel a jury for sentencing was renewed, and
25 that's consistent with what happened in the record both

1 before and after this colloquy. And it's very clear on
2 page 953 that Judge Miller was trying to make certain that
3 Mr. Inman was not entering a conditional plea because we
4 don't allow those in South Carolina, but, of course, we do
5 allow challenges to the sentencing procedure in South
6 Carolina. In fact, I believe it's on Line 17 of 953 where
7 he refers to conditional guilty pleas.

8 Your Honor correctly pointed out that the affidavit,
9 which was actually of Mr. Inman, which was June 28th of
10 2007, never waived the right for jury sentencing, and that
11 that right was asserted over and over and over again. And
12 I think they're trying to create some confusion. There's
13 actually two claims before the Court. There is the Hurst
14 claim that we're arguing that Hurst is retroactive or
15 should be applied retroactive as a new binding decision,
16 therefore the procedural bars don't apply. There is also
17 the ineffective assistance of appellate counsel regarding
18 the Apprendi-Ring-Blakely analysis.

19 Our Supreme Court has never addressed Blakely in
20 Downs or Inman or some of the other cases that they could
21 point you to where this issue has come up. And if you
22 accept her argument that Hurst is Ring and her argument
23 that this is a direct appeal issue where Hurst is Ring and
24 could be raised on direct appeal, then the Hurst issue
25 applies to both of these legal questions that are before

1 the Court right now. So either way you get to it, Hurst
2 is retroactive at least to Ring, or Hurst is Ring, and
3 therefore was available on the direct appeal. You get to
4 consider that case.

5 THE COURT: Do you still have your transcript in
6 front of you on page 952?

7 MR. GROSE: 952. Yes, sir.

8 THE COURT: Starting on Line 13.

9 MR. GROSE: Yes, sir.

10 THE COURT: "THE COURT: I just want to -- do you
11 understand that if I accept this plea, you're giving up
12 your right to have a jury make this determination on your
13 sentence with respect to the murder case?"

14 MR. GROSE: And I think all that means is, is that
15 the judge was saying that he was going to follow his
16 ruling that the ---

17 THE COURT: Well, let's just finish it out for the
18 record.

19 MR. GROSE: Okay.

20 THE COURT: "Do you understand that?"

21 "DEFENDANT INMAN: Yes."

22 Okay. Go ahead.

23 MR. GROSE: And then Mr. Bannister says, "Judge, for
24 the record, since we're going back to the jury trial
25 rights, let me say again that we previously made a

1 motion."

2 Judge Miller says, "It's well documented."

3 Mr. Bannister says, "I think that I have to restate
4 it, though, just for the record."

5 Judge Miller, to his credit, allows Mr. Bannister to
6 do that. Mr. Bannister says, at Line 2 on page 953, "He's
7 been put in a position where he's got to make a choice
8 between constitutional provisions. One is the Fourteenth
9 Amendment, Sixth Amendment and Eighth Amendment right to
10 present a complete defense which includes the mitigation
11 of his guilty plea. The other is a right to a jury trial
12 and have the sentencer determine what sentence he should
13 receive. He has to choose between the two. We say that
14 that choice itself is unconstitutional, and I'm just
15 stating that again for the record. You've already decided
16 that that's not going to be the case, and I just want to
17 make sure it is preserved. Thank you, Your Honor."

18 Then Judge Miller says, "Now, again, Mr. Inman, let
19 me tell you that the law of South Carolina is clear that
20 there is no conditional guilty pleas. Do you understand
21 that?"

22 "Yes, sir."

23 At Line 20, Judge Miller, "And whether or not that
24 issue is preserved for appeal is not for me to decide. Do
25 you understand that?"

1 Mr. Inman, "Yes, sir."

2 "THE COURT: An appellate court will make that
3 determination, the Supreme Court of the State of South
4 Carolina. Do you understand that?"

5 Mr. Inman says, "Yes, sir," meaning I understand that
6 the Supreme Court of South Carolina is going to determine
7 whether I get a jury for sentencing. And then they go
8 into talking about the requirement that the jury verdict
9 has to be unanimous.

10 So that supports our position, and it's consistent
11 throughout: the motion in 2007, the appeals to the South
12 Carolina Supreme Court, the appeal to the U.S. Supreme
13 Court, what was put on the record in this proceeding, what
14 was put on the record when, after the guilty plea
15 proceeding, Mr. Bannister and Mr. Inman asked for still to
16 have the jury impaneled, and, again, with the new trial
17 motion. I mean, it was constant over three years: 2007,
18 2008, 2009.

19 MS. BROWN: And, Your Honor, if I may.

20 THE COURT: Certainly.

21 MS. BROWN: We're just stopping too soon. When we go
22 on in the record, the Court ---

23 THE COURT: You're going to wear Mr. Welborn out.

24 MS. BROWN: Sorry about that.

25 THE COURT: It would have been nice if you provided

1 the Court with all of that.

2 MS. BROWN: But when you keep going with this, and
3 this shows how complete the colloquy really was and how
4 everybody wanted to be on the same page. On page 960, the
5 Court says, "Mr. Bannister, I'm not going to get into a
6 legal argument with you on the record about this issue.
7 Your client has entered the plea. I don't want him to do
8 it. I want him to be aware that you cannot reserve, you
9 cannot go over the law with him about what the courts
10 review and then look at the guilty plea." And he goes on,
11 and he concludes -- this is the Court ---

12 THE COURT: Isn't that an admonition about a
13 conditional plea ---

14 MS. BROWN: That's correct.

15 THE COURT: --- that South Carolina does not
16 recognize?

17 MS. BROWN: "Don't think that you're going to raise
18 that -- an issue about the statute. You're going to have
19 me -- if you enter a guilty plea, you're going to have me
20 be the fact-finder." And the Court says, "If it's a big
21 issue, then I'm about to not accept the plea."

22 And then there's a break in the proceedings when
23 Mr. Bannister talks to Mr. Inman. And they come back, and
24 this is onto 962, 963, Mr. Inman personally says, at that
25 point, he does want to enter the plea. That would be

1 rather interesting to get the information on what happened
2 there, because Mr. Inman made that determination.

3 MR. GROSE: But the question from the judge was ---

4 THE COURT: Wait a minute. Just a moment. Have you
5 completed your statement?

6 MS. BROWN: Yes. What ---

7 THE COURT: In other words, it's for the court
8 reporter to know who to listen to.

9 MS. BROWN: Oh, okay. I see, Your Honor. Thank you.

10 But the point is that they were very careful about
11 that. Yes, Mr. Bannister wanted to present that, and
12 Mr. Bannister wanted that issue to go forward. And
13 Mr. Inman new that, and Mr. Inman still pled guilty with
14 knowing the judge would sentence him. That's voluntary.

15 Thank you, Your Honor.

16 MR. GROSE: And on 961 at Line 25, after they resumed
17 from the recess, Mr. Bannister says, "We're ready to
18 proceed."

19 Then on 962, Judge Miller says, "Okay. Do you want
20 to continue on, Mr. Inman?"

21 "Yes, sir."

22 "And while this may not be -- all I'm trying to
23 determine is that your entry of this plea is not based on
24 a particular -- some issue that you think you might
25 prevail or might not prevail on the appellate court. Do

1 you understand?"

2 "Yes, sir."

3 "The only basis to plea -- the only basis for the
4 plea should be you knowing your knowledge of your rights,
5 intelligent nature of your plea, your ability to
6 understand what's going on, your admission to the facts
7 that you believe the State could prove against you, and
8 whether or not you prevail on an appellate issue should
9 have nothing to do with the entry of this guilty plea. Do
10 you understand that?"

11 He says, "Yes."

12 Then the judge says, "So whether or not you're
13 successful or not successful at some higher court on some
14 issue that might be raised should have nothing to do
15 whether or not you're entering that plea; is that
16 correct?"

17 And he says, "Yes."

18 And then there's a discussion that he wants to plead
19 guilty and he wants to enter into the sentencing phase.

20 It's clearly leaving open that this is an issue that
21 can be appealed, and the law of the case from our Supreme
22 Court is that this is a separate issue from the decision
23 to plead guilty. The sentencing procedure, you can plead
24 guilty and then challenge the sentencing procedure, and
25 that's what he was doing.

1 THE COURT: All right. Let me do this. Y'all both
2 have transcripts. Could you agree on what sections so the
3 court reporter doesn't have to depend on our reading of
4 the transcript so that she could refer, and I might also
5 have an opportunity to read rather than listen to the
6 transcript?

7 MR. GROSE: I could get you a list of all that.

8 THE COURT: I don't want a list. I want the pages.

9 MR. GROSE: I could get for you a list ---

10 THE COURT: In other words, we've talked about I've
11 got 952 to 954, but I think the last page I heard was 960
12 something.

13 MR. GROSE: And, Your Honor, I mean, and that's a
14 problem that we're getting into is we're trying to --
15 they're trying to pick bits and pieces part out of the
16 guilty plea.

