Appendix A to
Respondent's Brief in Opposition
Order Denying Post-Conviction Relief

IN THE CIRCUIT COURT OF HARRISON COUNTY, MISSISSIPPI
FIRST JUDICIAL DISTRICT

ALAN DALE WALKER	**PETITIONER**
vs	**Cause No. 25,945**
STATE OF MISSISSIPPI	**RESPONDENT**

CORRECTED ORDER AND REASONS ON PETITIONER'S MOTION TO VACATE SENTENCE[i]

"Today this [circuit] court is [again] confronted with the senseless slaying of Konya Rebecca Edwards, a young teenager who fought back against her assailants and at other times cooperated in a vain attempt to avoid being killed, to which the jury responded by sentencing Alan Dale Walker to death."[1] The Court, having carefully considered Walker's Petition to Vacate Sentence, the State of Mississippi's response, together with all other pleadings, exhibits, affidavits, live testimony, trial records and exhibits, and applicable case law finds that the motion should be denied, all as outlined below:

I. PROCEDURAL HISTORY

Walker's conviction and death sentence for the murder of Konya Edwards were affirmed on direct appeal. *Walker v. State*, 671 So. 2d 581 (Miss. 1995). Represented by the Mississippi Office of Capital Post-Conviction Counsel ("MOCPCC"), Walker unsuccessfully sought post-conviction relief. *Walker v. State,* 863 So. 2d 1 (Miss. 2004).

Walker filed a petition for a writ of habeas corpus in federal court, raising a challenge to the effectiveness of trial counsel's penalty phase performance. Although recognizing that the issue

[1] Adapted from Justice Smith's opening of the 8-1 affirmance of petitioner's conviction and death sentence. *Walker v. State*, 671 So.2d 581, 587 (Miss. 1995).

had not been presented to the state courts, Walker asked the District Court to excuse his failure to exhaust his state court remedy due to deficiencies in post-conviction representation. Pet. Reply to Resp. Answer (Doc 51), *Walker v. Epps,* No. 1:97-cv-29-KS, at 23-83 (S.D. Miss). In turn, the State asserted that there was no right to effective post-conviction counsel and urged the District Court to find the ineffectiveness claim barred. *See* Resp. Mem. of Authorities (Doc 99), *Walker v. Epps,* No. 1:97-cv-29-KS, at 127-144 (S.D. Miss.); *see also* Resp. Answer (Doc 46) at 3, 17-18.

Later, Walker renewed his request with the federal court to stay habeas proceedings and also requested leave to file a successive petition for post-conviction relief so that he may pursue a claim of ineffective assistance of post-conviction counsel. After the federal court granted the stay, Walker returned to state court with a successive petition for post-conviction relief challenging trial counsel's performance at the penalty phase of his trial and arguing that the ineffective assistance of prior post-conviction counsel provided cause to overcome the successive petition bar. The Mississippi Supreme Court agreed that prior post-conviction counsel performed in a deficient manner and granted leave for Petitioner to file his petition with the Circuit Court. *Walker v. State*, 131 So. 3d 562 (Miss. 2013). On December 12, 2013, the Supreme Court ordered this Court to:

> conduct a hearing to determine whether Alan Dale Walker's trial counsel was ineffective in searching for and presenting mitigation evidence during the penalty phase of his trial, and whether Walker suffered prejudice from such deficient performance, if any, "sufficient to undermine the confidence in the outcome actually reached at sentencing."

Id. at 564 (quoting *Doss v. State,* 19 So. 3d 690, 708 (Miss. 2009)).

Petitioner filed his Motion to Vacate Sentence on April 29, 2014. After preliminary motion practice and additional psychological testing by petitioner's expert, this Court held an evidentiary hearing over two separate days. On February 22, 2016, the Court heard from Petitioner's lay witnesses, including Walker's siblings, Amanda Fredrick, Leon Fredrick, and Terry Walker; Alan

Walker's parents, Anita Fredrick and Ronald Walker; Alan Walker's maternal aunt, Nellie Richards; Anita Fredrick's friend and supervisor, Vera Faye Breland.[2] At the December 1, 2016 hearing, the Court heard testimony from Alan Walker's trial counsel, Earl Stegall and experts Matthew Mendel, Ph.D. and Robert Shaffer, Ph.D. At the conclusion of the hearing, the Court set a deadline for post-hearing briefs which was extended at the request and agreement of the parties. After briefing, and while the Court undertook to decide the merits of the remand issue, the undersigned located within the clerk's trial exhibits, a previously believed to be missing report from a psychiatrist. The forensic evaluation and subsequent report had been sealed and placed into the trial court record. Additional motion practice followed; the report was disclosed to both sides; and both petitioner and respondent supplemented their briefs accordingly. The instant motion is now ripe for adjudication.

II. LEGAL STANDARD FOR INEFFECTIVE ASSISTANCE OF COUNSEL

Claims of ineffective assistance of counsel are guided by the two-part test announced in *Strickland v. Washington*, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984), as adopted by the Mississippi Supreme Court in *Stringer v. State*, 454 So. 2d 468, 476-77 (Miss. 1984). To succeed on a claim of ineffective assistance of counsel, Petitioner must show that trial counsel's performance was deficient, and that the deficient performance resulted in prejudice. *Id.* Prong 1 requires a showing that counsel's errors fell below an objective standard of reasonableness. *Strickland*, 466 U.S. at 688. Prong 2 requires Petitioner to show that counsel's deficient performance resulted in prejudice. *Id.* at 692. When a petitioner challenges a sentence of death based on a claim of ineffective assistance, "the question is whether there is a reasonable probability that, absent the errors, the sentencer—including an appellate court, to the extent it independently

[2] Each witnesses' testimony is summarized in Part III, but the Court notes here that a substantial amount of testimony did not deal with petitioner himself or his background, was cumulative and objectionable.

reweighs the evidence—would have concluded that the balance of aggravating and mitigating circumstances did not warrant death." *Id.* at 695. At this Post-Conviction stage, petitioner bears the burden of proof to prove each *Strickland* element by a preponderance of the evidence. Miss.Code Ann. § 99–39–23(7).

III. SUMMARY OF WITNESS TESTIMONY

Amanda Frederick

Walker's sister, Amanda Frederick, testified that her mother conceived four children by three different men. Amanda's brothers are Alan Dale Walker (Walker), Terry Walker, and Leon Frederick. She testified that their mother, Anita Frederick, had a difficult time raising them because she worked long hours at two jobs. Because of the long hours Anita worked, Walker and Leon took care of Amanda. She recalled that Walker drank beer when his friends came over, which was often. She had seen Walker drunk "quite a few times" during her childhood. One of the people Walker hung around was an older man named Jack Collins who got Walker and his friends to "steal stuff."

