No. 21A61

IN THE SUPREME COURT OF THE UNITED STATES

BRYAN P. STIRLING, Director, South Carolina Department of Corrections; MICHAEL STEPHAN, Warden of Broad River Correctional Institution,

Applicants,

v.

SAMMIE LOUIS STOKES,

Respondent.

CAPITAL CASE

RESPONSE IN OPPOSITION TO APPLICATION TO STAY MANDATE OF THE U.S. COURT OF APPEALS FOR THE FOURTH CIRCUIT PENDING PETITION FOR WRIT OF CERTIORARI

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RESPONSE TO APPLICATION

TO: THE HONORABLE JOHN G. ROBERTS, JR., Chief Justice of the Supreme Court of the United States and Circuit Justice for the Fourth Circuit

The Fourth Circuit granted habeas relief in this case because trial counsel rendered ineffective assistance of counsel when they failed to adequately investigate and develop a mitigation defense based on respondent Sammie Louis Stokes' traumatic childhood. That decision comports with this Court's precedents in *Williams v. Taylor*, 529 U.S. 362 (2000), *Wiggins v. Smith*, 539 U.S. 510 (2003*), Rompilla v. Beard*, 545 U.S. 374 (2005), *Porter v. McCollum*, 558 U.S. 30 (2009) (per curiam), and *Sears v. Upton*, 561 U.S. 945 (2010) (per curiam). Not a single judge on the Fourth Circuit voted to grant Applicants' petition for rehearing en banc.

The Fourth Circuit's mandate issued on October 12, 2021. *See* Exhibit A. On October 15, 2021, the district court granted a writ of habeas corpus vacating Stokes' death sentence unless the State begins jury selection in a new sentencing hearing by October 15, 2022. *See* Exhibit B; Exhibit C. As a result, state officials must decide whether to undertake a resentencing proceeding within the next year or, instead of

again seeking the death penalty, to allow Mr. Stokes to spend the rest of his life in prison.

Applicants urge this Court to recall and stay reissuance of the Fourth Circuit's mandate. *See* Application 8. Even assuming the relief Applicants request is not moot in light of the district court's subsequent issuance of the writ, they have not satisfied the standards for obtaining extraordinary equitable relief.

First, they have made no showing of irreparable harm (or any harm) that could justify this Court's recalling the Fourth Circuit's mandate. The district court has determined that resentencing need not occur *for a full year*, reflecting (among other things) Applicants' concerns about "a significant backlog on the criminal docket due to COVID shutdowns." Exhibit D; *see also* Exhibit B, at 1 ("The Court agrees one year is a reasonable time" for resentencing). That is more than sufficient time for Applicants to seek certiorari by the December 22, 2021 deadline, and for this Court to determine whether certiorari is warranted.

Second, Applicants have not identified any issue worthy of this Court's review or demonstrated any reasonable probability that the Court will grant certiorari. Despite Applicants' assertions, there is no

relevant circuit split. Nor have they identified any error in the Fourth Circuit's decision below. They have also forfeited any argument under 28 U.S.C. § 2254(e) and, as a result, there is no possibility that this case could be informed by the outcome of *Shinn v. Ramirez*, which is pending before the Court (No. 20-1009).

The application should be denied.

ARGUMENT

In seeking to recall and stay reissuance of the Fourth Circuit's mandate, Applicants bear a heavy burden. "The judgment of the court below is presumed to be valid, and absent unusual circumstances" this Court "defer[s] to the decision of that court not to stay its judgment." *Wise v. Lipscomb*, 434 U.S. 1329, 1333 (1977) (Powell, J., in chambers); *see also Graddick v. Newman*, 453 U.S. 928, 933 (1981) (Powell, J., in chambers). Such relief "is granted only in extraordinary cases." *Conkright v. Frommert*, 556 U.S. 1401, 1402 (2009) (Ginsburg, J., in chambers) (internal quotation marks omitted).

To obtain a stay or recall of the mandate, Applicants "must demonstrate (1) a reasonable probability that this Court will grant certiorari, (2) a fair prospect that the Court will then reverse the decision

below, and (3) a likelihood that irreparable harm will result from the denial of a stay." *Maryland v. King*, 567 U.S. 1301, 1302 (2012) (Roberts, C.J., in chambers) (brackets and internal quotation marks omitted). "Even when [all those conditions] exist," a stay remains a matter of "sound equitable discretion" that "requires … a clear case and a decided balance of convenience." *Barnes v. E-Sys., Inc. Grp. Hosp. Med. & Surgical Ins. Plan*, 501 U.S. 1301, 1302, 1304–05 (1991) (Scalia, J., in chambers) (internal quotation marks omitted). "Where there is doubt, it should inure to the benefit of those who oppose grant of the extraordinary relief which a stay represents." *Williams v. Zbaraz*, 442 U.S. 1309, 1316 (1979) (Stevens, J., in chambers).