17 THE COURT: Well, I'm going to let you pick bits and
18 pieces yourself. I'm not saying this is going to be the
19 final time that I request pages from the transcript, but I
20 hope you do understand that trying to live with that much
21 information would probably be not good for my health.

22 I might note that on occasion, I've been a part of
23 committees and other study groups and things like that,
24 and without fail, the weekend before the meeting, they
25 usually sent me a package like this. It finally got to

1 the situation or to the point where I would suggest do you
2 want me to read it or weigh it? And if you want me to
3 weigh it, I'll find the longest stairs in the vicinity and
4 toss them down the staircase, and the one that goes the
5 furthest prevails. I don't think that's the way a matter
6 should be decided.

7 So what I'm asking you, you go through, you've been
8 through it apparently, find what you feel is telling. And
9 no pun intended, really, but that's exactly what I want,
10 something that tells me is the crux of your position. And
11 if you need to amend it as we go through this or even
12 later, I'd suffer an amendment to the record. But for the
13 purposes of this hearing at this time, I would like to
14 have succinct copies of the transcripts that you are
15 relying on. I think we've pretty well distilled the
16 issues for the purposes of this hearing today and probably
17 whenever we finish it. But the thing is, let's do that.

18 And you can -- I think y'all are agreeing on what
19 contains -- you know, if we've got -- it looks like this
20 is the colloquy portion of the plea on both sides, so it
21 should be -- have an extra page at each end. How about
22 that?

23 All right. Anything else on that?

24 MR. GROSE: Can we have a recess to get that listing
25 for you? Thank you, Judge.

1 THE COURT: You certainly can. I think I might join
2 you. Not join you, but I'll participate as well.

3 All right. We'll stand at ease.

4 (WHEREUPON, a recess is taken at 3:10 p.m.)

5 (WHEREUPON, Respondent's Exhibit Numbers 1, 2 and 3 were
6 marked for identification, and Applicant's Exhibit
7 Numbers 9, 10, 11, 12 and 13 were marked for
8 identification.)

9 (WHEREUPON, proceedings reconvened at 3:28 p.m.)

10 THE COURT: All right. Mr. Grose, you're ready?

11 MR. GROSE: I'm ready. Yes, sir.

12 THE COURT: Ms. Brown?

13 MS. BROWN: Yes, Your Honor.

14 THE COURT: Okay. Great. You may proceed.

15 MR. GROSE: Your Honor, with regard to transcripts, I
16 think there are three portions of the transcript. I would
17 like for you to consider the entire hearing regarding the
18 mode of trial, which is pages 777 to 834 in the record.
19 I'd like for Your Honor to consider the entire guilty
20 plea, which is pages 911 through 975. I'd like for Your
21 Honor to consider the sentencing hearing transcript at
22 page 17, Lines 13 to 21.

23 As far as pleadings are concerned, in the record on
24 appeal at page 1,202 and 1,203 is the two-page motion to
25 determine the mode of trial. The motion and memorandum we

1 marked as an exhibit earlier today. I could be wrong, but
2 I don't see that in the record on appeal.

3 There was also the motion to reconsider and for a new
4 trial, which is at 1,244 to 1,247, and there's an order
5 denying the new trial motions at 1,248 in the record.

6 I'd also like to put into the record Applicant's
7 Exhibit 9, which is a memorandum in support of an
8 interlocutory appeal dated November 21st of 2007;
9 Applicant's Exhibit No. 10, which is an initial brief of
10 the appellant and the Supreme Court of South Carolina
11 dated January 2, 2008; Applicant's Exhibit No. 11, which
12 is a petition for writ of certiorari to the South Carolina
13 Supreme Court, which was filed in the Supreme Court of the
14 United States, and it is dated January 9th of 2008. The
15 two-page affidavit of Mr. Inman that we were already
16 discussing I've marked ---

17 THE COURT: All right. Does that have a number? I
18 think it does, doesn't it?

19 MR. GROSE: Well, I marked it as Exhibit 12. It was
20 in pleadings before, but I marked it as Applicant's
21 Exhibit 12.

22 And there is also Applicant's Exhibit No. 13, which
23 is an agreement confirming the terms of sentencing which
24 was executed by everyone except Solicitor Ariail, which
25 would have imposed -- if accepted, would have imposed a

1 life sentence.

2 And I think that covers what I could locate now, and
3 I think that that's everything because we were talking
4 about the mode of trial.

5 We also have the -- I think we already marked as an
6 exhibit the motion that was filed after the guilty plea
7 but before sentencing. I think that's already an exhibit
8 and I don't think that was in the record on appeal, but I
9 could be wrong.

10 THE COURT: Do you want to check it now? This is off
11 the record.

12 (Off the record.)

13 MR. GROSE: Exhibit Number 4 is the motion to
14 reconsider the order dated November 15, 2007, regarding
15 jury trial sentencing after a guilty plea. It was filed
16 on August 25, 2008.

17 And Exhibit 5 is the motion to reconsider a new
18 trial, which is in the record at 1,244.

19 The Exhibit 6 of applicant is in the record at 1,248.
20 It's the order denying the new trial motion.

21 The Exhibit 7 is the motion in memorandum to
22 determine the order of mode of trial. The two-page
23 version is in the record. This is a 25-page version,
24 which I don't believe was in the record.

25 And then Exhibit 8 is the order of the South Carolina

1 Supreme Court dated January 9, 2008, denying the
2 interlocutory appeal without prejudice, Your Honor.

3 And we've been through the other ones.

4 THE COURT: All right. You're moving for the
5 admission as a set? I know they're duplicates, but it
6 should be ---

7 MR. GROSE: At this point, the ones that, I guess, 4
8 through 13, you know, we move into evidence, Your Honor.

9 THE COURT: Have you looked at them, Ms. Brown? Are
10 you familiar with ---

11 MS. BROWN: No, sir. But I was following, and I only
12 have objections to two. One is 7. That is not in the
13 record. And the other is the affidavit that was not
14 signed by the solicitor. That's a unilateral proceeding
15 or document nowhere in the record. And, I mean, it may be
16 introduced for something else, but I do object to those,
17 because those two were not in the record.

18 And I agree that 911 through 974 is something that we
19 would really like the Court to review because that's the
20 expression by Mr. Inman.

21 MR. GROSE: Which was your objection? I got
22 Number 13. What was the other one?

23 MS. BROWN: 7 you said was not in the record. I
24 believe it was a longer one.

25 MR. GROSE: Well, it's not in the record on appeal,

1 but it's filed in this courthouse, so it is part of the
2 record.

3 MS. BROWN: Is this the one that you said it was a
4 shortened one?

5 MR. GROSE: No. The shortened one is the one that's
6 in the record on appeal. The more lengthy motion and
7 memorandum was filed, but appeared not to make it into the
8 record on appeal.

9 MS. BROWN: If the longer one is filed, I withdraw my
10 objection to that one.

11 THE COURT: Very good.

12 What's the other one there is an objection?

13 MR. GROSE: I think she said Number 13.

14 THE COURT: Which is ---

15 MR. GROSE: 7 was withdrawn. Number 13 is the ---

16 THE COURT: The objection is withdrawn, but not the
17 exhibit.

18 MR. GROSE: Right. Well, the objection to 7 is
19 withdrawn. The exhibit is not withdrawn.

20 13 is agreement concerning the terms of sentencing.

21 THE COURT: And with an objection?

22 MS. BROWN: I object only that it's not part of the
23 record at what point for the Court to look at. If it
24 comes in through a witness, we can address it at that
25 point, Your Honor.

1 THE COURT: Very good.

2 MR. GROSE: Thank you, Your Honor.

3 THE COURT: In that regard, I think we do have a
4 witness.

5 MR. GROSE: We do.

6 THE COURT: Would you like to call your witness?

7 MR. GROSE: I would call Jim Bannister.

8 WHEREUPON,

9 JAMES BANNISTER

10 After having been duly sworn, testified as follows:

11 THE COURT: If you would, please, sir, give us a full
12 name for the record.

13 THE WITNESS: Your Honor, my name is James W.
14 Bannister. I go by Jim.

15 THE COURT: And the W?

16 THE WITNESS: Is Wofford.

17 DIRECT EXAMINATION

18 BY MR. GROSE:

19 Q Jim, can I get you to tell the Court a little bit
20 about your educational and professional background?

21 A Sure. I graduated from South Carolina -- the
22 University of South Carolina in 1992. I graduated from
23 the University of South Carolina School of Law in 1995. I
24 clerked for two years for United States District Judge
25 Henry M. Herlong, Junior. After that I went out into

1 practice with the firm of Hill, White and Bannister. My
2 father was one of the partners there, Leo Hill was a
3 partner. And I've been in private practice with that firm
4 or iterations of it since '97.