Walker and his girlfriend, Robin Marroy, had a daughter, Michelle, in 1990. Before becoming involved with Walker, Robin married Leroy Marroy when she was a teenager and Leroy was in his 50s.

Amanda was eleven years old when she testified at her brother's trial in 1991. She testified that Walker's attorneys never spoke to her until the time of trial. Had they done so, she would have offered the same information she offered at the evidentiary hearing.

On cross-examination, Amanda testified she was ten years old when her brother murdered Konya Edwards. When her brother's friends came over to drink, they also smoked pot.

With counsels' consent, the Court examined Amanda about a situation she referenced on direct examination where Walker confronted a man who "flashed" their mother.[3] Amanda characterized Walker as protective of his mother. She further opined that Walker was able to distinguish what type of behavior toward a female was inappropriate and had been taught by his mother "how to treat people right, not how to do people wrong."

Anita Frederick

Anita Frederick, Walker's mother, testified that she grew up in Pensacola Florida and that she started selling magazines when she was sixteen to get away from home. Selling magazines was how she met Walker's father, Ronnie Walker. Anita testified about her parents and siblings. Her father left when she was seven or eight, and her mother was not around when she needed her. Anita had to take care of a younger sister after her mom was jailed in relation to being intoxicated and involved in an auto accident.

Anita met Ronnie Walker when she was 18 or 19. A year or two later, she gave birth to Walker, and two years after that to Terry. Ronnie's brother, Kenneth Walker, lived with them for a while. He acted strange.

Ronnie's job as a meat cutter "took him all over the place," and he lived in Hawaii when the kids were very young. As a result, she and Ronnie divorced when Walker was around four. She ended up moving to the Mississippi Coast for employment so she could raise the kids. She and the kids and two people she met in New Orleans s "stayed on the beach" and slept in a station wagon. She eventually obtained a one room apartment for her and the boys.

[3] On any occasion in which the Court asked a witness questions, the Court first inquired with counsel if anyone objected, which no party did. Afterwards, the opportunity for further questioning by counsel was offered.

Anita relayed a vague incident about a babysitter, Ms. Woodcock, pulling down Walker's pants when he was in kindergarten. A year after the incident, Walker told her about the incident and seemed scared.

Ronnie once came to visit the boys after the divorce and brought a big box of toys. Walker and Terry went to stay with their dad a few times in Alaska. Each time they went they stayed for a year. On the third visit, Walker came back but Terry stayed behind to live with their father.

Anita remarried to Winifred Frederick when Walker was seven. Anita and Winifred conceived Leon. She divorced Winifred after seven years because of his drinking problem and because he slept around with other women, including his ex-wife and a niece.

Walker started "running the roads" when he was 15 or 16. Walker hung out with friends his own age and with older men. One of the older men "growed his own marijuana" in a closet in his house. Another one of the older men had "all these little boys" go steal stuff for him. Walker drank alcohol with his friends between the ages of 14 and 18. Anita never saw Walker smoke marijuana, but smelled it on him. One day she saw Walker and his friend with "little packages" of marijuana, "and he was like selling it or giving it somebody." She did not have control over Walker during his teenage years because she worked so much.

When Walker was about 23, he and Robin had a child together. He took care of the child until he was arrested when she was six months old.

Anita claimed that Walker's attorneys did not speak to her prior to trial and that she did not know what they were going to ask her until she was on the stand. Had she been asked the same questions at trial that she was asked at the evidentiary hearing, she would have provided the same information then.

On cross-examination Anita was not sure whether Walker was five, six, seven, or eight years old the first time he went to Alaska to stay with his father. But the third time he went to stay with his father in Alaska, Walker was 21 or 22 years old when he returned, a year or two prior to murdering Konya Edwards.

Anita remembered Walker drinking when he was 17 years old, but did not remember if he drank before he was 17 years old. She did not know whether Walker sold the marijuana she saw in his room, she just knew there were three or four packets.

Although she made it sound like Walker was a young boy when he was under the influence of older men who got him and other friends to steal, Anita clarified on cross-examination that Walker was 20 or 21 years of age when he got in trouble for stealing.

Upon examination by the court, Anita testified that Walker responded appropriately when he spoke with a man who "mooned" her. She tried to do the best for her children and taught them respect for other people and their property. She grew up in church and took Walker to church to teach him right from wrong and teach him values. He was running around with kids she did not approve of when he was in his late teens, early twenties. The violent actions Walker committed against Konya Edwards was not behavior Walker would have learned living in her home.

Nellie Richards

Nellie Richards is Walker's aunt, Anita's sister. She and Anita had three other siblings. She recalled that her parents divorced when she was around three years old. She recalled that one day prior to the divorce, the other kids were playing in the front yard and she and her dad were playing "cowboys and Indians in the back yard." He tied her hands behind her back and told her to "get them undone." She went to her mother to untie her hands, and the next day her mother filed for divorce. Nellie had no independent memory about any other time her father tied her or a

sibling up. The Court allowed Petitioner's counsel to proffer her hearsay statement that another brother told her that their dad use to "tie the two of use up and lock us in the closet and turn the light out."

After the divorce, their mom worked during the day and spent time with her boyfriend at night. Anita left home "because she said no one was home." Anita thought it would be good for Walker and Terry to stay with their dad in Alaska since she and her siblings did not have a relationship with their father growing up. The boys were happy and did well when they stayed with Ronnie in Alaska.

Anita always worked hard to support the kids and put them first. Walker always did what Nellie asked of him when she would visit. She was aware that Walker drank some alcohol in his late teens.

Walker's attorneys never contacted her, but she would have testified at trial if asked.

On cross-examination, Nellie testified that she briefly lived with Anita when Walker was a baby, but other than, she that lived in New York and New Jersey for the remainder of Walker's pre-incarcerated life. Nellie visited Anita and the kids some, but most of what she knew about Walker came second hand, from telephone conversations she had with Anita "every few months or so." She had no personal knowledge of Walker ever smoking marijuana, but she thought she may have seen him drink a beer once.

