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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

On Petition for Writ of Certiorari to the Court of Common Pleas

CAPITAL PCR ACTION

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

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

v.

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

Appellate Case No. 2020-000881

STATE'S REPLY TO INMAN'S RETURN TO STATE'S PETITION FOR WRIT OF CERTIORARI

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STATE'S REPLY ARGUMENT

In his return to the State's petition, Inman fails to address two very critical points in this appeal – (1) that there is no factual basis to maintain a claim that his plea was involuntary; and (2) that he failed to challenge the statute on direct appeal when he had a chance to do so. In short, the claim is without merit and procedurally barred. The PCR court erred in granting relief.

At its heart, this is purely a case of waiver. Jerry Buck Inman wanted to be sentenced by a judge. He personally confirmed at the plea that he was waiving his right to jury proceedings, and, in particular, to have a jury determine his sentence. Further, Inman during his PCR proceedings confirmed that was his understanding and desire at the time of the plea. The PCR court was wrong to grant relief – relief that Inman himself did not request, and did not want.

The State relies on the arguments presented in its Petition for Writ of Certiorari, but additionally offers these few brief points in reply to the Return:

I.

Inman Fails to Acknowledge that State Law Governs Acceptance of Guilty Pleas and Sentencing Procedures.

Inman's position on appeal, (contrary to his personal, and consistent, assertions of waiver), is that he could not have voluntarily waived because he could not receive jury sentencing after pleading guilty.[1] That argument fails. There is no factual basis to support the assertion. Even so, the Constitution does not give Inman the right to force a change in state

[1] Inman spends several pages delving into legal history in order to contend that jury trials and jury decisions on mercy appear to be favorable in most cases. (See Inman Return, pp. 2-5). But a plea is not a bad path; it is simply a different one.

procedure – he cannot create a statutory change through simple preference – whether his, or his counsel's, or the PCR court's.[2]

The States are at liberty to craft their own procedures. Capital procedures differ from state to state. Each procedure must be assessed individually for compliance with federal law. Our statute never takes from a capital defendant the right to choose jury proceedings. Because it does not, Inman's argument fails.

Inman waived his right to jury proceedings. This was a personal choice made under the options available to Inman. South Carolina does not have the option to plead guilty and be sentenced by a jury. The PCR court erred by finding Inman's plea was involuntary because he did not have an option to insist on jury sentencing. [3] He never had that right to waive. If a trial court would allow jury sentencing following a plea, the proceedings must be considered void and invalid:

> … section 16–3–20(B), Code of Laws of South Carolina, 1976 (Cum.Supp.1981), requires sentencing by the trial judge, not a jury, when jury trial has been waived or the defendant has entered a guilty plea, *State v. Patterson,* 278 S.C. 319, 295 S.E.2d 264 (1982). We are compelled by that holding to vacate this appellant's plea, for in this case, as in Patterson, the sentencing phase of a capital proceeding was improperly tried to a jury.

State v. Truesdale, 278 S.C. 368, 369, 296 S.E.2d 528, 528–29 (1982); *see also State v. Patterson*, 278 S.C. 319, 322, 295 S.E.2d 264, 265–66 (1982), *overruled on other grounds*

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[2] It could hardly be clearer that Inman's choice was contrary to his counsel's desire, (see State's Petition, pp. 14-16), but, constitutionally, Inman's choice prevails. *McCoy v. Louisiana,* 584 U.S.___, 138 S.Ct. 1500 (2018). (See Inman's Return, pp. 5-7, referencing strategy to preserve issue). To avoid Inman's plain statements, the argument in the Return suggests looking to other points in the record. *Id.* There is no explanation for this suggestion other than the inference that his own plain, sworn, and consistent statements do not support the relief granted.

[3] Even Inman does not suggest that either federal or state law creates a right to plead guilty. He is right to forgo that argument. *See, e.g., Santobello v. New York,* 404 U.S. 257, 262 (1971) ("no absolute right to have a guilty plea accepted."); *see also* Rule 14 (b), SCRCrimP. ("A defendant may waive his right to a jury trial only with the approval of the solicitor and the trial judge.").

by State v. Torrence, 305 S.C. 45, 406 S.E.2d 315 (1991) ("We hold appellant's guilty plea and sentence must be vacated because a significant inducement for entering the plea was the condition that the jury determine punishment, *an impermissible condition under the statutory mandate…*") (emphasis added).[4]

