

RECEIVED

Jun 07 2021

S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM PICKENS COUNTY
Court of Common Pleas
Alexander S. Macaulay, Circuit Court Judge

Appellate Case No. 2020-000881

Jerry Buck Inman a/k/a Jerry Buck Inmon,Respondent-Petitioner,

v.

State of South Carolina,Petitioner-Respondent.

**JERRY INMON'S REPLY TO THE STATE'S RETURN TO HIS
CROSS-PETITION FOR A WRIT OF *CERTIORARI***

Diana Holt
S.C. Bar Number 7079
Diana Holt, LLC
Post Office Box 6454
Columbia, South Carolina 29260-6454
Phone: 803-782-1663
Email: DianaHolt@dianaholtllc.com

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

***Attorneys for Respondent-Petitioner Jerry
Inmon***

TABLE OF CONTENTS

Table of Contents i

Table of Authorities iii

In Reply

Introduction: Threshold Matter 1

Question I

The PCR court did not “make specific findings of fact, and state expressly its conclusions of law,” as required by S.C. Code Ann. § 17-27-80, regarding Jerry Inmon’s PCR allegation that his trial counsel rendered constitutionally deficient assistance of counsel, under the Sixth Amendment to the United State Constitution and Article I, §§ 3 and 14 of the South Carolina Constitution, for failing to investigate, develop, and present mitigation evidence that was available at the time of the sentencing hearing regarding Mr. Inmon’s life history, adaptability to incarceration, and extremely rare medical condition that is treatable and controllable with a common, inexpensive medication, when that mitigation evidence explained Mr. Inmon’s very conduct at the time of the crimes, explained the State’s aggravating evidence, precluded a finding that Mr. Inmon is an “animal” who “cannot be rehabilitated,” and would have led to a sentence of life imprisonment without the possibility of parole. 2

A. No findings of fact support the State’s arguments..... 4

B. Sandbagging..... 5

Question II

The PCR court did not “make specific findings of fact, and state expressly its conclusions of law,” as required by S.C. Code Ann. § 17-27-80, regarding Jerry Inmon’s PCR allegation that his appellate counsel rendered constitutionally deficient assistance of counsel, under the Sixth Amendment to the United State Constitution and Article I, §§ 3 and 14 of the South Carolina Constitution, for not appealing Mr. Inmon’s motion to continue his sentencing hearing so that he would have sufficient time to obtain another mitigation investigator after Dr. Loring refused to participate in Mr. Inmon’s case because the prosecutor intimidated her by threatening to arrest her if she testified..... 7

Question III

The PCR court did not “make specific findings of fact, and state expressly its conclusions of law,” as required by S.C. Code Ann. § 17-27-80, regarding Jerry Inmon’s PCR allegation that his appellate counsel rendered constitutionally deficient assistance of counsel, under the Sixth Amendment to the United State Constitution and Article I, §§ 3 and 14 of the South Carolina Constitution, for not appealing the trial court’s order denying his request to plead guilty and have his sentence determined by the jury when that right is protected by the Fifth, Sixth, Eighth, and Fourteenth Amendments to the United States Constitution after trial counsel preserved that issue for appellate review.....10

Question IV

The PCR court did not “make specific findings of fact, and state expressly its conclusions of law,” as required by S.C. Code Ann. § 17-27-80, regarding Jerry Inmon’s PCR allegation that his trial counsel rendered constitutionally deficient assistance of counsel, under the Sixth Amendment to the United States Constitution and Article I, §§ 3 and 14 of the South Carolina Constitution, for advising him to plead guilty and appeal the trial judge denying his request for jury sentencing when existing state law did not allow jury sentencing following a guilty plea in a capital case.12

Question V

The PCR court did not “make specific findings of fact, and state expressly its conclusions of law,” as required by S.C. Code Ann. § 17-27-80, regarding Jerry Inmon’s PCR allegation that his trial counsel rendered constitutionally deficient assistance of counsel, under the Sixth Amendment to the United States Constitution and Article I, §§ 3 and 14 of the South Carolina Constitution, for failing to object to the judicial rush to judgment, including the foregone conclusion that the sentence would be death.....13