Ronald Walker

Walker's father, Ronald Walker, testified about meeting Anita when he was around 19 and them marrying a few years later. They remained married for seven years and divorced when Walker was around three years old. After moving to Alaska, he did not hear from or see the kids again for three and a half years, although he had attempted to locate them during that time. Walker

stayed with him three or four times in Alaska, and Ronnie enrolled him in school there. The first time Walker went to Alaska he was around nine years old, and Ronnie's co-workers would compliment Walker for being so well-behaved. Walker complied with the house rules and helped with house work and yard work. Ronnie recalled no behavior problems. Although Ronnie worked a lot, he spent quality time with Walker and would take him fishing.

When Walker came to stay a second time when he was 17 years old, Ronnie noticed subtle changes in his behavior. His mother would "ship him to Alaska" after getting in "a little trouble ... just being a little wild, wild child." Ronnie characterized him as a little rebellious, noting that he did not approve of Walker's long hair and required him to get it cut. Walker was not happy about it but complied. Walker also broke curfew. The only trouble Ronnie could specify Walker was getting into in his teen years in Mississippi was "fighting chickens and stuff like that."

Ronald tried to "straighten him out and set him on the right road" while Walker stayed with him. Ronald and his wife took Walker and Ronald's other children to church. Walker was even baptized there, and Ronald noticed a positive difference in him.

Walker's attorney's never contacted him. He would have testified if contacted. Ronald testified on cross that he was 21 and Anita was 20 when they married. Ronald was never abusive nor did Walker ever suggest that his mother had been abusive. Anita called and told Ronald that Walker had been charged with capital murder but did not tell him the trial date.

Terry Walker

Walker's brother, Terry Walker, is two years Walker's junior. Terry was too young to remember his parents divorcing. His first memory of his father was when Terry visited him in Florida when he was six or seven. The first time Terry visited his father in Alaska was his second grade year in school. The second time he went, he was in fifth grade, and the third time, when he

was in seventh grade, he stayed permanently. Ronald and his wife disciplined him more than his mother and required him to do chores and "was pretty into school." Terry testified he had a good family life in Alaska and received a good education there.

When he came back to Mississippi, his mom was working two jobs and her husband also worked. So no one was watching him, Walker, and Leon. Anita's husband Winfred was "always drunk." Terry, who described himself as a timid child, may have been apprehensive of Winfred when he was drunk, but stated that Winfred was never abusive. Petitioner's counsel attempted to refresh Terry's memory with an affidavit Terry allegedly executed a year prior which indicted that Winifred had hit him, but Terry averred no recollection of that ever happening. But their mother did whip all the kids with a belt.

Terry recalled living near the Reyers, who were Winfred's kin. Terry recalled Winfred having a sexual relationship with his niece Brenda Reyer when she was around 16 or 18. Terry testified that the three Reyer sisters had inappropriate sexual contact with him when he was around 12 years old.

Terry characterized Walker's Mississippi friends as "corrupt." Walker's attorney's never contacted him. He would have testified on Walker's behalf. Later, on re-cross examination, however, Terry admitted he did not really know Walker during Walker's developmental years because they grew up in separate households.

On cross, Terry testified that around 1989, he secured a place to live and a job for Walker in Alaska. Walker came for a while, but did not like the work and wanted to move back to Mississippi.

Terry had no personal knowledge as to whether the Reyer sisters had inappropriate sexual contact with Walker. The sisters were not adults at the time they had inappropriate sexual contact

with him; they were "just older kids." Terry opined that being spanked with a belt was abusive. Winifred never put his hands on him or Walker.

Upon being questioned by the Court, Terry testified that his half-brother Leon grew up in the same environment as he and Walker did. Leon married, had children, and like Terry, managed to sustain employment throughout his adult life. Leon never had run-ins with the law other than one misdemeanor DUI. The affidavit petitioner's counsel presented to him on direct examination, with the incorrect allegation of Winfred having hit him as a child, was prepared by either an attorney or investigator and sent to him to sign. When Terry last saw Walker in 1989 in Alaska, he noticed no change in Walker's behavior or anything that caused suspicion or alarm in any way.

Leon Frederick

Walker's half-brother, Leon Frederick, is nine year's Walker's junior. Even though Leon was much younger, he recalled some of Walker's friends growing up. Walker and his friends would go fishing and work on cars together. Walker and his friends drank beer at the lake. Petitioner's counsel attempted to get Leon to state he saw Walker and his friends smoking pot or using other illegal drugs, but Leon asserted he saw no such thing. Leon was also aware of a couple of older men Walker and his friends hung around. Leon had no first-hand knowledge about Walker and his friends stealing things. One of Walker's friends use to smoke weed.

Growing up, Leon got spanked by his father, Winfred, "once in a blue moon." Winfred spanked with his hand, Anita spanked with a belt.

Leon did not recall testifying at Walker's trial.

On cross, Leon testified he did not remember seeing Walker or his friends drink at Winfred's house. He was not sure if they ever drank at Anita's house.

Vera Faye Breland

Vera Faye Breland knew Anita when they worked together at the South Mississippi Retardation Center, now known as South Mississippi Regional Center. Breland was Anita's supervisor. Breland knew of Amanda, Leon, and Walker, but only saw Walker once or twice when he came to their place of employment. The once or twice she ever saw Walker was "a short visit" at that. The apparent purpose of Breland's testimony was to testify about an incident that she either saw, saw part of, or did not see at all. It appears from the testimony that she once saw Walker "in a playful type situation" possibly pinch his mother's breast. But in the same description, Breland stated, "I didn't actually see him actually pinch her inappropriately ...." But she may have seen "his hand was around her up in here" during what she characterized as a "playful type situation."

The Court allowed Breland to testify that Anita had once told her that a male neighbor gave Amanda a bikini as a gift when Amanda was 12. Anita was not "threatened" by the act, but Breland let her know she though it inappropriate. Breland also testified that Anita had been told by someone that the man who bought the bikini had also been "peeping in her window." [4]

On cross-examination, Breland reiterated that she did not personally know Walker.

Earl Stegall

Earl Stegall was one of Walker's trial attorneys. Mr. Stegall suffered a stroke in 2005. Stegall still has memory problems, and when asked if he had "sufficient recollection of the facts of this case," Stegall responded he would do the best he could. He elaborated that he had "reviewed things and tried to remember everything, particularly talking with you in recent times, and that

[4] See footnote 2 above.

refreshed my memory." But Mr. Stegall honestly clarified, "Now, that's not to say I will remember everything today because I still have problems with my memory. But I will do my best."