South Carolina is not alone. In similar fashion, Ohio, considering its own capital case procedures, found "trial courts are not at liberty to create a nonstatutory procedure to convene a jury for sentencing purposes." *State v. Belton*, 74 N.E.3d 319, 335 (Ohio 2016). In Ohio, when a plea is allowed, "a three-judge panel determines both guilt and the appropriate sentence." *Id.,* at 335.[5] Even where states allow jury sentencing after a plea, if that is waived, there is no error in allowing judge sentencing. *See Mullens v. State*, 197 So. 3d 16, 39-40 (Fla. 2016) (" If a defendant remains free to waive his or her right to a jury trial, even if such a waiver under the previous law of a different jurisdiction automatically imposed judicial factfinding and sentencing, we fail to see how Mullens, *who was entitled to present mitigating evidence to a jury as a matter of Florida law even after he pleaded guilty and validly waived that right,* can claim error. As our sister courts have recognized, accepting such an argument would encourage capital defendants to abuse the judicial process by waiving the right to jury sentencing and claiming reversible error upon a judicial sentence of death.") (emphasis in original). Inman cannot show error, as again, the record shows a valid waiver.

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[4] This Court has previously held the statute constitutional. *State v. Shaw*, 273 S.C. 194, 203, 255 S.E.2d 799, 803–04 (1979), *overruled on other grounds by State v. Torrence*, 305 S.C. 45, 406 S.E.2d 315 (1991). The Court specifically referenced the provision that sentencing is conducted by a judge if the defendant pleads guilty. *Id.,* at 200, 255 S.E.2d at 802.

[5] This procedure holds true though the *Belton* court considered a 2008 state statute. According to Ohio case law, the relevant provisions apparently remain substantially similar. *See State v. Hale*, 2019 WL 2150837 (2019) (citing *State v. Bryan*, 8th Dist. Cuyahoga No. 105774, 2018-Ohio-1190).

II.

Inman Conflates Eligibility and Selection in the Return to Arrive at an Incorrect Conclusion that the Sixth Amendment Requires a Jury Weigh the Aggravating and Mitigating Circumstances.

Inman argues that the entirety of the sentencing proceedings constitute fact-finding. (Return, p. 11 and 15-16). But he misconstrues the different facets of capital sentencing and misstates the holding of *Hurst v. Florida*, 577 U.S. ___, 136 S.Ct. 606 (2016). Inman's further reliance on Delaware's decision in *Rauf v. State*, 145 A.3d 430, 497 (Del. 2016), finding that its statute allowing judicial weighing was unconstitutional, (see Return, p. 16), is misplaced and showcases the error in logic. A reading of the various concurring opinions in *Rauf* reveals little consistency and reflects a pronounced confusion between two distinct processes in capital sentencing. Inman's argument suffers from the same failings – both fail to appreciate the difference between eligibility and weighing.

The Supreme Court has recognized that there are two separate and distinct decisions to be made in capital sentencing, "the eligibility decision and the selection decision." *Tuilaepa v. California*, 512 U.S. 967, 971 (1994). Eligibility requires a determination of an "aggravating circumstance," which may be made during either the guilt phase or sentencing phase. *Id.,* at 972. *Ring*, however, was limited to one – the determination of "an aggravating circumstance necessary for imposition of the death penalty." *Ring v. Arizona,* 536 U.S. 584, 609 (2002).

In *McKinney v. Arizona*, 589 U.S. ___, 140 S. Ct. 702 (2020), the Supreme Court rejected – cleanly and clearly – the very argument that Inman forwards by its observation that "*Ring* and *Hurst* did not require jury weighing of aggravating and mitigating circumstances." 140 S. Ct. at 708. Inman is simply wrong.