Conclusion15

Certificate of Service16

TABLE OF AUTHORITIES

Cases

<i>Blakely v. Washington</i> , 542 U.S. 296 (2004).....	11
<i>Cothran v. Brown</i> , 357 S.C. 210, 592 S.E.2d 629 (2004)	14
<i>Fishburne v. State</i> , 427 S.C. 505, 832 S.E.2d 584 (2019).....	1
<i>Marlar v. State</i> , 375 S.C. 407, 653 S.E.2d 266 (2007).....	2
<i>McMaster v. Dewitt</i> , 411 S.C. 138, 767 S.E.2d 451 (Ct. App. 2014).....	14
<i>People v. Montour</i> , 157 P.3d 489 (Colo. 2007).....	12
<i>Simmons v. State</i> , 416 S.C. 584, 788 S.E.2d 220 (2016)	2, 9, 11, 13, 14
<i>State v. Allen</i> , 386 S.C. 93, 687 S.E.2d 21 (2009).....	11
<i>State v. Beaty</i> , 423 S.C. 26, 813 S.E.2d 502 (2018)	3
<i>State v. Crisp</i> , 362 S.C. 412, 608 S.E.2d 429 (2005).....	11
<i>State v. Downs</i> , 361 S.C. 141, 604 S.E.2d 377 (2004)	11
<i>State v. Inman</i> , 395 S.C. 539, 720 S.E.2d 31 (2011)	7, 13
<i>State v. Louviere</i> , 833 So. 2d 885 (La. 2002)	12
<i>State v. Lytchfield</i> , 230 S.C. 405, 95 S.E.2d 857 (1957).....	8
<i>State v. McMillian</i> , 349 S.C. 17, 561 S.E.2d 602 (2002).....	9
<i>State v. Page</i> , 2006 S.D. 2, 709 N.W.2d 739 (2006)	12
<i>State v. Piper</i> , 2006 S.D. 1, 709 N.W.2d 783 (2006)	12
<i>State v. Pulley</i> , 423 S.C. 371, 815 S.E.2d 461 (2018)	14
<i>State v. Tanner</i> , 299 S.C. 459, 385 S.E.2d 832 (1989).....	9
<i>State v. Torrence</i> , 305 S.C. 45, 406 S.E.2d 315 (1991).....	3
<i>State v. Williams</i> , 321 S.C. 455, 469 S.E.2d 49 (1996)	8, 9

Strickland v. Washington, 466 U.S. 668 (1984) 4

Statutes

S.C. Code Ann. § 16-3-20(B) 11

S.C. Code Ann. § 17-27-80..... 1, 2, 3, 4, 5, 8, 10, 11, 12, 13, 14

Constitutional

S. C. Const. Art. I, § 3..... 2, 8, 10, 12, 13

S. C. Const. Art. I, § 14..... 2, 8, 10, 12, 13

U.S. Const. Am. VI..... 2, 8, 10, 12, 13

Rules

Rule 59(e), SCRPC 2

IN REPLY

Jerry Inmon replies to the State's return to his cross-petition for a writ of *certiorari* (hereinafter "Cross-Petition" and "Return").

Introduction: Threshold Matter

Before addressing the State's response to each issue presented in the Cross-Petition, Mr. Inmon must address an error of law presented throughout the State's Return. As set forth in Mr. Inmon's Cross-Petition and this reply, the PCR court did not "make specific findings of fact, and state expressly its conclusions of law" relating to each issue presented in the Cross-Petition, as required by S.C. Code Ann. § 17-27-80. The State, however, contends:

The PCR court's order complies with the directive in *Fishburne v. State*, 427 S.C. 505, 832 S.E.2d 584 (2019). Although the order notes the denied claims "are not addressed," the court meant the claims would not be addressed in-depth fashion like its handling of the constitutional challenge to § 16-23-20. (App. 4). In the same paragraph, the court addresses the claims. Although the order addresses the remaining issues summarily, it complies with *Fishburne* because the court made findings of fact and conclusions of law on each issue. *Fishburne*, 427 S.C. at 512, 587. Unlike *Fishburne*, the PCR court did not overlook any claims.

Return, at 12; *see also, e.g.* Return, at 13, 16, 19, 20.