One thing in particular Stegall has trouble remembering is dates. He believes he began practicing law in 1972 or 1973 and stopped practicing in 1992 or 1993. He handled many murder cases and death penalty cases during his practice. Mr. Stegall quit practicing law when he was disbarred and later incarcerated because he embezzled money from a client's trust account. He served more than two and a half years in prison as a result of the embezzlement conviction(s). Mr. Stegall could not recall whether he was facing legal trouble at the time he represented Walker. He also no longer possessed Walker's file as it was destroyed during Hurricane Katrina.

Mr. Stegall looked back with pride, rightly so, on the fact that in all the death penalty cases he had tried, Walker's was the only one where he successfully moved the court to suppress his confession. Although he believed the guilty phase to be "a foregone conclusion," Stegall thought Walker stood a chance at sentencing until Jason Riser pled out and agreed to testify for the State. Stegall testified as follows regarding his strategy for mitigation:

> That -- the thing that I was going to do, I remember I was going to have him address the jury rather than have him testify. I think that's exactly what we did.[5] And I wanted to -- my thing in death penalty cases was to personalize them. Make them a person, you know. And tell their life history as well as you could so the jury could look at them and think of them as a person and not just somebody sitting there charged as a murderer. And I remember, I don't have an independent recollection of this, but I know I must have done it. We had the mother come and testify, that was the plan, and then a sister or a brother was going to testify. And I don't really have a good independent recollection of what they said or anything to be truthful with you.

Stegall had no direct memory of meeting with Walker's family prior to trial, but testified that "almost certainly" he would have talked to them on the phone prior to trial and met with them

[5] Stegall's memory is accurate here as the trial testimony transcript reflects that the defendant Walker stood and made a personally addressed the jury during closing argument at sentencing.

in person once they were in Vicksburg.[6] He could not remember whether he had contact with Walker's family in Alaska or Florida or whether he attempted to obtain an investigator to assist with collecting mitigation evidence. Robin Midcalf, a new lawyer at the time, was his co-counsel. Again, he had no direct memory, but Stegall believed he would have used Midcalf to investigate Walker's case.[7] Stegall did not think he consulted with "any experts about mitigation" for the 1991 trial.

Stegall was presented with an affidavit he allegedly executed in 2012, but again, he had no direct memory the contents. Stegall recalled having been recently presented with Mendel's report. He was asked, "Do you have an opinion as to whether that's the type of investigation that you would have wanted to perform if you had had -- if you had known that this was not -- you were going to need a penalty phase case?" Stegall maintained that he believed getting Walker's confession suppressed was going to get him a life sentence. When asked whether he had any strategic reason for not doing more of a mitigation investigation, Stegall responded, "I can't say that I did. I wish I could remember better and I could answer your question, but I just can't remember."

On cross-examination, Stegall testified that he was not familiar with Dr. Mendel and does not think he knew of him at the time of Walker's trial. Stegall did, however, have Walker examined by a Dr. Maggio. But Dr. Maggio's report disappeared during Hurricane Katrina.[8] But had it been favorable to Walker, he would have used it at trial. He could not think of Walker's

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[6] The court file contains correspondence from defense counsel requesting that subpoenas be issued to secure the attendance of Anita Fredericks, Amanda Fredericks, Winifred Leon Fredericks, Margaret Thomas and Mike Maniscalco at trial.

[7] Only Stegall testified at the hearing.

[8] The witness' recollection on this matter was obviously wrong as the report was later discovered after the hearing. In fact, all counsel believed the report no longer existed, and all had advised the Court that they could not locate it. The report was not secreted away from anyone, but was one of many articles contained within several boxes of exhibits and appellate records in the clerk's vault. No fault is attributed to any party for not having this report pre-hearing, and as the Court ruled previously, no further evidentiary hearing is necessary concerning this report.

post-conviction attorneys names, but indicated that Mr. Voisin prepared the affidavit he signed and he may have remembered the information at the time he signed it after the attorneys refreshed his memory at the time. At the time he represented Walker, he had handled many capital cases in Harrison County and won some of them. He had never been found ineffective in any of those case by a reviewing court. Stegall had no independent recollection of what took place at the time of Walker's trial or what his decisions were at that time.

On redirect, Stegall testified Dr. Maggio likely examined Walker for competency, but he could not say one way or another whether Dr. Maggio's examination related to mitigation.

Upon questioning by the Court, Stegall testified that if he had any information about Walker's past criminal history or alcohol or drug abuse, he would not have presented such information at trial and would not want similar information in the hands of the prosecution. In a follow up question by counsel for Respondent, Stegall testified that there was nothing about Walker that gave him cause to think he should hire a psychologist.

Dr. Matthew Mendel

Dr. Matthew Mendel was offered as an expert in psychology, "and more specifically, on the impact of childhood traumatic factors on the psychological development of adults." The trial court accepted him as an expert in psychology, adding, "and to whatever area he touches on in that specialty, I will give it what weight and credibility I think it deserves."

Dr. Mendel was asked by Petitioner's counsel to "explore the presence of possibly traumatizing factors in Alan Walker's life, and to address the impact of those factors upon him, how they contributed, if at all, to him, to his childhood development, and to becoming the adult he became." Dr. Mendel defined traumatizing factors as follows:

> I would define it as anything that is beyond the normal range of experiences. So destructive, or painful, or psychologically disturbing factors that are beyond the

> regular bumps and bruises that we all experience in childhood. It could be a very wide range of things. So it could certainly cover physical abuse, sexual abuse, emotional, verbal abuse. It could cover parental neglect. It could cover severe poverty, family instability, transitions, homelessness, could cover an injury, a severe injury, that if somebody experienced that. A physical disablement. It could cover if somebody grew up in an environment with very high levels of lead, that could be a traumatizing factor. So a wide -- any destructive disturbing factor in a person's life that's beyond the normal range of experiences.[9]

When asked how he assessed for the presence or absence of traumatizing factors with Walker, Dr. Mendel said he talked to Walker on two separate occasions (in 2008 and 2016) and interviewed his mother, his daughter (who was only one at the time of the murder), Robin Marroy, and the Reyer sisters. He also spoke with Amanda, Terry, and Leon on the phone. He also reviewed declarations from some of the people he spoke with and from Faye Breland, Earl Stegall, Michael Shavers, Paula Shavers, and Nellie Richards. He also spoke with Ronald and Terry after the first day of the PCR evidentiary hearing. Dr. Mendel also spoke with Dr. Shaffer. Dr. Mendel prepared a report in 2008 and a short supplement to his report in 2016.