I. Applicants Have Made No Showing of Irreparable Harm That Could Justify the Extraordinary Relief They Seek.

Applicants admit that Stokes remains in prison under a life-without-parole sentence and cannot be released. Because the Fourth Circuit's decision does nothing to affect his non-capital sentences, he will remain locked up in prison for the rest of his life regardless of how this case is resolved. The only open question is whether state officials will seek to reimpose the death sentence by initiating new sentencing proceedings. But nothing about the issuance of the Fourth Circuit's

mandate prevents state officials from pursuing resentencing while also filing a petition for writ of certiorari.

Nor is there any pressing reason for this Court to stay the Fourth Circuit's mandate. In response to a joint status report, the district court has already issued a writ of habeas corpus that accepts Applicants' proposal that they be afforded *a full year* to commence Stokes' resentencing. *See* Exhibit B; *see also* Exhibit D, at 1 ("[T]he parties, through undersigned counsel for [Applicants], report a suggestion of one-year as a 'reasonable time' in this matter" for resentencing). Applicants need not even begin jury selection for the new sentencing hearing until October 15, 2022, more than three months after the end of this Court's current Term. That is more than sufficient time for Applicants to file, and for this Court to consider, a petition for writ of certiorari.

Applicants contend that staying the Fourth Circuit's mandate would save a prosecutor the inconvenience and expense of preparing for resentencing. *See* Application 23. But "[m]ere injuries, however substantial, in terms of money, time and energy necessarily expended in the absence of a stay, are not enough." *Conkright*, 556 U.S. at 1403 (Ginsburg, J., in chambers) (quoting *Sampson v. Murray*, 415 U.S. 61, 90

(1974)). As courts have long recognized, the expense and inconvenience involved in preparing for a hearing are "incident to every sort of trial" and are not the kind of "irreparable damage which equity will interfere to prevent." *Bradley Lumber Co. v. NLRB*, 84 F.2d 97, 100 (5th Cir. 1936).

In any event, the burden is on Applicants to make a "clear showing" that they face "actual" and "imminent" irreparable harm, *Direx Israel, Ltd. v. Breakthrough Med. Corp.*, 952 F.2d 802, 812 (4th Cir. 1991), *as amended* (Jan. 7, 1992), and "simply showing some 'possibility of irreparable injury' fails to satisfy" that burden. *Nken v. Holder*, 556 U.S. 418, 434 (2009) (citation omitted); *see also Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 22 (2008). Applicants do not even attempt to show that they would need to invest significant resources on resentencing before the Court is able to consider a petition for certiorari. Because Applicants are not required to begin Stokes' resentencing proceeding for a full year, they have no basis for asking this Court to exercise its emergency equitable powers.

II. There Is No Reasonable Probability That the Court Will Grant Certiorari and No Fair Prospect That It Will Reverse the Fourth Circuit.

Applicants fail to identify any issue presented by the Fourth Circuit's decision below that is worthy of review. They rely on case-specific concerns with the Fourth Circuit's fact-bound conclusions that it was unreasonable for Stokes' counsel not to investigate evidence of his extraordinarily traumatic childhood and that, had the jury considered the withheld evidence, there is a reasonable probability that at least one juror would not have voted for a death sentence.

A. Trial Counsel Failed to Conduct a Thorough Investigation and Unreasonably Withheld From the Jury Compelling Mitigation Evidence.

Compelling personal mitigating evidence was available in this case but was never presented to the jury. Stokes had an extraordinarily traumatic childhood fraught with physical and sexual abuse, parental loss, and extreme deprivation. Yet trial counsel failed to meaningfully investigate Stokes' background and childhood. And what little evidence counsel's minimal investigation uncovered, they inexplicably failed to present to the jury. The Fourth Circuit rightly determined that trial counsel's investigation into Stokes' background "was inadequate, and

their decision to withhold all personal mitigation evidence was unreasonable." Slip op. 25; *see also id*. at 25–30.