The State's argument lacks factual and legal support. The order of dismissal expressly states Mr. Inmon's "**REMAINING PCR CLAIMS** are not addressed as the further proceedings upon remand shall be consistent with the proper conduct of the trial had pursuant to this judgment of the Court." A. 3-4 (emphasis original). The next three sentences of the order generally deny the remaining PCR claims without making any specific findings of fact or express conclusions of law. *Simmons v. State* held, "The PCR court's general denial of all claims not specifically addressed in the PCR court's order does

not constitute a sufficient ruling on any issues since it does not set forth specific findings of fact and conclusions of law.” 416 S.C. 584, 592, 788 S.E.2d 220, 225 (2016) (citing *Marlar v. State*, 375 S.C. 407, 409, 653 S.E.2d 266, 266 (2007) *abrogated by Fishburne*, 427 S.C. at 515-16, 832 S.E.2d at 589 (“If this were a generic civil action, we would likely be quick to accept the State’s preservation argument. However, because the United States Constitution’s Sixth Amendment guarantee to a defendant’s right to effective assistance of counsel is engrained in PCR cases, we cannot continue to permit a party’s procedural shortcoming—such as the failure to file a Rule 59(e) motion—to prevent this Court from remanding claims of ineffective assistance of counsel when the PCR court’s order does not comply with section 17-27-80.”)).¹

As discussed throughout the Cross-Petition, Mr. Inmon filed a Rule 59(e), SCRCP motion that expressly asked the PCR court to reconsider its order, make findings of fact and conclusions of law on all issues, and issue an order complying with section 17-27-80. For the reasons discussed below, this Court should decline the State’s invitation to depart with the requirements of section 17-27-80 and *Fishburne*.

Question I

The PCR court did not “make specific findings of fact, and state expressly its conclusions of law,” as required by S.C. Code Ann. § 17-27-80, regarding Jerry Inmon’s PCR allegation that his trial counsel rendered constitutionally deficient assistance of counsel, under the Sixth Amendment to the United State Constitution and Article I, §§ 3 and 14 of the South Carolina Constitution, for failing to investigate, develop, and present mitigation evidence that was available at the time of the sentencing hearing regarding Mr. Inmon’s life history, adaptability to incarceration, and

¹ In fact, in *Simmons*, the State argued “that Simmons’s claims [were] procedurally barred because they were not raised to the PCR court in a motion to reconsider. 416 S.C. at 591, 788 S.E.2d at 224. “[A]lthough the State [was] technically correct,” this Court held “dismissing the writ of certiorari would be fundamentally contrary to the interests of justice” and followed its “jurisprudence [that] permits a remand under such extraordinary circumstances.” *Id.* Mr. Inmon, of course, filed a Rule 59(e), SCRCP motion.

extremely rare medical condition that is treatable and controllable with a common, inexpensive medication, when that very mitigation evidence explained Mr. Inmon’s conduct at the time of the crimes, explained the State’s aggravating evidence, precluded a finding that Mr. Inmon is an “animal” who “cannot be rehabilitated,” and would have led to a sentence of life imprisonment without the possibility of parole.

Mr. Inmon seeks remand regarding ineffective assistance of trial counsel for not investigating and presenting mitigation because the PCR court did not make specific findings of fact and express conclusions of law required by section 17-27-80 and *Fishburne*. The State argues, “Trial counsel’s strategic decision not to develop and present additional mitigation evidence was reasonable because it would have opened the door to additional aggravating evidence, weakened Inman’s claim of prosecutorial misconduct,² and was largely cumulative to other expert testimony.” Return, at 7 (footnote added). The State’s attempt to recast this question in this manner has two fatal flaws: (1) the PCR court did not make any findings of fact that support the State’s arguments and (2) accepting the State’s arguments implicitly requires this Court to believe that trial counsel intentionally “sandbagged”³ the presentation of Mr. Inmon’s mitigation evidence in a manner that allowed the sentencing judge to find that Mr. Inmon is an “animal” who “cannot be rehabilitated.”