Dr. Mendel opined to a reasonable degree of psychological certainty that Walker "experienced a wide range of disturbing events that have had a profound impact upon him." He further opined that traumatizing factors had an impact on Walker's development into adulthood. Dr. Mendel further opined that "we can only understand Alan's behavior on that date by understanding and taking into account this -- these multiple factors, the traumas that he experienced in childhood." Mendel elaborated that he attempted to determine Walker's source of rage against women by analyzing his childhood.

Dr. Mendel discovered the following "traumatizing factors" which he opined impacted Walker's development into adulthood: extreme poverty and instability, lack of parental

[9] It appears that a traumatizing factor could be a wide range of things, none of which any of the prior lay witnesses who knew Walker had described.

supervision and oversight, being undressed by a babysitter, fatherlessness, inappropriate/premature sexual activity, and the use of alcohol and marijuana as a teenager.

Mendel testified that the overall impact of all of the aforementioned "trauma" resulted in "central themes" for Walker including power, powerlessness, control, and helplessness. The poverty he grew up in made him feel unsafe. An incident in which a friend of his mother's undressed him made him feel powerless and scared. Walker was a "very needy boy" who wanted affection and did not know how to get it. Introduction to sexual activity at a young age was confusing and overwhelming and distorted his views of women and sexual relationships. This introduction to sexual activity at an early age also, according to Mendel, "plays a central pivotal role in his anger and rage" which is directed solely at women. The introduction to sex at an early age also causes Walker to suffer from the "Madonna-whore complex." Sufferers of this complex put "good girls" on a pedestal and view them as "perfect pure virginal beings," but are drawn to women they perceive as "promiscuous, slutty, whorish women." Alcohol consumption may have also played a role in Walker's rage and violence.

Petitioner's counsel asked whether it would have been possible for a psychologist in 1990 to analyze the foregoing factors the way Mendel did and testify at Walker's sentencing hearing. Dr. Mendel replied, "I believe so."

On cross-examination, Dr. Mendel stated that although he discussed what was very clearly an unfounded rumor about the possibility of a sexual relationship between Walker and his mother in his report, he "did not in any way rely upon it in making my diagnosis."[10] Dr. Mendel then jumped quickly to incident that Faye Breland described. In his report and testimony, Dr. Mendel

[10] Dr. Mendel's report does state however that sexual abuse is particularly damaging to a child.

characterized the alleged nipple grabbing incident as sexual in nature. However, Dr. Mendel acknowledged that Breland "backtracked enormously" in her testimony.[11]

Although the entirety of Dr. Mendel's testimony concerned "trauma" Walker endured during childhood, Dr. Mendel was unsure of the American Psychological Association's definition of "trauma." Even if fatherlessness is not considered trauma under the APA definition, Dr. Mendel does not "believe that the APA is some sort of gospel." Dr. Mendel's own definition of trauma is "things that are out of the -- beyond the pale. Things that are highly unusual and painful or devastating or destructive on the upbringing of an individual."

Dr. Mendel was asked how his opinion that Walker suffers from the Madonna-whore complex is relevant to his actions against Konya Edwards, who was a stranger to him so he could not have known whether to classify her as a Madonna or a "whore." Dr. Mendel responded that Walker simply has anger and rage at women generally and that he felt unsafe around women.

Dr. Mendel did not diagnose Walker with anything. Rather, the purpose of Mendel's evaluation is "to be able to explain this human being to help anybody involved in this case . . . understand how he became the adult he became."

Dr. Mendel testified that a few weeks of homelessness did not cause "all of this trauma." Dr. Mendel recognized that although he makes statements and conclusions about "drug use," he had no concrete proof that Walker actually smoked marijuana. Dr. Mendel opined as to the importance of Walker not being hugged as a child, but did not inquire as to whether he was held or hugged as an infant. Dr. Mendel referred to Walker as an alcoholic although he had never been diagnosed as such. Dr. Mendel pointed out that four of Walker's friends he drank alcohol with as

[11] Breland's testimony did not contain evidence of sexual touching. This conflict in the evidence is noted as it bears on the Court's evaluation of weight and credibility of the testimony and petitioner's ability to meet his burden of proof.

teenagers are now dead, but he admitted he had absolutely no proof that their deaths were alcohol related. Much of his report is based on Walker's self-reporting.[12]

Mendel's report focuses strongly on the sexual contact Walker and Terry had with the Reyer sisters. Mendel states in his report that he "piec[ed] the ages together" and that "it appears" Terry and Walker were six and eight years old when this act occurred with an eleven-year-old Reyer sister. Mendel testified as to these ages at the PCR hearing. However, Terry's affidavit states only that he had not yet reached puberty when a Reyer sister performed oral sex on him. And at the hearing, Terry stated that he was 12, making Walker 14, at the time they had sexual contact with Reyer sisters, who Terry characterized as "older kids."[13]

Robert Shafer

Dr. Robert Shafer was accepted as an expert in forensic psychology and neuropsychology. Dr. Shafer performed a neuropsychological assessment of Walker. In addition to administering neuropsychological testing, he considered and relied on Dr. Mendel's report and findings of trauma. Dr. Shafer did not personally review any witness statements which were the basis for Mendel's findings. Dr. Shafer testified that there is a correlation between childhood trauma and brain function, including difficulty processing verbal information, impairment of executive functioning, interference with appreciation of consequences, interference with regulation of emotions, and possibly with ability to make good judgments. Types of trauma that can affect brain function in the foregoing ways include maternal neglect, "psychological abuse in terms of

[12] Walker self-reported LSD use to Dr. Maggio but did not report it to Dr. Mendel

[13] To the Court, there is a difference in an eight year old engaging in sexual activity than a fourteen year old engaging in sexual activity. While Mendel offered no testimony to indicate what, if any, difference this six year age difference would make on his conclusion, this major discrepancy has bearing on the weight and credibility of Mendel's testimony about the effects of childhood sexual activity.

disrespectful treatment of the body," and sexual abuse. Alcohol consumption during teenage years can also lead to developmental arrest, such as inability to make friends.

Dr. Shafer opined, based on his evaluation of Walker, that Walker's neuropsychological profile "is consistent with that of individuals that have experienced various traumas during their developmental period."