5 Q Okay. And were you one of the -- obviously, you're
6 licensed in South Carolina. You probably covered that.

7 A Yes. I'm licensed in South Carolina to practice law.
8 What else do you want to know?

9 Q Okay. Are you one of the lawyers that represented
10 Jerry Buck Inman after his arrest and through his capital
11 trial?

12 A Yes, yes. I was one of the lawyers who got
13 appointed.

14 Q All right. And can you tell Judge Macaulay how your
15 appointment came about?

16 A Okay. So remembering that this was ten years ago or
17 more, my recollection was that the case had initially been
18 assigned to Judge Few. I got a phone call from Judge Few
19 asking me if I would consider being appointed counsel for
20 Mr. Inman. There was a period of time where I asked him
21 if I could have a little bit of time to think about it.
22 It was obviously a significant undertaking, and I wanted
23 to talk to my family about what that might mean in terms
24 of time and just effort that it was going to take.

25 I initially told him that there were some concerns I

1 had from the outset that I wanted to have an understanding
2 about. One was I think at the time that Mr. Inman was in
3 a protective custody down on the coast. I can't remember
4 where exactly, but I remember indicating that I thought it
5 would be a problem for me with my current private practice
6 to be able to spend, in essence, what would be two days to
7 see Mr. Inman for a couple hours if he was going to stay
8 there, and that if I was going to take the appointment, I
9 wanted for sure Mr. Inman to be here at Pickens.

10 Two, I wanted to make sure that there weren't going
11 to be any funding issues as it related to any experts. Of
12 course, I had no idea at the time what we would be looking
13 for and where we'd be going, but I had heard anecdotally
14 that maybe there was some issues with purse strings being
15 a little bit tight, so I just wanted to make sure that we
16 weren't going to be fighting two battles: one, trying to
17 handle the death penalty case; and, two, trying to fight
18 for funding.

19 I received assurances that Mr. Inman could be and
20 would be brought to Pickens and that this case would get
21 the appropriate attention that it needed from a funding
22 standpoint. And so with that, I ended up getting
23 involved.

24 In the meantime, there was an issue with
25 Mr. Culbertson as to whether or not he was going to be

1 appointed or would remain on. He had initially -- it was
2 at least my understanding had been Mr. Inman's private
3 counsel. And I forget what -- yeah. I think he filed a
4 writ with the Supreme Court, ended up remaining as counsel
5 and becoming appointed. And then the case got transferred
6 to Judge Miller, if I recall. And so just to put it in a
7 time frame, that's really when I got on board is when
8 Judge Miller had the case.

9 (WHEREUPON, Applicant's Exhibit Numbers 14-A, 15-A, 16-A,
10 17-A and 18-A were marked for identification.)

11 BY MR. GROSE:

12 Q And thank you for that answer. Obviously, I think
13 Mr. Culbertson can speak to how he got involved, but for
14 the purposes of this question, was he involved before you
15 were?

16 A Yes. Absolutely.

17 Q Okay. I want to show you -- do you remember when the
18 crime took place? Of course the record will reflect that,
19 but . . .

20 A You'd better give me a year.

21 Q Would it be May of 2006?

22 A That sounds right, yes.

23 Q All right. I want to hand you what's been marked as
24 Applicant's Exhibit Number 14. Does that look familiar to
25 you?

1 A Yes, that does.

2 Q And what is that?

3 A That's -- the Exhibit 14 appears to be the order
4 that's giving Judge Few jurisdiction over the case. It
5 looks like it's dated June of 2006.

6 Q Okay. And let me hand you what's been marked as
7 Applicant's Exhibit Number 15. Does that look familiar to
8 you?

9 A Yes. That does look familiar to me.

10 Q And what is that?

11 A Exhibit 15 is the clocked and filed order dated
12 February of 2007 appointing me as one of Mr. Inman's
13 counsel.

14 Q All right. And it refers to Mr. John Dejong as other
15 appointed counsel?

16 A That's correct.

17 Q All right. And it does reference Mr. Culbertson, who
18 was, at that time, still private counsel?

19 A Yes.

20 Q Okay. Let me hand you what's been marked as
21 Applicant's Exhibit Number 16 and ask if you recognize
22 that.

23 A Yes. I've seen this before.

24 Q All right. What is that?

25 A I believe Exhibit 16 is the order that is assigning

1 the case to Judge Miller. That's March 21, 2007.

2 Q And that's an order from the Supreme Court?

3 A That's correct.

4 Q And does that order also reference the writ of
5 prohibition that you discussed earlier?

6 A It does, it does. Yes.

7 Q What does it say about that?

8 A Let's see. I believe that it denies the petition for
9 the writ, but has assigned the case to Judge Miller and
10 then asks him to reconsider the previous order that had
11 been entered by Judge Few.

12 Q And that regarded, in part, Mr. Culbertson?

13 A That's correct, yes.

14 Q All right. Let me hand you what's been marked as
15 Applicant's Exhibit Number -- is that 17?

16 A Yes.

17 Q And do you recognize that order?

18 A Give me just a second.

19 Q Sure.

20 A (Reviews exhibit) Yes. I recognize this.

21 Q Okay. And what is that order?

22 A That is Judge Miller's order dated November 15, 2007,
23 wherein he is making it clear that both Mr. Culbertson and
24 myself will be authorized to seek funds for representing
25 Mr. Inman. And it further references the reality that

1 Mr. Dejong was the sole public defender here in Pickens,
2 and that he just was not going to be able to commit any
3 significant amount of time to the case absent finding
4 somebody else to handle the entire public defender
5 caseload.

6 Q Okay. And do you remember if Judge Miller convened a
7 hearing on that motion?

8 A My recollection is that he did. I have a
9 recollection of having a hearing. Whether it was before
10 the order or after the order, I can't say sitting here
11 right now, but it seems like we did have a hearing where
12 he said something on the record and we talked about it.

13 Q Okay. So is it fair to say that after that order,
14 which is Exhibit Number 17, that you and Mr. Culbertson
15 were both appointed as well as Mr. Dejong?

16 A Yes. That was my understanding.

17 Q Okay. I'm going to hand you what is marked as
18 Exhibit Number 18 for the applicant. Do you recognize
19 that?

20 A Okay. So Exhibit 18 looks a lot like a detailed
21 printout of the hours that were requested as part of the
22 funding for the defense of Mr. Inman.

23 Q Okay. And that's where you kept track of your time
24 and the activities that you did?

25 A Yes.

1 MR. GROSE: Your Honor, at this time, I would move
2 Exhibits 14 through -- is that 18? -- into evidence.

3 THE COURT: Now, what is Number 14?

4 MR. GROSE: 14 was the order appointing Judge Few or
5 assigning Judge Few jurisdiction.

6 THE COURT: That's good. And 18?

7 MR. GROSE: 18 is Mr. Bannister's time records.

8 THE COURT: Any objection?

9 MS. BUTTERBAUGH: No objection, Your Honor.

10 THE COURT: Without objection, 14, 15, 16, 17 and 18
11 are admitted.

12 (WHEREUPON, Applicant's Exhibit Numbers 14-A, 15-A, 16-A,
13 17-A and 18-A were admitted into evidence.)

14 BY MR. GROSE:

15 Q And if you could take a look at Exhibit Number 18,
16 your very first time entry there, what does that have to
17 do with?

18 A So the first time entry is February 6, 2007. It
19 looks like I spent two hours doing research regarding the
20 attorney's role in a guilty plea. Among other things,
21 we're looking at -- I was looking at the ethical rules,
22 and identifying potential experts, and going over the
23 forms that were going to be necessary for the indigent fee
24 vouchers.

25 Q Now, is it fair to say, from looking at that time

1 record, that the possibility of Mr. Inman pleading guilty
2 was an issue pretty much from day one for you on the case?

3 A Yes. Absolutely.

4 Q Okay. And you said your entry and your testimony was
5 is that you're looking at the ethical rules. Do you
6 remember what types of things that you looked at?

7 A So I'm reaching back, again, but I can tell you that
8 around this time frame, I was trying to have an
9 understanding of what was the client's role, what were his
10 constitutional rights versus what was my role and sort of
11 where that line was in terms of strategy and how we went
12 forward. And Mr. Inman was, at that point, adamant, and
13 that stayed the same throughout, but that he wanted to
14 plead guilty. And I was trying to see if he had the right
15 to do that with or without my consent or with or without
16 my advice.

17 Q And do you know how you ultimately resolved that?

18 A Ultimately resolved that that it was absolutely his
19 right, if he was competent, that he could enter a guilty
20 plea and there would be nothing I could do to stop it.

21 Q Okay. Did you also review your ethical
22 responsibilities as regarding preparation of a case even
23 though he had expressed those desires to you?

24 A I don't think that was the focus, at this point. I'm
25 looking to see when was the first time I actually went to

1 meet with him.