² See, e.g., A. 7 (issue statement arguing additional mitigation evidence would have “weakened Inman’s claim of prosecutorial misconduct”); 10 (“When the sentencing proceedings reconvened, trial counsel strategically chose not to call Dr. Loring as a witness. To do so would potentially jeopardize the prosecutorial misconduct issue on appeal.”); 11 (“The same rationale applies to trial counsel’s attempts to find a replacement for Dr. Loring. Any testimony from the replacement would weaken the argument that prejudice arose from the solicitor’s error.”); and 11 (“To the contrary, the additional information . . . would have weakened his ability to pursue the claim for prosecutorial misconduct.”). The State, however, never addressed Mr. Inmon’s PCR claim for “failing to continue to prepare with Dr. Loring in the event the trial judge reconvened the trial, as in fact occurred.” A. 793. Mr. Inmon was prejudiced when the trial judge called Dr. Loring as a court’s witness without her being prepared to present all of the mitigation evidence known to her.

³ “When used as a transitive verb, Merriam–Webster defines ‘sandbag’ as ‘to conceal or misrepresent one’s true position, potential, or intent especially in order to gain an

A. No findings of fact support the State’s arguments.

As set forth in Mr. Inmon’s Cross-Petition and this reply, the PCR court did not “make specific findings of fact, and state expressly its conclusions of law” relating to each issue presented in the Cross-Petition, as required by S.C. Code Ann. § 17-27-80, *Fishburne*, and *Simmons*. For the reasons discussed above, this Court must reject the State’s argument that the order of dismissal’s general denial of all remaining PCR claims complies with section 17-27-80 and *Fishburne*. In fact, the order of dismissal contains only one sentence purporting to generally deny the ineffective assistance of trial counsel claims: “Moreover, the record of the proceedings, and the testimony received at the PCR hearing support and confirm that trial counsel diligently prepared, assiduously and aggressively represented Inman throughout the representation.” A. 4. Not only does this conclusory statement not comply with *Fishburne*, it also does not preclude specific findings of fact and express conclusions of law finding constitutional ineffective assistance of counsel, pursuant to *Strickland*,⁴ once the PCR court considers the merits of the claim.

To support its argument that trial counsel reasonably limited their mitigation investigation, it relies on Mr. Inmon’s telling Dr. Donna Maddox and Dr. Gregg Dwyer about other rapes that were not known to the prosecution. Although the State argues the sentencing authority would consider the previously unknown rapes as additional aggravation, the order of dismissal does not contain this finding of fact. While this argument might be a

advantage over.” *State v. Beaty*, 423 S.C. 26, 36, 813 S.E.2d 502, 507 (2018) (citing Merriam–Webster Dictionary, <http://www.merriam-webster.com/dictionary/sandbag>). This Court cited the potential of “a defense attorney” employing a “sandbagging tactic” as justification for abolishing *in favorem vitae* review in capital cases. *State v. Torrence*, 305 S.C. 45, 65, 406 S.E.2d 315, 326 (1991).

⁴ *Strickland v. Washington*, 466 U.S. 668 (1984).

tempting invitation to depart with the requirements of section 17-27-80 and *Fishburne*, it overlooks that possibility the PCR court might find that Mr. Inmon providing Dr. Maddox and Dr. Dwyer a complete psycho-sexual history enabled them to diagnosis with Biastophilia. It overlooks the possibility a PCR court might find that a diagnosis of Biastophilia is a “game changer” because it can be treated and controlled with a common medication. It overlooks the possibility that the PCR court might find the ability to treat Mr. Inmon’s medical disorder precludes a finding that Mr. Inmon is an “animal” who “cannot be rehabilitated,” and would have led to a sentence of life imprisonment without the possibility of parole.

This Court must reject the argument that this evidence was merely cumulative because, as seen above, the PCR court could conclude this evidence, not known to the trial judge, is sufficiently mitigating to change the outcome of the sentencing hearing.

B. Sandbagging.

Accepting the State’s argument, that trial counsel made a strategic decision not to investigate, develop, present mitigation evidence, in a manner that allowed the sentencing judge to find that Mr. Inmon is an “animal” who “cannot be rehabilitated,” in order to avoid weakening the claim of prosecutorial misconduct, requires this Court to conclude trial counsel intentionally abandoned their ethical obligation to conduct an independent mitigation investigation and zealously represent Mr. Inmon during his sentencing hearing. The State’s Return is not the first time the prosecution arm of the State accused trial counsel of sandbagging the sentencing hearing. Mr. Inmon’s Second Amended PCR Application (Corrected) alleges:

11(b)(7) In the alternative to 11(b)(1), (2), (3), (4), (5) and (6), [trial counsel] intentionally [did] not present 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 no strategic justification exists.