While courts afford counsel considerable deference in deciding how to represent a client, that does not absolve counsel of the "obligation to conduct a thorough investigation of the defendant's background." *Williams v. Taylor*, 529 U.S. at 396. In this case, counsel shirked that duty. As the Fourth Circuit explained, trial counsel had little to no experience preparing a mitigation defense, consulted with no experienced attorneys or mitigation experts, started the investigation six months into their nine-month representation, hired an inexperienced mitigation investigator, did not conduct any follow-up interviews or develop the investigator's findings, and retained experts who were never consulted about the personal mitigation evidence. Slip op. 25–26.

Although trial counsel discovered some red flags, including that Stokes' parents were heavy drinkers and that his stepfather abused his mother, counsel never took reasonable steps to follow up. As a result, they failed to uncover the wide array of reasonably available mitigating evidence, which included: as a child Stokes was whipped with electrical cords; he saw his stepfather break his mother's jaw by stomping on her

face; he was sexually assaulted when he was 11 years old; he had no running water and was forced to steal food to eat; he witnessed his father's dead body on the front lawn when he was 9; and he saw his mother's death at the age of 13. Slip op. 3–4. "In a capital murder trial where mitigating the death penalty was the central issue in the defense, such an investigation is objectively unreasonable." Slip op. 26.

Applicants contend that, despite the lack of any reasonable investigation, the Fourth Circuit should have deferred to trial counsel's decision to present "a single witness at sentencing: a retired prison warden who was unprepared and counterproductive." Slip op. 3; *see* Application 18–22. According to Applicants, trial counsel's failure to present mitigation evidence reflected "strategic decision-making by trial counsel in the thick of an intense trial." Application 19 (quoting Slip op. 51 (Quattlebaum, J., dissenting)). But without an adequate investigation, counsel was never in the position to "make a strategic decision about whether or not to" present mitigating evidence to the jury. *Williams v. Stirling*, 914 F.3d 302, 313–15 (4th Cir. 2019), *as amended* (Feb. 5, 2019). Having failed to uncover the available mitigating evidence, trial counsel understood only that Stokes had a "poor

upbringing" similar to "struggles" that "a lot of us had." JA3524. That uninformed view infected counsel's decision to withhold all personal mitigating evidence from the jury.

What little "strategy" trial counsel purportedly had — "that a South Carolina jury in the 1990s, and particularly Black people, would not be open to a personal mitigation narrative — was objectively unreasonable." Slip op. 30. The value of mitigating evidence is no novel invention of the 21st century. Nor is it appreciated by only one ethnic or racial group. It is a "belief, *long held by this society*, that defendants who commit criminal acts that are attributable to a disadvantaged background, or to emotional and mental problems, may be less culpable than defendants who have no such excuse." Slip op. 30 (quoting *Penry v. Lynaugh*, 492 U.S. 302, 319 (1989)). To the extent counsel deemed personal mitigating evidence altogether valueless, that decision fell far below any "objective standard of reasonableness." *Strickland v. Washington*, 466 U.S. 668, 688 (1984).

The same analysis explains why the Fourth Circuit correctly concluded that Stokes has demonstrated cause to excuse any procedural default. PCR counsel were ineffective because they failed to develop and

present a claim based on trial counsel's failure to present mitigation evidence. By their own admission, PCR counsel's failure to pursue this claim was not strategic but "the product of distraction, inexperience, and carelessness." Slip op. at 21; *see id.* at 18–24. Moreover, PCR counsel's abandonment of the mitigation claim was "objectively unreasonable" given the remarkable strength of that claim — where "trial counsel presented no background mitigation evidence at all, and [this Court] had recently deemed trial counsel ineffective for even more robust presentations" — and the "obvious and dispositive weaknesses" of the other claims PCR counsel pursued instead. *Id.* at 23. There was no error in the Fourth Circuit's fact-bound conclusion that PCR counsel were ineffective.

B. The Fourth Circuit Correctly Evaluated Prejudice in the Context of South Carolina Law.

The Fourth Circuit rightly concluded that trial counsel's deficient performance prejudiced Stokes. *See* Slip op. 31–36. In deciding prejudice, "the question is whether there is a reasonable probability that, absent the errors, … the sentencer … would have concluded that the balance of aggravating and mitigating circumstances did not warrant death." *Strickland*, 466 U.S. at 694–95. Where, as here, a jury must

decide unanimously to impose the death penalty, prejudice "requires only 'a reasonable probability that at least one juror would have struck a different balance.'" *Andrus v. Texas*, 140 S. Ct. 1875, 1886 (2020) (per curiam) (quoting *Wiggins*, 539 U.S. at 537–38). A defendant need not show that "counsel's deficient conduct more likely than not altered the outcome." *Porter*, 558 U.S. at 44 (quoting *Strickland*, 466 U.S. at 693–94).