2 But I want to say that the initial part of what I was
3 trying to do was to figure out when I met with him and
4 when we had these conversations where he was asking me
5 very pointed questions about pleading guilty, and I did
6 not want to misrepresent how that was going to work. I
7 felt like it was important to build a rapport with him,
8 and I didn't want to start that by seeming like I was
9 trying to manipulate him in any way, shape or form.

10 But I wanted to know what the rules were, too,
11 because I was going to be honest with him. If I thought
12 what he was trying to do was not his call and it was mine,
13 I was going to take what I thought was the best course of
14 action.

15 Q Okay. If I could get you to turn over to the next
16 page, and roughly two thirds down there, there's an entry
17 for May 15th of 2007.

18 A Okay.

19 Q What is your time entry for that?

20 A All right. So the one, two, three entries on May the
21 15th, do you want the first, second and third or ---

22 Q Well, actually, the -- well, let's go through.
23 What's the first one?

24 A So research on Arizona vs. Ring and the issue on
25 nonjury finding of aggravating circumstances.

1 I think very early on, one of the issues that I was
2 looking at, because we didn't -- if he was going to plead
3 guilty, there weren't a whole lot of issues that were
4 available to us, but one of the issues I was looking at is
5 the constitutionality of having a jury decide the death or
6 life without parole and whether or not our current South
7 Carolina system met the constitutional requirements for
8 that.

9 Q And we're going to come back to that.

10 A Okay.

11 Q Did you also draft a memorandum? Is that one of your
12 entries that day?

13 A Let's see. Yes.

14 Q Okay. And that was a memorandum on jury sentencing
15 issue, correct?

16 A Yes.

17 Q Okay. Now, the middle or the second entry for that
18 day is you traveling to the jail to meet with Mr. Inman.

19 A Right.

20 Q And by that point, he would have been back here in
21 Pickens; is that correct?

22 A That's correct.

23 Q And do you remember if it was Lee Correctional where
24 they were holding him at a safe-keeper?

25 A I do not. But I don't have a recollection of seeing

1 him anywhere but in Pickens.

2 Q Okay. So would you have -- on May 15, 2007, would
3 you have discussed your concerns with Mr. Inman about the
4 constitutionality of judge sentencing in a capital case
5 following a guilty plea?

6 A I'm certain that that came up, because it would have
7 been part of and became part of a lot of the discussions
8 about entering the guilty plea.

9 Q And, in fact, if you look at your entry on 5/16 of
10 2007, you know, it looks like, as part of a team meeting,
11 the idea of guilty plea negotiations was discussed; is
12 that correct?

13 A Yes.

14 Q Okay. And do you recall anything about that
15 conversation?

16 A So this is May 16th. We went almost two years from
17 that point to when we had the sort of final version, Jerry
18 Buck Trial 2.

19 Q Right.

20 A So a lot of discussions about negotiations that
21 happened over this time period. So I'm only hesitating
22 because I'm having a hard time remembering whether or not
23 we were talking about guilty plea negotiations with Inman
24 in the sense that it was us and the client saying, okay,
25 look, we're happy to -- we're going to let you do the

1 guilty plea because that's your right, but you're going to
2 have to let us do what we need to do to defend you in the
3 sentencing portion. And so there are certain things that
4 are going to happen during the plea, and we're going to
5 have a fight probably about the issues about whether we
6 can get a jury to come in and be the ultimate decider of
7 your sentence. And so I think that was kind of what we
8 were talking about.

9 He was always reluctant to have any mitigation put
10 forward on his behalf, and we were always trying to get
11 some cooperation from him to let us do our job.

12 Q And he ultimately allowed you to present mitigation?

13 A Yes, he did.

14 Q And he ultimately allowed you and co-counsel to
15 pursue the issue of jury sentencing?

16 A He did, he did. Absolutely.

17 Q Looking still on that page for the entry of May 17th
18 and May 19th of 2007, was there still -- were you still
19 continuing to work on the jury trial issues and research
20 related to that?

21 A Yes. You can say that that stayed a constant
22 throughout the entire defense.

23 Q Okay. And if we -- it's going to be important that I
24 kind of go through all those steps a little more ---

25 A That's fine. That's fine.

1 Q --- if you can bear with me.

2 If you could turn to the next page for your entries
3 on July 21st and 22nd, can you tell Judge Macaulay what
4 was going on there with regard to the guilty plea issue?

5 A Yes. So July 21, 2007, if I'm looking at the correct
6 one, it says "research interlocutory appeals." Is that
7 the one you're talking about?

8 Q Yes, sir.

9 A And then the 22nd, the same thing.

10 So it appeared to me, if I remember this correctly,
11 in the research we had done that the problem was always
12 when it got to the Supreme Court on whether or not you
13 could have a jury trial sentencing is that they would say,
14 "Well, you waived it when you entered your guilty plea."
15 And so I was trying to come up with a way in which we
16 could tee-up the issue so that nobody could say that we
17 had waived trying to get a jury to sentence Mr. Inman
18 after a guilty plea.

19 And so what I ultimately -- as a team, what we
20 resolved was that we were going to go forward with what I
21 want to say it was a motion to determine procedure, I
22 forget exactly what we called it, but it was a motion
23 regarding the procedure of how to go forward. And I
24 wanted it to be -- I wanted there to be a decision on the
25 front end that we couldn't get a jury trial if we entered

1 a guilty plea before we had entered the guilty plea.
2 Whether I was right or wrong, I felt like that was the
3 best way to tee-up the issue for the Supreme Court so that
4 nobody could ever say we waive the issue after the guilty
5 plea.

6 So the idea here was to file an interlocutory appeal
7 after the motion and then take it as far as we could take
8 it. I want to say, and I may be jumping ahead of you,
9 Mr. Grose ---

10 Q Oh, no. You're going fine. You're fine.

11 A Okay. All right. So what our plan was is to get a
12 ruling from the judge on the procedure so that we would
13 have a ruling that we were not going to get a jury trial
14 if we entered a guilty plea, explain why that was not
15 constitutional. We anticipated the interlocutory appeal
16 would be denied, and then I believe we were going to and
17 did file a petition for cert with the United States
18 Supreme Court. Ultimately, that was -- that petition was
19 denied.

20 So that was step one, I guess, of the formal way in
21 which we tried to preserve this issue so that it wouldn't
22 be waived.

23 Q Okay. And I'm going to come back to that motion in
24 just a minute.

25 A Okay.

1 Q But before we get to that, in June, specifically
2 June 15th and 18th, and there's two entries on the 18th,
3 were you still continuing to look at that issue?

4 A Yes.

5 So, you know, as you get -- as you do pretty in-depth
6 research, sometimes you'll end up having to go down a path
7 to make sure that you haven't missed something. I was
8 trying to be as thorough as we could, at least that was
9 the effort I was making, and so a lot of these things we
10 were researching right along with it had to do with issues
11 that I thought could become relevant for the purposes we
12 were seeking, which is to try to preserve this jury trial
13 sentencing issue.

14 Q Bear with me just a second.

15 Okay. And moving down that page to on June 29th,
16 were you continuing to work on that?

17 THE COURT: Is this still June '07?

18 MR. GROSE: This is June 29, 2007. Yes, sir.

19 THE COURT: After July?

20 MR. GROSE: Well, I think, and I may have misspoken,
21 I asked him about June 16th and 18th. And I do want to
22 move on to July, but ---

23 THE COURT: Well, I thought you've already gone
24 through July 21st and 22nd.

25 MR. GROSE: Did I?

1 THE COURT: Guilty plea ---

2 MR. GROSE: I thought that was May 21st and 22nd.

3 THE COURT: I don't know. Is it?

4 THE WITNESS: I can say May 21st is when I was
5 researching the interlocutory appeal.

6 THE COURT: Okay. So that was May.

7 THE WITNESS: That was May. Yes. I may have
8 misspoken.

9 THE COURT: No. I'm sure you're capable of making
10 errors.

11 MR. GROSE: I'm capable of asking a bad question.

12 THE COURT: Go ahead. Now we're on to June.

13 BY MR. GROSE:

14 Q All right. So we talked about June 15th and June
15 18th you were researching appealing that issue.

16 A That's correct, yes.

17 Q And then on June 29th, is it fair to say that you
18 were continuing to work on your jury sentencing
19 memorandum?

20 A Yes. So June 29th . . .

21 Q It's the second entry on June 29th ---

22 A Oh, I see.

23 Q --- towards the end.

24 A Right. Draft Number 2, the motion for jury
25 sentencing, yes.

1 Q And I noticed going through your time records,
2 sometimes you would have multiple drafts of pleadings.
3 Could you sort of explain the process that you would go
4 through?

5 A So this is just the way I do it, but Draft 1 is
6 usually just I've tried to pull out -- I try to pull
7 together every case that I thought was relevant to the
8 issue.

9 Draft 2 is usually me going back, cutting and pasting
10 the quotes, the relevant quotes that I think come out of
11 each case.