A. 794. Former Solicitor Ariail, in fact, testified:

Q. I do want to go back to one thing. In the beginning you called — you described this case as a calamity. What did you mean?

A. Have you not read the record? The record is replete with, you know, what I call totally out-of-the-ordinary death penalty stuff. From Bannister, to begin with, you know, and give — I give Jim lots of credit. He was very legally resourceful.

But the case proceeded from a guilty plea to still getting a jury trial, which was a huge issue. Then we proceeded to a death penalty before a judge, which was totally sort of a new thing for me, although I had done it one time before with Judge Kittredge. 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?

These things I had never dealt with before. So we were — we were sort of all going along. Then we got prosecutorial misconduct. Then we got Judge Loeb. We got Desa Ballard up there. We got John Mauldin opining on all kinds of subjects that — Troy Tessier, all of these people going on. And poor Dr. Loring is sitting there with all of this kind of floating around, doing her — doing her thing.

That's why I say it's a calamity.

A. 1927-28.

When it is just former Solicitor Ariail claiming a “staged intimidation of a witness who was never intimidated” and “sabotage from the defense of not bringing this woman back and creating a huge appellate or a PCR issue,” it is tempting to dismiss these allegations as an ill-conceived legal strategy to deflect scrutiny from his own prosecutorial misconduct, found by the trial judge and affirmed by this Court. *State v. Inman*, 395 S.C. 539, 564, 720 S.E.2d 31, 45 (2011) (“Based on the foregoing, we find there is evidence to support the judge’s finding of prosecutorial misconduct as the Solicitor’s actions were done for no other purpose than to intimidate Dr. Loring.”). But, now that the Attorney General’s Office has adopted former Solicitor Ariail’s allegations of staged witness intimidation and defense counsel sabotage, as a reason to deny Mr. Inmon post-conviction relief, this Court has new reason to be concerned about the integrity of the Mr. Inmon’s sentencing hearing.

The dark cloud of former Solicitor Ariail’s intimidation of Dr. Loring—that has lingered over Mr. Inmon’s death sentence since September 2008—looms larger and more ominous now that the Attorney General’s Office asks this Court to conclude defense counsel made a reasonable decision to sandbag Mr. Inmon’s mitigation case by staging the intimidation of Dr. Loring and sabotaging the sentencing hearing by not calling her as a witness. At a minimum, the sandbagging allegations require remand for the PCR court to make findings of fact and conclusions of law regarding these allegations. The unique facts and circumstances of this case also militate in favor of this Court denying the cross-petitions for writs of *certiorari* and remanding this case to the Court of General Sessions for a fresh start.

Question II

The PCR court did not “make specific findings of fact, and state expressly its conclusions of law,” as required by S.C. Code Ann. § 17-27-80, regarding Jerry

Inmon’s PCR allegation that his appellate counsel rendered constitutionally deficient assistance of counsel, under the Sixth Amendment to the United State Constitution and Article I, §§ 3 and 14 of the South Carolina Constitution, for not appealing Mr. Inmon’s motion to continue his sentencing hearing so that he would have sufficient time to obtain another mitigation investigator after Dr. Loring refused to participate in Mr. Inmon’s case because the prosecutor intimidated her by threatening to arrest her if she testified.

Mr. Inmon seeks remand on this ineffective assistance of appellate counsel issue because the PCR court did not make specific findings of fact and express conclusions of law required by section 17-27-80 and *Fishburne*. The State argues Mr. Inmon “failed to establish ineffective assistance of counsel on either of these claims, which the PCR court correctly found” because it “made sufficient findings of fact and conclusions of law on each issue” in compliance with *Fishburne*. Return, at 13. As set forth in Mr. Inmon’s Cross-Petition and the introduction to this reply, the PCR court did not “make specific findings of fact, and state expressly its conclusions of law” relating to this ineffective assistance of appellate counsel issue presented in the Cross-Petition, as required by S.C. Code Ann. § 17-27-80, *Fishburne*, and *Simmons*.