In the Delaware decision, which pre-dates the *McKinney* decision, the confusion is apparent. One of the concurrences correctly noted, in line with the former precedent and logic set out by the Supreme Court, that "*Hurst* and *Ring* do not require a jury to make the determination that the aggravating circumstances outweigh the mitigating circumstances." *Rauf*, 145 A.3d at 497 (Valihura, J., Concurring in Part). "The *Hurst* Court did not hold that the Sixth Amendment requires that a jury must make the determination as to the appropriate sentence…." *Id.*, at 497-98. The dissent, too, noted that *Hurst* was not a "weighing" decision. *Id.,* at 504 (Vaughn, J., dissenting). These observations[6] were eventually vindicated in *McKinney* when the Supreme Court (again) recognized the distinction. *Id.* ("*Ring* and *Hurst* did not require jury weighing of aggravating and mitigating circumstances"). The Court cited to Justice Scalia's concurring opinion in *Ring* that succinctly summarized: "Those States that leave the ultimate life-or-death decision to the judge may continue to do so…." 536 U.S. at 612. The difference – one is fact-based, the other is not. *See Kansas v. Carr*, 577 U.S. 108, 119 (2016) ("the aggravating-factor determination (the so-called 'eligiblity phase')" described as "a purely factual determination" while, in contrast, "[w]hether mitigation exists, … , is largely a judgment call (or perhaps a value call)"). In line with this noted difference, the Alabama Supreme Court observed:

> …the weighing process is not a factual determination. In fact, the relative "weight" of aggravating circumstances and mitigating circumstances is not susceptible to any quantum of proof.

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[6] Not only did the Delaware court not have the benefit of *McKinney*, it would appear the state court used a liberal helping of interpretation of state law and interpreted operation of their state statute in arriving at the rather splintered reasoning. It also stands in contrast to other pre-*McKinney* cases. *See, e.g., United States v. Sampson,* 486 F.3d 13, 32 (1st Cir. 2007) (collecting cases where "other courts have recognized, the requisite weighing constitutes a process, not a fact to be found" and resolving "[t]he outcome of the weighing process is not an objective truth that is susceptible to (further) proof by either party.").

Ex parte Waldrop, 859 So. 2d 1181, 1189 (Ala. 2002); *see also Ex parte Bohannon,* 222 So. 3d 525, 533 (Ala. 2016) (finding "[t]he United States Supreme Court's holding in Hurst was based on an application, not an expansion, of Apprendi [*v. New Jersey*, 530 U.S. 466 (2000)] and Ring; consequently, no reason exists to disturb our decision in Ex parte Waldrop with regard to the weighing process."). Ohio has also explained "[w]eighing is *not* a fact-finding process subject to the Sixth Amendment" as weighing does not expose a defendant to greater punishment. *Belton,* 74 N.E.3d at 337 (citing *State v. Gales,* 658 N.W.2d 604 (Neb. 2003)). Inman is wrong to argue that weighing is part of the constitutionally protected fact-finding process.

Inman is also wrong that this Court needs to revisit its prior rulings upholding the statute given that it has not yet considered *Blakely*.

III.

Inman Failed to Show that this Court's Prior Cases Should be Revisited in Light of Blakely v. Washington. Blakely was available and relied upon in the circuit court proceedings which demonstrates that the claim was not procedurally available for review in PCR. At any rate, Blakely does not Alter the Apprendi/Ring Analysis and does not change the logic and basis for the Court's prior precedent.

As a first point, *Blakely* applied the logic of *Apprendi.* The Supreme Court in *Hurst* specifically said so:

> 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.

Hurst, 577 U.S. at 97–98. But Inman bears a further burden. *Blakely*, decided in June 2004, was in existence at the time of the August 2008 and 2009 circuit court proceedings. Inman's counsel actually asserted and relied upon *Blakely* in the pre-trial appeal – a fact Inman is constrained to

admit. (See Inman Return, pp. 5-6; see also p. 13, "*Blakely* was well established law at the time" of circuit court proceedings). This direct appeal issue was barred from review in PCR under the *Simmons* Doctrine. *Drayton v. Evatt,* 312 S.C. 4, 8, 430 S.E.2d 517, 520 (1993) ("The *Simmons* rule gives effect to the Legislature's clear intent that the post-conviction relief procedure is not a substitute for appeal or a place for asserting errors for the first time which could have been reviewed on direct appeal."). At any rate, *Blakely* did not dilute a defendant's right to waive jury proceedings for necessary fact-finding:

> …nothing prevents a defendant from waiving his Apprendi rights. When a defendant pleads guilty, the State is free to seek judicial sentence enhancements so long as the defendant either stipulates to the relevant facts or consents to judicial factfinding.

Blakely v. Washington, 542 U.S. 296, 310 (2004).[7]

Again, the record is very clear that Inman admitted the relevant facts.