12 And then usually it's the third time around that I
13 start organizing it in an order that makes logical sense
14 and flows, and group quotes together topically and then
15 figure out how I'm going to move between those to craft an
16 argument.

17 Q And that's just sort of a process you follow to be
18 thorough.

19 A Yes. In this case in particular, I mean, I literally
20 would start with every case that I could find through
21 Westlaw research keyword search. And then I would cull
22 out the ones that had nothing to do with it. I would put
23 the ones that did have something to do with what I was
24 looking at, and sort of create what I thought was going to
25 be -- you know, usually you get 20, 25 cases that seem to

1 be the most relevant.

2 Q Okay. And if we move into July, I think you're going
3 to have to flip over a couple of pages, I'm looking at
4 July 25th and also August 1st, two entries that are next
5 to each other.

6 A Yes. July 25th I've got research on the Eighth
7 Amendment right to present any mitigation, research on the
8 Sixth and Fourteenth Amendment right to present a full and
9 complete defense.

10 And then the other one was August 1st?

11 Q Yes, sir. Specifically, you have two cases that you
12 reviewed there.

13 A State vs. Crisp and State vs. Downs.

14 Q Okay. And I know it's been more than a decade, but
15 do you recall what those cases were about?

16 A I recall better the right to present a full and
17 complete defense than I do Crisp and Downs, but since I'm
18 doing them somewhat in the same time frame, I'll say to
19 present a full and complete defense I felt like was tied
20 into the guilty plea in front of a jury. I did not like
21 being ham-strung or handcuffed with the idea that I
22 couldn't get in front of a jury and ever be able to let a
23 jury know that he's accepted responsibility.

24 Now, maybe jumping ahead again here, but remorse
25 seems to be one of the things that compels juries to give

1 life sentences in the research of death penalty cases, and
2 being able to say I pled guilty, I take full
3 responsibility, to me was a big deal to be able to put
4 that in front of a jury. And I felt like the inability
5 that was created by the statutory framework to do that cut
6 against your ability under the Eighth Amendment to present
7 any mitigation.

8 And I can't remember what Crisp and Downs -- you'll
9 have to just show me those cases, but ---

10 Q And we can come back to that in a minute.

11 But if you look at your entry on August 2nd, were you
12 looking at the guilty plea as mitigation like what you
13 were just talking about?

14 A Let me just see, make sure.

15 Q And it's the first August 2nd entry.

16 A Where we're brainstorming mitigation scenarios? Or
17 guilty plea as mitigation. Yes. That's it. Yeah.

18 Q Okay. And then if you jump down about two thirds of
19 the way down, it's the last entry for August 3rd of 2007,
20 you, again, are brainstorming the guilty plea, research on
21 capital jury project, and research the validity of guilty
22 plea strategy. What was that dealing with?

23 A I'm trying to remember what the capital jury project
24 was. I can't say that's jumping out at me at the moment.

25 But the validity of the guilty plea strategy I was --

1 if I recall, this issue was in a state of flux during the
2 time frames that we were with -- that we were defending
3 Mr. Inman, and so I was always cognizant or trying to see
4 if there was new cases that had been filed, new memos that
5 might be out there, and so I would periodically kind of
6 check back to see if anything new popped up on appeal in
7 any other state that might give me some new ideas other
8 than what we were already working on.

9 Q Okay. If I told you the capital jury project was
10 some research that John Bloom and others conducted where
11 they interviewed jurors from capital cases, would that
12 refresh your memory?

13 A That would -- so that would take you back to the
14 whole idea that remorse seems to be the big issue with
15 juries that are giving life sentences, that at the end of
16 the day, even a horrible, horrible case like this one was,
17 if there's going to be something that might can change the
18 outcome, remorse can often be it.

19 Q And you wanted to communicate that to the jurors?

20 A I sure would have liked to have the opportunity, yes.

21 Q And in your dealings with Mr. Inman, was he
22 remorseful?

23 A Beyond a shadow of a doubt. That was what was such a
24 contradiction about him was that he could have engaged in
25 such an evil act and at the same time be so remorseful and

1 so confused about how he could have been the type of
2 person that did that.

3 It's hard to explain in a way that really captures
4 it, but he hated himself for what he did, couldn't
5 understand why he would do it and had a full understanding
6 of the pain and misery that he had caused not only Tiffany
7 Souers, but also the family. I mean, he was -- he was
8 always concerned that the ultimate outcome be something
9 that would benefit them to some extent.

10 Q And he accepted his responsibility.

11 A Yes.

12 Q And he was remorseful.

13 A Absolutely.

14 Q Okay. If we could go down to August 16th, the very
15 last line of your entry you have something there about a
16 two-jury argument used in Arizona. Do you remember what
17 that is?

18 A Okay. So, again, this is reaching back a good bit,
19 but I think there had been some discussion potentially
20 about the idea that you could have one jury decide guilt
21 and another jury then show up to decide whether or not it
22 was going to be life or the death penalty.

23 Q If I can get you to turn the page and look at August
24 17th of 2007. And you have an entry about doing final
25 drafts of motions that day.

1 A Right. Yes.

2 Q And one of those was the final draft of the motion to
3 determine the mode of trial.

4 A Right. So that would be the motion I had referred to
5 before, which was -- ties back into the research we were
6 doing related to the Eighth Amendment, the Sixth, the
7 Fourteen Amendment presenting a guilty plea as mitigation
8 and to preserving the issue of whether you could plead
9 guilty and still get a jury trial sentencing.

10 Q Okay. And I see you have the record with you.

11 A I do.

12 Q If you could go to the third volume, which is the
13 shortest one, and turn to pages 1,202 and 1,203, please.

14 A (Witness complies) Okay.

15 Q And I also want to approach and hand you Defendant's
16 Exhibit Number 7, which is dated later on in September,
17 and ask you if you recognize really both of those
18 documents, 1,202 to 1,203. And I may have said
19 defendant's but I meant Applicant's Exhibit No. 7.

20 A So 1,202 to 1,203 was the motion signed by me. It
21 was a motion to determine the mode of trial filed August
22 it looks like 17th of 2007. And then Exhibit 7 is the
23 memorandum that would have been filed at some point in
24 conjunction with the motion to determine mode of trial, I
25 believe. And that's dated September the 14th, 2007, also

1 signed by me.

2 Q And in the -- I'm sorry. I didn't mean to cut you
3 off.

4 A That's all right.

5 Q All right. In the record at 1,202, towards the
6 bottom of the page, did you rely on both the Sixth and the
7 Eighth Amendments?

8 A That's correct.

9 Q And did you cite the case of Ring vs. Arizona?

10 A I did.

11 Q Okay. And if I could have you look with me at
12 Applicant's Exhibit Number 7, by the time you got to this,
13 you were also citing in addition to Ring, Blakely vs.
14 Washington.

15 A Yes.

16 Q And, again, I know it's been more than a decade and
17 you're welcome to look at that, but could you recall for
18 the judge what you were trying to do by looking at Ring
19 and Blakely?

20 A So I believe that those Supreme Court cases were
21 stair steps that were moving towards the inevitable
22 conclusion that a death penalty to be valid was going to
23 have to be determined by a jury if that's what a defendant
24 sought. In other words, you had a right to have a jury
25 trial determine whether or not it should be life or death.

1 And I felt like those cases were -- it was the next one on
2 the horizon, frankly. That is the issue that we were
3 facing. I mean, the logic of it seemed compelling to me,
4 at least, as a lawyer representing Mr. Inman with this
5 issue that, you know, it was just time for this South
6 Carolina statutory framework to fall.

7 Q Okay. And if you look back at your time sheets on
8 the same page that we were looking at before, on
9 August 21st, did you look at a number of legal authorities
10 that day?

11 A Yes. That's correct.

12 Q And was one of them a case from Colorado?

13 A That is correct, yes.

14 Q And do you know if you cited that case from Colorado
15 in your memorandum, which is Applicant's Exhibit
16 Number 17?

17 A Not without looking at it. Have you got a page you
18 want to point me to? I'm sorry. I can find it.

19 Q Okay. I'm sorry for not having that for you.

20 A That's okay.

21 Q I'll tell you what. Why don't we just come back to
22 that later.

23 A There it is. Okay. It's on page 23.

24 So I cited a quote out of there. "Once a capital
25 defendant enters a guilty plea, he retains a Sixth

1 Amendment right to jury sentencing on the facts essential
2 to the determination of death eligibility."

3 THE COURT: Which case is that?

4 THE WITNESS: That was Colorado vs. Montour. It's a
5 2007 case, and it's cited at page 23 of Exhibit 7.

6 BY MR. GROSE:

7 Q And there's also some South Dakota cases cited in
8 that same general area of the memoranda?

9 A Yes. State vs. Piper, which was 2006, and State vs.
10 Page, which was also 2006.

11 Q And I want to show you what's been marked as -- and
12 this is front and back, but it's Applicant's Exhibit
13 Number 12. Do you recall that document?