Dr. Shafer described numerous tests he administered to Walker. Among the tests administered in whole or in part were the Test of Memory Malingering, the Structured Interview of Symptoms, the Wisconsin Card Sorting Test, the Stroop Test, the Iowa Gambling Test, and the Rey Auditory Verbal Learning Test. Based on the Structured Interview of Symptoms, Dr. Shafer claimed that Walker had difficulties with speech articulation, confusion spells, memory gaps, unrecalled behaviors, numbing and tingling sensations, irregular heartbeat, flushing or hot sensations, and frequent headaches, all of which are "statistically ... correlated with known cases of brain impairment." Walker apparently did pretty poor on all tests administered which suggests impairment in frontal lobe executive functioning, the left hemisphere, and in the transfer of information between the hemispheres of the brain.

On cross examination, Dr. Shafer was asked why neuropsychological testing was necessary in this case. He responded that adults who have experienced childhood trauma "have some characteristic deficits in neuropsychological functions" and it is "good practice to at least do a screening of brain integrity with any individual that's facing a death penalty."

Dr. Shafer was questioned about why he failed to put Walker's scores on the administered tests in his report. Shafer replied that his report "was intended to give global information, not a specific numeric detail." Dr. Shafer seemed to acknowledge that his failure to report scores made it impossible for Respondent to have an expert review the vague findings. Although Shafer

provided more detail in his testimony, his report included very general tests results such as "below average" and "impaired range."

Dr. Shafer was asked about an Alabama case in which he offered expert testimony and in which the reviewing court found that his opinion was based on false information which he had not attempted to verify or validate. Shafer responded, "I had that information which was provided to me and I was able to describe the source. But no way of proving or perfectly corroborating the accuracy of the information." Shafer indicated that in all of his evaluations he relies on sources and information presented to him which he does not personally confirm. He elaborated that "every time this kind of inquiry is conducted, hypotheses are presented and conclusions are reached with relative degrees of certainty. But never with perfect certainty."

The only records Shafer reviewed in conducting his evaluation were Walker's school records. He agreed that it is often useful to review the subject's medical records, but he did not do so in this case. He also did not personally review any information regarding the horrendous crime Walker committed, nor the details of his case, relying instead on Petitioner's counsel rendition of the facts of Walker's case.

Dr. Shafer was asked what information he relied on to corroborate the test results. Dr. Shafer stated that he corroborated the results only with the research information and scoring tables from the tests themselves. Shafer sought out no information specific to Walker to corroborate the test results, choosing instead to rely on Mendel's report, which he accepted without question. He did question Dr. Mendel "about a few finer points" and claimed that an example of convergent information obtained was that which related to the extent of Walker's alleged sexual abuse.

Dr. Shafer agreed that Walker knows the difference between legal and illegal activity. Shafer agreed that psychopaths show deficient functioning in the same areas of the brain he alleges

Walker has deficient functioning. Shafer does not think Walker is a psychopath because the history he relied on from Mendel does not indicate Walker had a substantial history of cruelty or aggression toward children or animals. Shafer acknowledged that Mendel reported Walker was aggressive and violent to females, but Shafer pointed to the fact Walker had "feelings for his sister and sadness about the events that happened when they were children." Shafer claimed Walker wouldn't have those feelings if he were a psychopath as opposed to someone who allegedly had impaired brain functioning due to "childhood trauma."

Dr. Shafer acknowledged that it can only be inferred that the deficits Walker allegedly has now were present at the time he brutally raped and murder Konya Edwards. Dr. Shafer testified that he could not say that at the time of the crime Walker had the impairments he allegedly has now. Rather, what Dr. Shafer suggests is that "at the time of the incident, that he was functioning with some deficits in neuropsychological functions." Dr. Shafer elaborated that he could somehow know that at the time of the murder Walker was impaired in the abilities to "anticipate the consequences in a series of actions, and especially to attach relevant emotional significance to the consequence of his actions" and that he had issues relating to "impulsivity and the regulation of emotions." Dr. Shafer could not say that any of Walker's alleged deficits caused him to kill Konya Edwards. But Shafer claimed the alleged deficits were "causation factors." When asked what a causation factor is, Shafer replied, "the factor is diminished capacity in the functioning of his brain." The diminished capacity did not cause Walker's actions, but influenced them.

IV. ANALYSIS UNDER *STRICKLAND*

A. Deficient Performance

Courts reviewing ineffective assistance claims "must indulge a strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance; that is, the

[petitioner] must overcome the presumption that, under the circumstances, the challenged action might be considered sound trial strategy." *Id.* at 689 (internal quotations omitted). Moreover, the U.S. Supreme Court has recently reiterated that " '[s]urmounting *Strickland's* high bar is never an easy task.' " *Richter,supra,* at ——, 131 S.Ct., at 788 (quoting *Padilla v.Kentucky,* 559 U.S. —— , ——, 130 S.Ct. 1473, 1484, 176 L.Ed.2d 284, (2010)).

Petitioner's counsel, like Strickland's counsel, claims that defense counsel was ineffective for properly investigating and presenting a case in mitigation. The *Strickland* court found as follows regarding whether the counsel's decisions regarding investigation of mitigation evidence can be considered deficient performance:

> [S]trategic choices made after thorough investigation of law and facts relevant to plausible options are virtually unchallengeable; and *strategic choices made after less than complete investigation are reasonable precisely to the extent that reasonable professional judgments support the limitations on investigation.* In other words, counsel has a duty to make reasonable investigations *or to make a reasonable decision that makes particular investigations unnecessary.* In any ineffectiveness case, a particular decision not to investigate must be directly assessed for reasonableness in all the circumstances, applying a heavy measure of deference to counsel's judgments.

Id. at 690-91 (emphasis added).

Stegall's strategy was to personalize or humanize his client. As summarized above, he wanted his client to make a personal statement to the jury. If he had testified instead of offering his testimony at the sentencing phase, he would no doubt have be subjected to vigorous cross-examination on the violence he inflicted upon Edwards. Consistent with that strategy, trial counsel also put forth witnesses who could offer more details into Walker's life. That is, counsel offered family and friends to provide evidence designed, to the extent it could, to counter the brutality of Konya Edwards' murder. The testimony heard by the jury provided virtually unchallenged evidence that Walker had a supportive family; a young daughter whom he loved; relatives who

loved him; he enjoyed respectable employment and had even risked his own life by rushing into a burning house to save a child. That strategy did put forth a humanizing or personalizing premise to the jury. Accordingly, it cannot be said to be unreasonable to this Court.