Although the State correctly notes abuse of discretion is the standard of review when the trial court denies a motion to continue, it relies on a 1996 case quoting a 1957 case and argues “overturning a conviction on this ground is ‘about as rare as the proverbial hens’ teeth.’” Return, at 13 (citing *State v. Williams*, 321 S.C. 455, 459, 469 S.E.2d 49, 51 (1996) (quoting *State v. Lytchfield*, 230 S.C. 405, 409, 95 S.E.2d 857, 859 (1957))). In doing so, the State does not address the cases, decided since *Williams* and *Lytchfield*, cited in Mr. Inmon’s Cross-Petition holding otherwise: *State v. McMillian*, 349 S.C. 17, 561 S.E.2d 602 (2002); *State v. Tanner*, 299 S.C. 459, 385 S.E.2d 832 (1989).

On the merits, the State argues “the trial judge had already given [trial] counsel seven months to obtain a replacement witness” but failed to stay in touch with the trial court about the progress of this witness’ efforts other than obtaining the necessary funding. The State also argues this claim lacks merit because the trial judge called Dr. Loring as a court’s witness, trial counsel “had the opportunity to elicit additional mitigation from Dr. Loring, but chose not to do so, and the trial court believed trial counsel was “more interested in pursuing the misconduct issue than in presenting a full defense”. Return, at 13-14.⁵ The State’s arguments are flawed for the three reasons discussed below.

First, the PCR court did not make any specific findings of fact to support the State’s factual argument. As already discussed, “The PCR court’s general denial of all claims not specifically addressed in the PCR court’s order does not constitute a sufficient ruling on any issues since it does not set forth specific findings of fact and conclusions of law.” *Simmons*, 416 S.C. at 592, 788 S.E.2d at 225.

Second, the State’s argument—trial counsel neglected to stay engaged with Dr. Loring, failed to secure and prepare a replacement expert witness, breached their obligation to keep the trial court informed of their process, and chose to present misconduct over “presenting a full defense”—militates in favor granting Mr. Inmon post-conviction relief for the claims presented in Question I of the Cross-Petition. *See also* PCR Application ¶¶ 10(b) and 11(b)(1), (2), (3), (4), and (5), A. 790, 793-94. The trial judge gave trial counsel the option of continuing with Dr. Loring or finding a replacement witness. Trial counsel did not fulfill either option. It was foreseeable the trial judge would call Dr. Loring as a

⁵ The State also argues, the parties agreed “agreed to resume sentencing on April 20, 2009.” Return, at 14. Not only did the PCR court not make a finding of fact supporting this argument, the record supports the conclusion trial counsel never agreed to this date.

court's witness. Trial counsel, therefore, rendered constitutional ineffective assistance of counsel when they were not prepared to present mitigation evidence though Dr. Loring or a replacement expert.

Third, accepting the State's argument that trial counsel chose to present misconduct over "presenting a full defense," requires this Court to conclude trial counsel sandbagged the presentation mitigation and were not candid with the trial court when they outlined the reasons for moving for a continuance. As discussed in Question I above, accepting the State's "sandbagging" argument not only contradicts the law of the case regarding prosecutorial misconduct, but also provides new reason for this Court to be concerned about the integrity of the Mr. Inmon's sentencing hearing.

If the State is correct that the continuance motion "had little, if any, merit" (Return, at 13), then the need to grant post-conviction relief for the claims contained in Question I becomes apparent. At a minimum, remand is necessary for the PCR court to make findings of fact and conclusions of law regarding these allegations. The unique facts and circumstances of this case militate in favor of this Court denying the cross-petitions for writs of *certiorari* and remanding this case to the Court of General Sessions for a fresh start.

Question III

The PCR court did not "make specific findings of fact, and state expressly its conclusions of law," as required by S.C. Code Ann. § 17-27-80, regarding Jerry Inmon's PCR allegation that his appellate counsel rendered constitutionally deficient assistance of counsel, under the Sixth Amendment to the United State Constitution and Article I, §§ 3 and 14 of the South Carolina Constitution, for not appealing the trial court's order denying his request to plead guilty and have his sentence determined by the jury when that right is protected by the Fifth, Sixth, Eighth, and Fourteenth Amendments to the United States Constitution after trial counsel preserved that issue for appellate review.