14 A (Reviews exhibit) Yes.

15 Q Okay. And earlier you testified about Mr. Inman's
16 remorse and acceptance of responsibility and feelings
17 towards the family. Is some of that reflected in that
18 affidavit?

19 A Yes.

20 Q And is that an affidavit that Mr. Inman gave?

21 A It is.

22 Q And in that affidavit, is it fair to say that he's
23 expressing his willingness to enter a guilty plea?

24 A Yes.

25 Q But it only refers to the guilt-innocence phase. It

1 doesn't refer to waiving jury sentencing, does it?

2 A That is correct.

3 Q And the affidavit that Mr. Inman signed, that was --
4 was it June what?

5 A Let's see. 28th of June 2007.

6 Q All right. So that's consistent, that affidavit is
7 consistent with the research you were doing in May, June,
8 July and August regarding the mode of trial; is that
9 correct?

10 A That's correct, yes.

11 Q Okay. And Mr. Inman participated in your efforts by
12 signing that affidavit.

13 A He did.

14 Q Okay. And if you could turn to page 777, which is in
15 Volume 2.

16 A (Witness complies) Okay.

17 Q That's a hearing date of September 4th also in 2007,
18 right?

19 A It says September 14th.

20 Q I'm sorry. September 14th. My bad.

21 If you look over at page 780 ---

22 A Okay.

23 Q --- and look at Line 5, would it be fair to say that
24 this was a hearing that dealt with the mode of trial?

25 A It's certainly mentioned there, for sure.

1 Q Okay. Do you recall that there was a hearing
2 regarding the mode of trial?

3 A Yes.

4 Q Okay. And, of course, the record will speak for
5 itself, but would you have made some of the same arguments
6 in that hearing that you made in Applicant's Exhibit
7 Number 17?

8 A Yes.

9 Q And have testified about here today?

10 A Correct.

11 Q Okay. And I might have jumped ahead a little bit.
12 If you go back to your time sheets -- and I'm going to
13 show you, if you look at this page, which starts with
14 824 ---

15 A Okay.

16 Q --- would it be fair to say that you have entries on
17 8/27 that deal with jury issues, 8/31 that deals with jury
18 issues, 9/10 that deals with this issue, actually, a
19 couple entries on 9/10, 9/11 and 9/12?

20 A Yes. All those were focused primarily on this motion
21 to determine mode of trial to preserve the jury trial
22 argument for the sentencing phase.

23 Q Okay. And if I flip over to the next page, if you
24 could do that with me, it looks like you may have even
25 had a mock argument for this motion hearing; is that

1 right?

2 A That's correct.

3 Q All right. And then on September 14th, which was the
4 day of the hearing, you had more research preparation and
5 attended the hearing.

6 A That's right.

7 Q Okay. Do you still have that transcript in front of
8 you?

9 A Yes, sir.

10 Q If you could, could you look at pages 812 through
11 816?

12 A Okay. I'm there. You want me to read through them,
13 both of them?

14 Q Yeah. If you just familiarize yourself with those,
15 please.

16 A (Reviews document) Okay. I've read it.

17 Q Okay. In that -- that was part of the hearing on the
18 mode of trial.

19 A Yes. That's correct.

20 Q And did you rely on Appendi in that hearing?

21 A Yes. As it related to Blakely and some of the other
22 cases, yes.

23 Q And Ring?

24 A Yes. And Ring.

25 Q And you referred to the cases that you had found in

1 your research from other jurisdictions.

2 A That's correct. I mean, this was what I was talking
3 about, the -- sort of the continued review going back.

4 And as we tickled out this issue, we realized that Blakely
5 had become a significant moment in terms of interpreting
6 the kinds of statutes we were dealing with in South
7 Carolina. Post-Blakely, it looked like the majority of
8 states were deciding you have a right to have a jury
9 decide your sentence.

10 Q And that's based, in part, on the -- maybe not
11 completely, but on the Sixth Amendment?

12 A Correct.

13 Q And the right to a jury trial, basically.

14 A The right to a jury trial, yes.

15 Q I want to hand you what's been marked as Applicant's
16 Exhibits 9 and 10, and they're already in evidence, and
17 ask you if you recognize both of those.

18 A (Reviews exhibits) Yes. I recognize these. I was
19 just looking to see if my signature is in here, and it is.

20 Q And what are those?

21 A Let's see. So Exhibit 9 was a memorandum supporting
22 an interlocutory appeal filed November 21, 2017. That was
23 filed here in the Pickens Clerk of Court office.

24 And then the initial brief of appellant, Exhibit 10,
25 which I guess was somewhere in January of 2008. Yes. So

1 I'm including the transcript that had come from the
2 September 14, 2007, hearing, which was the one on the mode
3 of trial.

4 Q Okay. And let me show you -- and both of those dealt
5 with mode of trial?

6 A They were -- I mean, this was the strategy.

7 Q Right. And Exhibit 8, Applicant's Exhibit 8 is
8 already in evidence. Do you recognize that?

9 A Yes, I do.

10 Q And what is that?

11 A That is the order basically denying my interlocutory
12 appeal on the decision that the trial judge had on the
13 motion to determine the mode of trial. That's dated
14 January 9, 2008.

15 Q Okay. And there's an order that's attached to that,
16 isn't there?

17 A Yes.

18 Q And is that a reprinted copy of Judge Miller's order
19 that dealt with the mode of trial?

20 A Let's see (reviews exhibit).

21 Q I'm sorry. I'm sorry. I'm jumping ahead. I'm
22 looking at a document I haven't given you yet. I'm sorry.

23 Applicant's Exhibit Number 11.

24 A Okay. So Applicant's Exhibit Number 11 I believe is
25 what we filed after we got back the order denying our

1 interlocutory appeal. So interlocutory appeal is
2 January 9, 2008, and we filed a petition for writ of cert
3 in South Carolina Supreme Court -- I'm sorry -- to the --
4 yeah. To the South Carolina Supreme Court.

5 Q And that's filed in the United States Supreme Court.

6 A Yes. That's filed in the United States Supreme
7 Court. I remember I had to get -- I had to go get my
8 certificate to practice in the United States Supreme Court
9 before I could file this, which was a process in and of
10 itself. But yes.

11 Q And is there an order attached to that?

12 A Yes. There's an order attached to that. It comes
13 from Pickens County Court.

14 Q All right. And that was Judge Miller's order on the
15 mode of trial.

16 A That's correct November 15, 2007.

17 Q And ultimately, the United States Supreme Court did
18 not accept cert?

19 A They did not.

20 Q Okay. And Mr. Inman was aware that you were taking
21 all of these actions.

22 A He was.

23 Q Okay. If I could get you to turn forward several
24 pages to your time sheets, it looks like they begin
25 2/29/08 is the first entry.

1 A Okay. 2/29/08.

2 Q And if I could get you to go down about two thirds of
3 the page -- well, actually, before we do that, about
4 halfway down the page, from 4/17, there's an entry, review
5 of the American Bar Association guidelines for standard of
6 care in death penalty cases.

7 A Correct.

8 Q All right. And did you make yourself familiar with
9 those during Mr. Inman's case?

10 A Yes.

11 Q And did you accept those to be the prevailing
12 professional norms?

13 A I did, yes.

14 Q Okay. If we go down to April 19th of 2008, you have
15 an entry that says "group review, appellate issues, law
16 governing maintenance of the objections." Do you know
17 what -- can you tell us what that entry was about?

18 A So let's see. What is this? This is April of 2008.
19 So just for my own reference, we tried this case in August
20 of 2008 and then came back in April of 2009?

21 Q I think the record will show when we get there that
22 you entered a guilty plea in August, then the sentencing
23 phase began in September, and then you came back in April
24 of the following year.

25 A Okay. So '08 was when we're coming back for the --

1 round two.

2 Q Right.

3 A Okay. All right. So I'm just trying to ---

4 Q '09 was round two, if I understand what you mean by
5 round two.

6 A Okay. Right, right. So governing the maintenance of
7 the objections, so what we were talking about here was,
8 okay, how do we proceed through the ultimate, you know,
9 next steps in this case and be sure that we don't do
10 anything that's going to waive our determination of the
11 mode of trial.

12 Q Okay. And during all of this period of time, you
13 were meeting with Jerry Inman, weren't you?

14 A Yes. I will say that somebody from our team
15 certainly was meeting directly with him, but oftentimes
16 was not me but it was other members of the team.

17 Q All right. And this strategy was being explained to
18 him.

19 A Yes. Now, I was usually the one that was talking
20 about the strategy.

21 Q Okay.

22 A I mean, that was sort of how we -- our roles evolved.
23 I was the one that would talk to him about the legal
24 issues and what to expect procedurally, that kind of
25 thing.

1 Q Okay. And if you go to the next page, May 27th, it
2 looks like you were still -- never mind. That looks like
3 that has to do with jury questionnaires. I'll withdraw
4 that.