This is especially true after trial counsel received and reviewed Dr. Maggio's report. Dr. Maggio was appointed to perform a competency evaluation, but his report provided greater breadth than just opining on competence to stand trial. Notably, Dr. Maggio did not find any defect of intellect, memory or judgment. Further, there was no major psychiatric diagnosis, but Walker appeared to have Antisocial Personality Disorder. Dr. Maggio references Walker's family history, where he was born, his educational and work history. Likewise, the report details the facts of Konya Edwards' murder and how Walker expressed no remorse.[14] Walker admitted to alcohol use, denied marijuana consumption, but had been an LSD user for 6 or 7 years. A fair reading of the report would have ruled out a *M'Naughton* insanity defense and there would be no reason for trial counsel to develop additional psychological or psychiatric evaluations.

Stegall's strategy would have been reasonable under the facts presented. *Ross v. State* 954 So.2d 968, 1005 (Miss. 2007)(while trial counsel is not required to exhaust every conceivable avenue of investigation, he or she must at least conduct sufficient investigation to make an informed evaluation about potential defenses.) Had trial counsel offered the jury the same evidence that PCR counsel did, the prosecutor would be armed not only with Dr. Maggio's opinions, but the jury would have heard about Walker's other bad and criminal conduct. Stegall testified at the hearing that he would not have wanted the other evidence of bad and criminal conduct in the hands of the prosecution to use against his client. And no doubt he would not have wanted Dr. Maggio's to testify about his evaluation of Walker.

[14] The report was never provided to the prosecutor at the trial level as Walker's mental status was not at issue. Even if disclosed, inculpatory evidence referenced in the report could not have been used by the state.

While PCR counsel would have advanced a different theory to the jury in mitigation,[15] this Court cannot accept what Stegall did as constitutionally deficient. It is too facile "for a court, examining counsel's defense after it has proved unsuccessful, to conclude that a particular act or omission of counsel was unreasonable." *Green*, 868 F.2d at 178 (*citing Strickland*, 466 U.S. at 689). In *Howard v. State*, 945 So. 2d 326 (Miss. 2006), the Supreme Court reminds us:

> A fair assessment of attorney performance requires that every effort be made to eliminate the distorting effects of hindsight, to reconstruct the circumstances of counsel's challenged conduct, and to evaluate the conduct from counsel's **perspective at the time**. Because of the difficulties inherent in making the evaluation, a court must indulge a strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance; that is, the defendant must overcome the presumption that, **under the circumstances**, the challenged action "might be considered sound trial strategy." *See Michel v. Louisiana*, supra, 350 U.S., [91] at 101, 76 S.Ct., [158] at 164 [100 L.Ed. 83 (1955)]. There are countless ways to provide effective assistance in any given case. Even the best criminal defense attorneys would not defend a particular client in the same way. See Goodpaster, *The Trial for Life: Effective Assistance of Counsel in Death Penalty Cases*, 58 N.Y.U. L.Rev. 299, 343 (1983).
>
> *Howard v. State*, 945 So. 2d 326, 354 (Miss. 2006) (Emphasis added).

Strickland, 466 U.S. at 689–90; *Stringer*, 454 So.2d at 477.

Considering the foregoing, the strategy to humanize or personalize the defendant and its attendant investigation by trial counsel did not represent deficient performance.

B. Petitioner Fails to Show Prejudice Which Resulted From the Alleged Deficient Performance.

Even if this Court found that petitioner proved the first element of *Strickland*, he must also show that counsel's alleged deficient performance resulted in prejudice.[16] The second *Strickland*

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[15] Much of petitioner's evidence, upon proper objection, would likely have been excluded from jury consideration at a sentencing trial. While the rules of evidence are applied less strictly during a sentencing hearing, several witnesses offered speculative testimony, generous amounts of (double) hearsay, and much of it was cumulative.

[16] The Court commented at the conclusion of the evidentiary hearing that it was considering that petitioner had satisfied the first prong of Strickland. It should be noted that the Court did not make that finding but offered that

prong requires a showing that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Strickland*, 466 U.S. at 694. In the death penalty context, *Strickland*'s second prong requires the petitioner to prove that "absent the errors, 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." *Id.* at 695. The errors of counsel must have been so serious that they deprived the defendant of a fair trial, that being a trial with a reliable result. *Havard v. State*, 928 So. 2d 771, 781 (Miss. 2006), (quoting *Strickland*, 466 U.S. at 687). The court deciding the ineffective assistance claim must consider the totality of the evidence which was before the sentencing jury, and must determine whether the petitioner has proven that the jury's sentencing determination "would reasonably likely have been different absent the errors." Walker has failed to prove prejudice in this regard.

Much of the lay witness testimony presented at the PCR hearing did not pertain to Walker personally. That which did revealed that Walker drank beer as a teenager, stole "stuff" with friends, had teenage and older friends who were bad influences, and that his mother's method of discipline for her children was to spank them with a belt.[17] Walker's experts' opinions, much of which are based on unverified information (and in some instances rumor and mere speculation), are that Walker suffered trauma in childhood which left him feeling powerless, helpless, and

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comment as an initial impression. However, upon further review of the testimony transcripts, contemporaneously made notes and post-hearing briefing, the Court is not persuaded that the first prong of *Strickland* was met.

[17]The assertions contained in Dr. Mendel's report that Walker and his brother Terry were sexually abused at the ages of 6 and 8, was discredited by Terry's testimony that the acts happened when he was 12, making Walker 14 at the time. Engaging in sexual activity by a 14 year old who was running with other teenagers his age and older men would not be out of the question. It is totally speculative that this caused the trauma Dr. Mendel associated with it. Further, Dr. Mendel's speculation on sexual matters is further demonstrated by his inclusion of the assertion that Walker had a sexual relationship with his mother, and if offered in the presence of a trial jury would have been excluded.

unsafe. The alleged childhood trauma affected Walker's brain functioning. This impaired brain functioning resulted in some type of diminished capacity which could have influenced, but not caused, Walker's actions at the time of the murder. This is simply not the type of evidence from which this Court could find that the jury would have reasonably likely opted for a life sentence had it been presented at sentencing.