Judge Miller found the following statutory aggravating circumstances: "the Defendant committed the murder … while in the commission of the crimes of kidnapping, burglary in the first degree, and criminal sexual conduct in the first degree." [App. p. 4066]. Inman admitted guilt to the murder, kidnapping, burglary and criminal sexual conduct. [App. pp. 3937-39]. He admitted the facts that showed the kidnapping, burglary and criminal sexual conduct were part

[7] Inman's suggestion that *Lewis v. Wheeler*, 609 F.3d 291 (4th Cir. 2010) is not helpful because it did not consider *Blakely,* (see Inman Return, p. 13), is a misdirection. *Blakely* was not considered because the court was reviewing an allegation to determine whether a "reasonably competent attorney would have believed that the *Apprendi/Ring* cases established that a defendant who pleads guilty to a capital offense and waives his or her right to a jury trial nevertheless retains a right to a jury determination of aggravating factors," and *Blakely* "was not issued until after Lewis pleaded guilty and her sentences affirmed on appeal." *Id.,* at 309 and 310 n. 6. It is not a hint that the case would be resolved differently if *Blakely* could be considered. Indeed, the court decided that "the *Ring* decision did not clearly establish or even necessarily forecast that a capital defendant who pleads guilty and waives his right to a jury trial can insist upon a jury trial on aggravating factors." *Id.,* at 310. Further, the court noted the very language quoted above, that waiver may still be allowed. *Id.,* at 310 n. 6.

and parcel of the same line of events, *i.e.,* the murder was committed while in commission of the other crimes. [App. pp. 3948-62]. In short, Inman admitted the facts that support the aggravating circumstances. Again, there is no factual basis for an argument to the contrary. *See Mahdi v. Stirling*, No. CV 8:16-3911-TMC, 2018 WL 4566565, at *43 (D.S.C. Sept. 24, 2018) ("Given Mahdi's voluntary waiver and admission to the relevant facts, judicial sentencing did not violate Mahdi's Sixth Amendment rights. *See Blakely v. Washington*, 542 U.S. 296, 303, 310, 124 S.Ct. 2531, 159 L.Ed.2d 403 (2004) (holding that under *Apprendi*, a judge may impose any sentence authorized "on the basis of the facts ... admitted by the defendant" and noting "nothing prevents a defendant from waiving his *Apprendi* rights.").[8]

Consequently, for all these reasons, this Court's precedent upholding the statutory provision remains sound. *See State v. Allen*, 386 S.C. 93, 687 S.E.2d 21(2009); *State v. Crisp,* 362 S.C. 412, 608 S.E.2d 429 (2005); *State v. Wood,* 362 S.C. 135, 607 S.E.2d 57 (2004); *State v. Downs,* 361 S.C. 141, 604 S.E.2d 377 (2004). Further, the federal courts, considering federal law (specifically *Ring* and *Hurst*) have acknowledged with approval this Court's precedent upholding the statutory provision. *See Allen v. Stephan*, No. 0:18-CV-01544-DCC, 2020 WL 1446717, at *35 (D.S.C. Mar. 25, 2020).

Factually, Inman's argument fares no better. The record is very clear that Inman understood that he was specifically waiving his right to jury proceedings; that the judge would be making the decisions in sentencing if so waived; and, that Inman was facing either a life sentence or a death sentence. [See App. 3937, 3940-41, and 3962-64]. *See also State v. Inman*, 395 S.C.

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[8] As argued in the State's petition, the PCR court's logic based on the State constitution also fails. (See State's Petition, p. 18). The State Constitution, like the Federal Constitution, preserves the right to a jury trial, but does not force the right on any defendant. *See Ring*, 536 U.S. at 609 ("If the defendant preferred the common-sense judgment of a jury to the more tutored but perhaps less sympathetic reaction of the single judge, he was to have it.") (quoting *Duncan v. Louisiana,* 391 U.S. 145, 155–156 (1968)).

539, 556, 720 S.E.2d 31, 40 (2011) ("[A] review of the plea colloquy reveals Inman entered his plea knowingly and voluntarily as he repeatedly acknowledged that he understood the charges against him, the consequences of his plea, and the rights he was waiving by pleading guilty, *including the right to have a jury determine his guilt and sentence.*") (emphasis added). In short, the structure the PCR court found deficient was actually in alignment with state and federal law. It was also in alignment with Inman's wishes; he wished to be sentenced by the judge and he was.

In sum, no relief was due either legally or factually. The grant of relief must be reversed.

IV.