5 Moving forward, I'll show you the page, it begins
6 with an entry on 7/18/2008.

7 A Okay.

8 Q If you go down about a half a page, there's a single
9 -- well, there's one entry for August 11th with a bunch of
10 other entries that are entered into that. One has to do
11 with scheduling the guilty plea, it looks like.

12 A Correct. Yes.

13 Q And is it fair to say that at this point, you were
14 moving either towards a trial or towards entering a guilty
15 plea?

16 A That is correct.

17 Q Okay. And if you go down to 8/13, there's an entry
18 for research constitutional Catch-22 Hobson's choice
19 issues.

20 A Yes.

21 Q What do you mean by that?

22 A Well, it sort of goes back to what I was saying
23 before, which is I wanted to be sure that we put on the
24 record at the guilty plea, at least that's what I think we
25 were doing here, that we were being put in an impossible

1 position. We were going to have to give up something
2 whichever way we went. And I recognize that sometimes
3 that's one of the choices that a criminal lawyer has to
4 make.

5 But my research, I had concluded that this guilty
6 plea without a jury sentencing was not -- was not one of
7 the times when a defendant should have had to choose
8 between the impossible choices that we were put in. So I
9 was trying to see are there other examples out there
10 potentially that I can use to, again, be sure I preserve
11 the record when we go through the guilty plea that we are
12 not waiving the jury trial, or at least the issue of the
13 jury trial, the mode to determine trial. Because I ---

14 Q And when you say "the jury trial," you mean a jury
15 for sentencing?

16 A A jury for sentencing, yes.

17 Q Right.

18 A Yes. Because that was the only jury trial issue that
19 Mr. Inman was willing to let us proceed with.

20 Q And so is it fair to say that in the team discussions
21 and the discussions with Mr. Inman, you were looking at
22 jury trial for guilt/innocence and a separate issue as far
23 as jury trial for sentencing?

24 A Yes.

25 Q Okay. And with your studies of issue preservation

1 and the Hobson's choice, it was your goal, correct me if
2 I'm wrong, but to try to keep that issue alive during the
3 guilty plea.

4 A Yes.

5 Q And Mr. Inman was aware that that was the strategy.

6 A Yes.

7 Q All right. And he allowed you to proceed in that
8 manner?

9 A He did.

10 Q Okay. Now, you also have some entries on August 14th
11 regarding preparing towards the guilty plea. It looks
12 like you and Ms. Strom, Betty Strom were having
13 discussions about what the State's factual presentation
14 would be.

15 A That's correct.

16 Q Okay.

17 A I just didn't want to get surprised by anything she
18 was going to say.

19 Q I commend you for that.

20 And then on the 18th, there was a review of
21 Dr. Schwartz-Watts, now Dr. Maddox's report. She had
22 offered an opinion about Mr. Inman's competency to stand
23 trial; is that correct?

24 A That's correct. And more particularly, to enter the
25 guilty plea. But yes.

1 Q Okay. And then it looks like on August 18th, you had
2 a meeting with Mr. Inman and you reviewed what to expect
3 in the guilty plea colloquy.

4 A That's correct. Yes.

5 And I'll say that we -- you know, I wanted him to be
6 aware that there might be some -- I wasn't sure how the
7 judge was going to react or what the solicitor was going
8 to say, but I knew we were going to be -- there might be
9 some moments where it got a little heated about whether we
10 were waiving this issue or not, and it was going to be
11 that ---

12 Q And you were preparing him for that.

13 A I was preparing him that it was going to be more than
14 just, hey, I'm pleading guilty.

15 Q Okay. And then if we could go in Volume 2 of your
16 transcript to page 911, and you're partly at fault for
17 making such a lengthy record that we have to keep ---

18 A Well, my witness stand is starting to look like my
19 office.

20 All right. So August 19, 2008, is page 911, looks
21 like a transcript of record.

22 Q All right. And if you look at 913, Solicitor Ariail,
23 around Line 5, indicates that there's going to be a guilty
24 plea; is that right?

25 A That's correct.

1 Q In looking at the index, it looks like
2 Dr. Schwartz-Watts, now Dr. Maddox, did testify at that
3 hearing; is that correct?

4 A That's my memory, yes.

5 Q Okay. And when we get -- if we get to page 931 ---

6 A Okay.

7 Q --- if you look at Line 13, do you interpose an
8 objection beginning there?

9 A I do.

10 Q And take a look at that for a second, please.

11 A (Reviews document) Yes. I've read it.

12 Q And we don't necessarily have to go through every
13 three, but was this you carrying out what you just
14 testified about that you were going to preserve as best
15 you could this issue for appeal?

16 A Yes. Absolutely.

17 Q Okay. Now, following -- I think we said the guilty
18 plea was on August 19th; is that right?

19 A I'll take your -- the date sounds correct, yes.

20 Q All right. I want to hand you what's marked as
21 Applicant's Exhibit Number 4 for this hearing, which looks
22 like it was filed on August 25th. What is that?

23 A Okay. So this was a motion that we filed to
24 reconsider the jury trial sentencing after entry of a
25 guilty plea. That's dated August 21, 2008. It's signed

1 by me.

2 This was, again, following up with just making sure
3 the record was preserved to the extent that I could do it,
4 that we were serious about wanting a jury trial on the
5 sentencing phase.

6 Q All right. And you did that with Mr. Inman's
7 knowledge and approval?

8 A Yes.

9 Q Okay. If you could go to Volume 1 and turn to
10 page 17 and look at Lines 13 through 18, can you read
11 those into the record, please.

12 A Sure. Line 13, "MR. BANNISTER:" that would be me,
13 "Finally, let me just renew our demand for a jury trial
14 for the sentencing phase of this case. We've made that
15 throughout the case at each of the stages, just for the
16 record. I suspect I know what the ruling is going to be,
17 but we have one last opportunity, so I'm making the
18 demand."

19 Q All right. And what was the rationale for making
20 that objection or making that motion or reminder at that
21 point?

22 A The same as all the other motions had been as I just
23 was not going to be sitting here trying to explain how I
24 didn't do something to try to preserve this for review ---

25 Q Right. And ---

1 A --- at least if it was in my power.

2 Q And, in fact, this is the point where there was
3 either going to be -- and procedurally the point where
4 there was either going to be a judge sentencing proceeding
5 or the judge was going to have to change his mind and
6 impanel the jury.

7 A That's correct.

8 Q Okay. And that's sort of the other side of the coin.
9 A lot of times, we renew our motions that might delay a
10 trial before the jury selection. This is the other side
11 of the coin where you were renewing those before the judge
12 goes forward.

13 A That's correct.

14 Q Okay. Now, while we're still talking about this
15 issue, of course, to jump forward, as you talked about it,
16 there was the hearing, and then there was a break, and
17 there was a restart or you come back a second time.
18 Ultimately, Judge Miller imposed a death sentence.

19 A That's correct.

20 Q Okay. I want to hand you what's been marked as
21 Applicant's Exhibit Number 5. It's also, I believe, in
22 the record. Do you recognize that? When I say "the
23 record," I mean the record on appeal.

24 A Let's see. So Exhibit 5, yes. This was, I think --
25 well, it was a motion for a new trial and to reconsider

1 signed by me, filed May 1, 2009. And I was going through
2 the various issues that I believe had been created by
3 everything I think that had transpired up to that point.

4 Q Right. And we don't necessarily have to go through
5 all of those, but was one of them, one of those issues
6 the issue about the mode of trial and the jury
7 sentencing?

8 A Yes. And I believe that's listed as Exhibit -- I
9 mean as Issue A.

10 Q Okay. And I'm going to hand you what's been marked
11 as Applicant's Exhibit 6 that's already in evidence. It's
12 also in the record on appeal. Is that Judge Miller's
13 ruling on your posttrial motions?

14 A That would be correct, yes.

15 Q Okay. And so you essentially obtained a final ruling
16 on that issue, again, at that point?

17 A Yes.

18 Q Okay. Just before we leave this issue, there was a
19 breakdown in the trial at some point; is that right?

20 A That's a kind way to put it.

21 Q We're going to talk about that more later. But I
22 want to show you -- I'm looking at this exhibit number,
23 Exhibit 13, Applicant's Exhibit 13 for identification for
24 this hearing.

25 A Yes.

1 Q Can you take a look at that.

2 A (Reviews exhibit) Yes. That has my signature on it
3 and Mr. Inman's signature on it. It is the agreement
4 confirming the terms of sentencing.