Mr. Inmon seeks remand on this ineffective assistance of appellate counsel issue because the PCR court did not make specific findings of fact and express conclusions of law required by section 17-27-80 and *Fishburne*. Although acknowledging appellate counsel was not familiar with the “the holding in *Blakely v. Washington*⁶ or various cases from other jurisdictions,” the State attributes this unfamiliarity with the law to appellate counsel’s retirement. Return, at 15 (footnote original but renumbered). Yet, the State argues, “But appellate counsel could recall that the constitutional issue was settled in the eyes of this Court.” *Id.* Once again, the State’s argument is flawed because the PCR court did not make any specific findings of fact to support the State’s factual argument. As already discussed, “The PCR court’s general denial of all claims not specifically addressed in the PCR court’s order does not constitute a sufficient ruling on any issues since it does not set forth specific findings of fact and conclusions of law.” *Simmons*, 416 S.C. at 592, 788 S.E.2d at 225.

The State continues to rely on *dicta* in Mr. Inmon’s direct appeal and the holdings in *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), and *State v. Downs*, 361 S.C. 141, 604 S.E.2d 377 (2004). None of these cases considered *Blakely* and the other state court cases raised by trial counsel in Mr. Inmon’s constitutional challenge of S.C. Code Ann. § 16-3-20(B), which mandates the capital “sentencing procedure must be conducted before the judge.”⁷ At a minimum,

⁶ 542 U.S. 296 (2004).

⁷ *People v. Montour*, 157 P.3d 489, 497 (Colo. 2007); *State v. Page*, 2006 S.D. 2, ¶ 71, 709 N.W.2d 739, 762 (2006); *State v. Piper*, 2006 S.D. 1, ¶ 48, 709 N.W.2d 783, 803 (2006); *State v. Louviere*, 833 So. 2d 885, 895 (La. 2002). See also Cross-Cert Petition, at 34-35.

remand is necessary for the PCR court to make findings of fact and conclusions of law regarding these allegations. The unique facts and circumstances of this case militate in favor of this Court denying the cross-petitions for a writ of certiorari and remanding this case to the Court of General Sessions for a fresh start.

Question IV

The PCR court did not “make specific findings of fact, and state expressly its conclusions of law,” as required by S.C. Code Ann. § 17-27-80, regarding Jerry Inmon’s PCR allegation that his trial counsel rendered constitutionally deficient assistance of counsel, under the Sixth Amendment to the United States Constitution and Article I, §§ 3 and 14 of the South Carolina Constitution, for advising him to plead guilty and appeal the trial judge denying his request for jury sentencing when existing state law did not allow jury sentencing following a guilty plea in a capital case.

Mr. Inmon seeks remand on this ineffective assistance of trial counsel issue because the PCR court did not make specific findings of fact and express conclusions of law required by section 17-27-80 and *Fishburne*. The State, once again, argues the PCR court “made sufficient findings of fact and conclusions of law on each issue” in compliance with *Fishburne*. Return, at 16. As set forth in Mr. Inmon’s Cross-Petition and the introduction to this reply, the PCR court did not “make specific findings of fact, and state expressly its conclusions of law” relating to this ineffective assistance of appellate counsel issue presented in the Cross-Petition, as required by S.C. Code Ann. § 17-27-80, *Fishburne*, and *Simmons*.

On the merits, the State argues, “Inman offered no evidence to support the claim that his guilty plea arose from deficient legal advice or was conditioned upon his ability to challenge § 16-23-20.” Return, at 16-17. The State’s position is flawed for two reasons. First, the PCR court did not make any specific findings of fact to support the State’s factual argument. As already discussed, “The PCR court’s general denial of all claims not

specifically addressed in the PCR court’s order does not constitute a sufficient ruling on any issues since it does not set forth specific findings of fact and conclusions of law.” *Simmons*, 416 S.C. at 592, 788 S.E.2d at 225. Second, the State bases its argument on a non-existing requirement that the guilty plea be conditioned on a challenge to section 16-23-20. As this Court recognized in Mr. Inmon’s direct appeal, challenges to a sentence are independent from the guilty plea. *Inman*, 395 S.C. at 555, 720 S.E.2d at 40 (“Inman was permitted to appeal this secondary sentencing issue”). At a minimum, remand is necessary for the PCR court to make findings of fact and conclusions of law regarding these allegations. The unique facts and circumstances of this case militate in favor of this Court denying the cross-petitions for writs of *certiorari* and remanding this case to the Court of General Sessions for a fresh start.