Inman Misapprehends the Simmons Doctrine. A Defendant is Barred from Raising the Same Issue Available in Prior Proceedings. The Question is Not Whether it Was Decided on the Merits but Whether the Claim was Available.

Inman essentially argues since he preserved his claim but it was not raised on appeal, he is free to raise the claim again in PCR. (Inman Return, p. 15). That is the exact opposite of what the PCR statute sets out and what the *Simmons* Doctrine reflects. The claim presented challenges the constitutionality of the statute and is a freestanding claim suited for direct appeal. Thus, under the *Simmons* Doctrine: "Errors in a petitioner's trial which *could* have been reviewed on appeal may not be asserted for the first time, *or reasserted*, in post-conviction proceedings." *Simmons v. State*, 264 S.C. 417, 423, 215 S.E.2d 883, 885 (1975) (emphasis added). It is not enough that counsel attempted to or did preserve the issue – appellate counsel did not raise the issue. Further, this Court determined that Inman "abandoned this issue as he *correctly recognizes* that this issue has been decided against his position." *Inman*, 395 S.C. at 556, 720 S.E.2d at 40 (emphasis added). Inman is wrong to suggest that he could show ineffective assistance of appellate counsel. (See Inman Return, p. 15). Consequently, this falls to the res

judicata and issue preclusion doctrine set out in the statute and in *Simmons, supra*. In particular, the claim was raised to the trial court, denied by the trial court, and not raised in the appeal. The claim is barred. *Drayton v. Evatt, supra.*

This Court has found rare exception to this basic rule. In *Fortune v. State*, 428 S.C. 545, 559, 837 S.E.2d 37, 44 (2019), this Court allowed a free-standing claim where an objection was sustained, but remedial action was not sufficient, thus, "[n]othing … was subject to direct review." But that is not the case here. This Court has already found that the issue *was* available, but not raised. Further, it is just not a meritorious issue. *Inman*, 395 S.C. at 555-56, 720 S.E.2d at 40. Even so, nothing supports Inman's position here that it may be raised later in PCR.

To the extent Inman seeks to circumvent that bar by asking this Court to find – contrary to the Supreme Court's *McKinney* decision – that *Hurst* is actually a new rule and actually does support his position, (see Inman Return, pp. 15-16), that is a hard argument to make. It is meritless. The Court has already interpreted its own opinion, and Inman points to no good reason to discard it. *See generally Mathis v. United States*, 136 S. Ct. 2243, 2254 (2016) ("a good rule of thumb for reading our decisions is that what they say and what they mean are one and the same"). Additionally, his bid to have the South Carolina Constitution apply to find *Hurst* retroactive, (see Inman Return, p. 16), does not help him, if for no other reason, because *Hurst* does not stand for the principle Inman forwards. Inman confuses eligibility and selection. (See Argument II, supra). Inman's argument on *Hurst* is not legally sound.

In sum, the PCR court erred in failing to recognize that the PCR claim alleging the state was unconstitutional was procedurally barred. It doubly erred by finding the procedurally barred claim could support relief. Again, no relief is due.

V.

Inman's Allegation of an Involuntary Plea Citing a Failure of Advice that the Plea Proceedings Would be Conducted Differently is Factually Wrong.

Inman alleges that Judge Miller rushed the proceedings and did so unfairly. (Inman Return, pp. 13-14). He is not only factually wrong in this allegation, it does not help him to show any error.

Inman raised separate issues in his PCR alleging trial counsel was ineffective in "[f]ailing to object to the forgone judicial conclusion that the sentence would be death," and also alleged that he "was denied the right to a fair trial … during the sentencing phase … because of the rush to the forgone conclusion that the sentence would be death." In both allegations, Inman relied on an isolated portion of the solicitor's discovery deposition taken during the PCR proceedings. [App. pp. 794-96]. The isolated portion of the deposition is consistent with what counsel observed and related during the PCR hearing – that "everyone" eventually became annoyed at the continued delays, included his client. Mr. Bannister identified a letter received by the defense from Inman requesting the defense spend more energy in going forward than in the distracting delay concerning additional mitigation and the issue with the solicitor. [App. pp. 1170-71]. The letter indicated that the mitigation should come to a close, and the following portion of Inman's letter was read into the record: "I have a request for you, and I respectfully ask you to do this with your most persuasive argument and put as much effort in it as I'm sure you're putting into the issue with Bob Ariail." [App. p. 1171]. [See also App. 333-36, the State's post-trial filing discussing same]. But what Inman could not show (and cannot show here) was that Judge Miller improperly and unfairly pre-determined the sentence. The record reflects the fullness of the mitigation received, and the careful deliberations by the judge. Judge Miller expressed his careful consideration of the evidence, and the importance of a fair decision:

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

[App. p. 3763, lines 16-24]. Further, this Court similarly found, in the direct appeal, that the record supported the aggravating circumstances, and found "the sentence of death was not the result of passion, prejudice, or any other arbitrary factor." *Inman*, 395 S.C. at 567, 720 S.E.2d at 46. The record here shows no evidence of any bias or improper influence. The PCR judge properly and correctly found no evidence of ineffective assistance, determining that "trial counsel diligently prepared, assiduously and aggressively represented Inman," and also properly and correctly found that the "freestanding claims are bar[r]ed by jurisdictional limitations set out in S.C. Code § 17-27-20." [App. p. 4].

Again, the allegations against Judge Miller set out in the Return are without support and without merit.

VI.

Inman Concedes that the PCR Court Could Not Properly Rely on the Victim's Bill of Rights in Making a Determination on the Voluntariness of the Plea. Inman's Further Allegation of the PCR Court's Thought Process for Considering the Victim's Bill of Rights is Unsupported and Irrelevant.

The PCR court included references to Inman's desire to plead guilty to spare the victim's family from the *guilt phase* as a type of offer to enforce the Victim's Bill of Rights. This logic is legally wrong and factually questionable as there were other considerations at issue. (See State's Petition, pp. 21-22). Even so, Inman apparently concedes the point as he attempts to otherwise explain the references as "a contrast" between Inman's expressed "compassion" for the family

compared to the "spectacle that ensued" with the Loring issue. (Inman's Return, p. 17).[9] His only record citation, though, is to the PCR court's reference to "courtroom proceeding regarding guilt" and "media attention." (Inman's Return, p. 17). Inman's argument for this purported new interpretation of what the PCR court actually meant lacks support and persuasion.

VII.

Inman Does not Contest that the Grant of Relief Was Unreasonably Expanded to Reverse Guilt and Sentencing.

The State submitted in its petition that even if error occurred that would warrant setting aside the sentencing phase, (though it maintained there was none), there is no error to warrant setting aside the guilty plea to the charges. (State's Petition, pp. 24-25). Inman does not argue any error with the State's position. At any rate, this Court has previously found the plea was knowing and voluntary. *Inman*, 395 S.C. at 556, 720 S.E.2d at 40. Indeed, PCR counsel for Inman asked only for resentencing. [App. p. 225]. The grant of relief is greater than what the record could possibly support.

VIII.

Inman's Alleged Additional Sustaining Grounds Consist of Claims that Did Not Afford Relief Independently and Do Not Provide Support as Additional Sustaining Grounds.

Inman also offers other grounds for relief, referencing his cross-petition, and asserting ineffective assistance of trial and appellate counsel. (Inman's Return, pp. 18-21). The PCR judge found no evidence of ineffective assistance:

> … the record of the proceedings, and the testimony received at the PCR hearing support and confirm that trial counsel diligently prepared, assiduously and aggressively represented Inman throughout the representation. Further, both trial

[9] Inman also notes that the issue of "[t]he solicitor's conduct" was thoroughly vetted on direct appeal. The State agrees. This also means that it cannot be re-litigated in the PCR. *Drayton, supra.*

> and appellate counsel made reasoned and careful decisions to raise and present the particular issues involved at the time.

[App. p. 4].

The record supports that decision. The State is addressing each of Inman's specific arguments in more detail in its return to the cross-petition. The State requests that the Court allow it to incorporate by reference its full return as to Inman's particular arguments for the purported "sustaining" grounds. Further, in regard to the claim of ineffective assistance of appellate counsel for failing to raise an issue related to judge-sentencing after the plea, (see Inman Return, pp. 19-20), the State has previously shown in argument above that Inman's claim is without merit. Lastly, as the other alleged "sustaining" grounds essentially only go to allegations of error at sentencing, (see Iman's Return, pp. 18-21), these grounds cannot provide additional support for vacating the guilty plea. Again, there is no support to vacate the plea.

CONCLUSION

Based on the foregoing, and for all the reasons set out in its Petition, the State asks this Court to grant its petition.

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March 29, 2021
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