5 Q All right. Now, Solicitor Ariail, as I understand
6 it, never accepted that agreement.

7 A Yeah. Hold on. I'm -- yes. This is something that
8 we -- that is correct. Solicitor Ariail did not accept
9 this agreement. But the purpose behind it was to let him
10 know that we were serious about ending the litigation and
11 that this is a form that had been used in a case -- a
12 death penalty case prior to ours with Solicitor Ariail
13 where sort of the same issue had come up. And we saw this
14 as the way to get to a point where everybody would
15 understand that we were -- this was not a game, we were
16 serious, that we had Mr. Inman in a position where he
17 would consider taking life without parole, which I think
18 the reason we went through this process to have the
19 agreement signed is because it seemed contradictory to the
20 position Mr. Inman had taken throughout the litigation.
21 And what I had explained to Mr. Inman -- what our team had
22 explained to him was that the issues that had been created
23 in round one of State vs. Inman were likely to result in
24 litigation that was going to go on for years, and that ---
25 Q And here we are today.

1 A And here we are today.

2 And that if we could end the litigation, that we
3 felt, based on what little information we had had from the
4 victim's mother, at least, that ending the litigation
5 would be more of a -- be more helpful to the victims than
6 continuing on with it as we went forward.

7 Q And that agreement indicated his willingness to
8 accept a life sentence.

9 A That's correct.

10 MR. GROSE: Okay. Judge, I saw Mr. Bannister looking
11 at the clock a minute ago. My legs are getting a little
12 tired. I at least need a break, but I would propose that
13 maybe we adjourn for the day and resume tomorrow morning
14 because I still have, unfortunately, a lot of things to go
15 through. I wish I could get Jim in and out.

16 THE COURT: Let me ask you, Mr. Bannister. Is that
17 acceptable?

18 THE WITNESS: I'm happy to be back and start as early
19 as you would like tomorrow morning.

20 THE COURT: We've been talking about 10 o'clock.

21 THE WITNESS: Okay.

22 THE COURT: We have people coming from Columbia as
23 well as West Union.

24 THE WITNESS: Yes, Your Honor.

25 THE COURT: All right. The thing is, as I understand

1 it, this is sort of an imposition in the sense that --
2 now, how about are we going to have a telephone conference
3 with our applicant?

4 MS. BROWN: We can certainly arrange that, Your
5 Honor, if you want to do that first.

6 THE COURT: I was just -- I was going to -- I was
7 curious about it. Maybe Mr. Bannister would like to have
8 some time in his office in the morning. If we could do
9 the conference at, say, 10:00 and then ---

10 THE WITNESS: If I could leave my office -- if you
11 give me until 10:30 to leave my office, I could be here at
12 11:00. I've got ---

13 THE COURT: Well, that's what I'm trying to do.

14 THE WITNESS: That would be great.

15 THE COURT: Let's do this. It will probably take us
16 more than an hour. We're using a telephone conference
17 with the applicant to clarify some matters there.

18 Why don't we say not before 11:00.

19 THE WITNESS: That would be perfect.

20 THE COURT: Okay. And then I'll be honest with you,
21 I think I could use a little break myself in the morning,
22 if it's going to be anything like today. I'm sure it
23 won't.

24 All right. So we will stand adjourned to 10:00 in
25 the morning. And then, Mr. Bannister, if you could be

1 here about 11:00.

2 THE WITNESS: I'll be here at 11:00.

3 THE COURT: Very good.

4 (WHEREUPON, a recess is taken at 4:52 p.m., to be
5 reconvened on Tuesday, August 21, 2018.)
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1 Tuesday, August 21, 2018

2 (WHEREUPON, proceedings reconvened at 10:14 a.m.)

3 THE COURT: All right. We're a little bit late.

4 Is the applicant ready?

5 MR. GROSE: Yes, sir.

6 THE COURT: Is the State ready?

7 MS. BROWN: Yes, sir.

8 THE COURT: All right. Have we made the arrangements
9 necessary for the telephone conference call?

10 MS. BROWN: Yes, Your Honor. And we just checked
11 with SCDC and we're ready to go.

12 THE COURT: Is there anything -- let's see. How do
13 we want to proceed with this? This is really the first
14 time I've had this done in 48 years.

15 MS. BROWN: Well, there were two questions yesterday,
16 Your Honor. First was whether there was a waiver to be
17 present, and then a waiver ---

18 THE COURT: Well, I understand. But what's the
19 procedure you want to use? You're calling him really as a
20 State's witness; is that not right?

21 MS. BROWN: If we take his testimony over the phone,
22 Your Honor, absolutely we would call him and have him ---

23 THE COURT: Well, that's what I'm asking. And is
24 that not what we're going to be doing rather than have him
25 here?

1 MR. GROSE: I think what we were doing was we were
2 determining that he was waiving his presence here and that
3 he knows that this is going to be his time to testify.

4 THE COURT: Well, I think -- and how do you do that
5 other than by examination?

6 MR. GROSE: Well, I think you examine him, but I just
7 was concerned about the way they said "State's witness"
8 that they were going to want to question him.

9 THE COURT: Well, I think so. They're entitled to
10 question him. He's an applicant.

11 MS. BROWN: Yes, sir.

12 THE COURT: He's the one that brought the action.

13 MR. GROSE: Well, but I don't think that he has to
14 testify. And the ordinary procedure, I've had two of
15 these, and the applicant ---

16 THE COURT: Well, that's what I'm asking, Mr. Grose.
17 I confess I've been practicing since 1970. This is the
18 first time I've had a telephone conference during a trial
19 with a potential witness. I would think that a party is a
20 witness.

21 MR. GROSE: Well, they are, but the practice in South
22 Carolina is, is that in capital cases, that an applicant
23 does not testify against their will. I mean, I'm not ---

24 THE COURT: Well, of course. I mean, he can waive
25 his right to testify at any time.

1 MR. GROSE: Right. Well, and I thought that that's
2 what we were determining, not whether or not that they
3 were going to get to question him.

4 THE COURT: Well, what do you want then? Do you want
5 to go first and ask him if he wants to testify or not, and
6 then if he says "no," then we hang up?

7 MR. GROSE: I thought it was going to be the
8 Court ---

9 THE COURT: I'm not asking you what you thought.
10 Just tell me what you want to do. What do you think would
11 be the fair thing to do in a situation like this? Like
12 you say, you've done it several times. This is my first
13 time.

14 MR. GROSE: Okay. Well, and this is a little
15 different, but what I think that you should do is Your
16 Honor should question him not unlike you would question a
17 defendant whether or not they wanted to testify in a
18 criminal trial, make sure he understands his rights and
19 that he's waiving them.

20 MS. BROWN: Your Honor, on the issue of waiver, you
21 may recall that we submitted a request for specific
22 questions. We listed out the questions that we thought
23 that Your Honor may want to pose that would be essentially
24 are you refusing to testify? Do you know that there can
25 be an adverse inference?

1 THE COURT: Well, let me ask you, do you have a copy?
2 I've seen them and I've got -- but no one has ever ---

3 MS. BROWN: I do, Your Honor. May I approach?

4 THE COURT: Very good. And, of course, the
5 applicant.

6 MR. GROSE: We have them.

7 THE COURT: All right. Any objection to them before
8 she hands them to me?

9 MR. GROSE: The objections would be that they're
10 multiple and they're overbroad, particularly given the
11 fact that we've withdrawn the claims about the
12 voluntariness of the guilty plea. Some of those wouldn't
13 be relevant anymore.

14 MS. BROWN: And, Your Honor, this is his one
15 opportunity. If he wishes to testify, it would have to be
16 on anything that he wants to use, whether it's a
17 mitigation claim, involuntary plea, anything that he wants
18 to raise. One application.

19 THE COURT: Well, that's just it. I don't understand
20 if he could withdraw the voluntariness, because that's the
21 crucial issue regardless.

22 MS. BROWN: That is a crucial issue, but there are
23 also the mitigation claims in there.

24 THE COURT: I'm just talking about in any, what is
25 it, PCR where there's a plea.

1 MS. BROWN: Sure. And as you pointed out, it's
2 routinely done. Applicants routinely take the stand.
3 We've had several capital applicants take the stand.

4 THE COURT: Well, I'm just -- you're saying not to
5 ask the questions. If it's a part of his application, how
6 do you get him to knowingly, intelligently, freely and
7 voluntarily amend his petition or application to say he
8 doesn't want the -- or he admits that it was voluntary?

9 MR. GROSE: Well, based on Jim Bannister's testimony
10 yesterday ---

11 THE COURT: Well, no. It's not what a witness says
12 as to the applicant or the party's intention and knowledge
13 as to what he does as far as his constitutional rights.

14 MR. GROSE: I understand. I was just going to say on
15 the two issues in Paragraph I believe it's 11(A) regarding
16 the voluntariness of the guilty plea, we are not going to
17 be able to present ---

18 THE COURT: I don't have 11(a), I don't think.

19 MR. GROSE: --- substantial to ---

20 THE COURT: Is 11(a) on here?

21 MR. GROSE: I'm talking about the PCR application ---

22 THE COURT: Oh, I'm sorry.

23 MR. GROSE: --- not there.

24 I can just tell you, we're not going to be able to
25 meet the proof requirements for those two particular