Evidence of Walker's "childhood trauma" stacked against the brutality of what he did to Konya Edwards reasonable could not have caused the jury to consider a life sentence. To be sure, the jury heard the detailed heinous facts regarding murder, including:

- Walker's victim, Konya Edwards, was "a young teenager who fought back against her assailants and at other times cooperated in a vain attempt to avoid being killed . . . ." *Walker v. State*, 671 So. 2d 581, 587 (Miss. 1995).
- Prior to raping Edwards, Walker hit her in the face several times. *Id.* at 589.
- While dragging her out of the vehicle to the location where she would first be brutally sexually assaulted, any time Edwards would resist Walker he would hit her and "repeatedly say 'live or die.'" *Id.*
- When Walker was initially unable to sexually penetrate the victim, he told Jason Riser to "take his turn." *Id.*
- After Riser vaginally raped Edwards, Walker anally raped her while forcing her to simultaneously perform oral sex on Riser. *Id.*
- Walker also forced the victim to perform oral sex on him. *Id.*
- Edwards responded by biting his penis, and Walker punched her in the face again. *Id.*
- After the violent rape, Walker choked Edwards and beat her some more. *Id.*
- Walker forced the victim to lie on her stomach and put her chin on a log. *Id.*
- He then repeatedly stomped the back her neck - seven or eight times. *Id.*
- During these torturous events, Edwards begged and pleaded for her life. *Id.*

- Walker responded by taking her out into the lake and alternated "choking her and pushing her head beneath the water" for about ten minutes. *Id.* at 590.

- Edwards eventually stopped splashing and Walker apparently thought she was dead. *Id.*

- When he realized she was not, he and Riser carried her away from the lake and Walker shoved a stick in Edwards' vagina. *Id.*

- Walker eventually doused the victim in gasoline and burned her body. *Id.*

It follows then that from this evidence, the jury found (beyond a reasonable doubt) that Walker committed two separate aggravating circumstances in the murder of Konya Edwards. Those were that Walker committed the capital murder while engaged in the commission of the crime of sexual battery and that he committed the capital murder for the purpose of avoiding or preventing a lawful arrest.[18]

In reviewing the evidence in aggravation against the totality of the available mitigating evidence, this Court is persuaded that there is no reasonable probability that the additional evidence Walker presented would have changed the jury's verdict. The remand evidence (presented live, subject to cross examination and this fact finder's ability to make judgment calls about credibility) primarily focused on Walker's family life and its effects on him. Certainly Walker did not have an easy life and it was marred by lifestyle choices of people over whom he had no control. He was exposed at an early age to circumstances and events to which most are not exposed. He committed crimes, used drugs and drank. Unfortunate? Yes, but not sufficient to disturb the

[18] The Mississippi Supreme Court likewise considered the brutality of the murder on direct appeal when applying its proportionality analysis to the imposition of the death penalty. "[H]is victim was severely beaten; suffered through forced sexual acts of fellatio and anal intercourse; was toyed with by being asked whether she wanted to live or die, after the plan to kill her was already formed; survived various unsuccessful attempts to kill her; and finally, was murdered and her body burned. Left behind was evidence of the humiliating sexual battery and a most gruesome scene for her family to discovery and remember forever." *Walker v. State*, 671 So. 2d at 630. No doubt the heinous nature of Edwards' murder has already been recognized by this state's highest court as sufficient to impose the death penalty.

confidence in the jury's verdict. "The benchmark for judging any claim of ineffectiveness must be whether counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied on as having produced a just result." *Strickland* at 686, 104 S.Ct. 2052. The Court is satisfied that a just result was reached by the trial jury.

V. FURTHER CONSIDERATIONS FOR DENYING THE MOTION

This Court is not the first to consider the ineffective assistance of counsel at sentencing issues raised here. Walker pursued a federal habeas corpus petition, including this claim; but the claim was not yet exhausted in state court and therefore premature. The district court said that "[e]ven if these claims were not barred, they would fail on the merits." *Walker v. Epps*, No. 1:97CV29KS, 2012 WL 1033467, at *53 S.D. Miss. Mar. 27, 2012).[19] Judge Starrett's order, while not binding on this Court, provides additional persuasion to this Court that the motion should be denied. The district court evaluated the evidence brought before it by way of affidavits and declarations.[20] It did not have the benefit that this Court had in judging the witnesses' credibility while testifying live and subject to cross-examination. The district court likewise found that much of the evidence did not pertain to petitioner himself and that the evidence the jury heard would have conveyed an adequate understanding of Walker's environment that would not have been materially enhanced by the additional evidence. Finding that Walker had not satisfied *Strickland* and that the evidence was not persuasive, the district court said:

> ". . .with the mitigation evidence newly offered being primarily cumulative or possibly harmful, and in light of the harsh facts of Konya's murder, this Court could not, even if it were permitted to do so, say that Walker's attorney was ineffective for failing to adequately investigate his case. *See Wong v. Belmontes,* 130 S.Ct. 383, 391 (2009) (holding that, in light of the possibility that the

[19] See also, *Walker v. State*, 131 So. 3d 562 (Miss. 2013) at ¶10-11 (Chief Justice Waller's objection to the remand order which set out his accord with Judge Starrett's findings).

[20] Drs. Schaefer and Mendel were not mentioned in Judge Starrett's opinion, so it appears that their reports were not made part of the habeas proceedings.

> prosecutor would introduce evidence of an earlier murder and the manner in which this victim was killed, the notion that additional witnesses would have helped the mitigation case was "fanciful.") For the same reasons, the Court finds that this evidence would not have made a substantial difference in the outcome of his case, and, therefore, he cannot show the second required element of *Strickland,* which is prejudice."

Walker v. Epps, No. 1:97CV29KS, 2012 WL 1033467, at *62 (S.D. Miss. Mar. 27, 2012).

Judge Starrett's careful consideration of the *Strickland* claims, even if premature, likewise illustrates that the instant motion should be denied.

VI. CONCLUSION

Having reviewed all the relevant materials and applying the appropriate case law to those materials, the undersigned is persuaded that petitioner has not met his burden of proof in this post-conviction remand matter. Accordingly, his Motion to Vacate Sentence should be denied.

It is therefore,

ORDERED AND ADJUDGED that the Motion to Vacate Sentence should be and is hereby denied. It is,

SO ORDERED, this the 17th day of April, 2018.

ENTERED, this the _____ day of April, 2018.

CHRISTOPHER L. SCHMIDT
CIRCUIT COURT JUDGE

cc: Counsel of record and Office of the District Attorney – 2d District

[i] To change "expert reports" on page 29 to "declarations".

FILED
APR 17 2018
CONNIE LADNER
CIRCUIT CLERK
BY: _____ D.C.