Question V

The PCR court did not “make specific findings of fact, and state expressly its conclusions of law,” as required by S.C. Code Ann. § 17-27-80, regarding Jerry Inmon’s PCR allegation that his trial counsel rendered constitutionally deficient assistance of counsel, under the Sixth Amendment to the United States Constitution and Article I, §§ 3 and 14 of the South Carolina Constitution, for failing to object to the judicial rush to judgment, including the foregone conclusion that the sentence would be death.

Although the State acknowledges that former Solicitor Ariail’s deposition provides factual support for this claim, it argues the PCR court “made sufficient findings of fact and conclusions of law on each issue” in compliance with *Fishburne*. Return, at 18-19. As set forth in Mr. Inmon’s Cross-Petition and the introduction to this reply, the PCR court did not “make specific findings of fact, and state expressly its conclusions of law” relating to this ineffective assistance of appellate counsel issue presented in the Cross-Petition, as required by S.C. Code Ann. § 17-27-80, *Fishburne*, and *Simmons*.

On the merits, the State argues that former Solicitor Ariail's subsequent, contradictory testimony is sufficient for this Court to reject this claim and the trial court had independent grounds to deny Mr. Inmon's motion to continue. Return, at 19. The State's argument is flawed because the PCR court did not make any specific findings of fact to support the State's factual argument. As already discussed, "The PCR court's general denial of all claims not specifically addressed in the PCR court's order does not constitute a sufficient ruling on any issues since it does not set forth specific findings of fact and conclusions of law." *Simmons*, 416 S.C. at 592, 788 S.E.2d at 225. Proper consideration of Solicitor Ariail's testimony would include giving priority to the former Solicitor's initial testimony over the State's subsequent questioning in an effort to save its position on this issue. *See, e.g., State v. Pulley*, 423 S.C. 371, 381, 815 S.E.2d 461, 466 (2018) (James, J., concurring) (courts should inquire into "subsequent contradictory account" by a witness) (citing *Cothran v. Brown*, 357 S.C. 210, 218, 592 S.E.2d 629, 633 (2004) (providing "a court may disregard a subsequent affidavit as a 'sham,' that is, as not creating an issue of fact ..., by submitting the subsequent affidavit to contradict that party's own prior sworn statement") and *McMaster v. Dewitt*, 411 S.C. 138, 144, 767 S.E.2d 451, 454 (Ct. App. 2014) (holding a trial court must exercise discretion to determine whether to accept a "sham" affidavit)). At a minimum, remand is necessary for the PCR court to make findings of fact and conclusions of law regarding these allegations. The unique facts and circumstances of this case militate in favor of this Court denying the cross-petitions for writs of *certiorari* and remanding this case to the Court of General Sessions for a fresh start.

CONCLUSION

Based on the unique facts and circumstances of this case, this Court should deny the cross-petitions for a writ of *certiorari* and remand this case to the Court of General Sessions for a fresh start. The evidence presented during the evidentiary hearing revealed the full extent of the trauma suffered by Dr. Marti Loring because of the former Solicitor's misconduct and established resulting prejudice. The Attorney General's adoption of the former Solicitor's accusation that trial counsel sandbagged presenting mitigation evidence during the sentencing hearing provides new reason for this Court to be concerned about the integrity of the Mr. Inmon's capital trial and sentencing hearing. A fresh start is the only way to instill public confidence in the outcome of this case.

In the alternative, if this Court grants the State's position, this this Court also should grant this petition, allow additional briefing, consider the issue, and remand this case to the court below to make findings of fact and conclusions of law regarding all of the issues pled in the PCR application.

Respectfully Submitted,

By s/E. Charles Grose, Jr.

E. Charles Grose, Jr.

S.C. Bar Number 66063

The Grose Law Firm, LLC

404 Main Street

Greenwood, SC 29646

(864) 538-4466

Email: charles@groselawfirm.com

By s/Diana Holt

Diana Holt

S.C. Bar Number 7079

Diana Holt, LLC

Post Office Box 6454

Columbia, South Carolina 29260-6454

Phone: 803-782-1663

Email: DianaHolt@dianaholtllc.com

June 7, 2021

Attorneys for Jerry Inmon