In this case, the absence of any personal mitigating evidence "undermine[d] confidence in [the] outcome" of the proceeding. *Id.* (quoting *Strickland*, 466 U.S. at 694). Even without hearing *any* humanizing evidence, the jury apparently contemplated a life sentence, submitting a note to the trial court asking for more information on privileges in a maximum-security prison. *See* JA1405. If the jury had known of Stokes' "excruciating life history," there is a reasonable probability that the outcome would have been different. Slip op. 34 (quoting *Wiggins*, 539 U.S. at 537). There was simply "too much mitigating evidence that was not presented to now be ignored." *Id.* (quoting *Porter*, 558 U.S. at 44).

1. The Fourth Circuit Did Not Disregard Aggravating Evidence.

Applicants cannot reasonably dispute that the evidence of Stokes' extraordinary childhood trauma could have swayed the jury. Instead, they contend that the Fourth Circuit misunderstood South Carolina law because it respected the jury's findings concerning statutory aggravating factors. *See* Application 13–14. In making that argument, the Applicants mischaracterize the death-sentence-selection analysis and seek to sweep aside the jury's actual findings.

As this Court has explained regarding the sentencing process in other states, and as South Carolina law likewise provides, there are "two different aspects of the capital decisionmaking process: the eligibility decision and the selection decision." *Tuilaepa v. California*, 512 U.S. 967, 971 (1994); *see also* S.C. Code § 16-3-20. The eligibility decision involves the jury finding "statutory aggravating circumstance[s]." S.C. Code § 16-3-20. "[I]f a statutory aggravating circumstance is found, the defendant must be sentenced to either death or life imprisonment." *Id.* In deciding whether to *impose* the death penalty, the jury considers "mitigating circumstances otherwise authorized or allowed by law and the …

statutory aggravating and mitigating circumstances which may be supported by the evidence." *Id.* § 16-3-20(C).

Applicants acknowledge that "[a]dditional aggravating circumstances do not, under [South Carolina law], contribute to the actual selection of the death penalty because juries in [South Carolina] are not instructed to 'weigh' circumstances of aggravation against circumstances of mitigation." *State v. Plath*, 313 S.E.2d 619, 629 (S.C. 1984). As the Fourth Circuit recognized, the selection decision is more than just "comparing two piles of evidence and asking which is greater." Slip op. 32. When it comes to evaluating prejudice, the question is whether the jury's inability to consider *any* personal mitigating evidence may reasonably have affected one juror, even in light of the aggravating evidence and even if the evidence "does not undermine or rebut" death eligibility. *Williams v. Taylor*, 529 U.S. at 398. Applicants' position that the Fourth Circuit failed to pile certain evidence on one side of the sentence-selection balance misunderstands the proper analysis.

In any event, the Fourth Circuit did not neglect to consider or improperly "diminish" any relevant evidence. The Applicants assert that the Fourth Circuit declined to give dispositive weight to statutory

aggravating circumstances that the jury *expressly declined to find*. As the Fourth Circuit's decision explains, the prosecutor submitted six aggravating factors to the jury. The jury found only four, which it listed on the verdict form. *See* JA1465. The jury specifically did *not* find (1) that the prosecutor had established that a murder was committed while in the commission of physical torture, or (2) that two or more persons were murdered by the defendant in one course of conduct. *See* Slip op. 32 n.10. The Fourth Circuit properly recognized that the statutory factors not found by the jury should not be weighed against Stokes.

Applicants contend that the Fourth Circuit's deference to the jury's findings mean that it "erroneously discarded" relevant evidence "showing circumstances of the crime and the defendant's character." Application 15; *see also id.* at 16 (asserting that the Fourth Circuit "wrangl[ed] the most aggravating evidence out of the equation"). But that is plainly incorrect. *First*, the majority clearly took account of the gravity of the offense, identifying it as "an especially brutal crime." Slip op. 34 (quoting *Hooks v. Workman*, 689 F.3d 1148, 1207 (10th Cir. 2012)). Indeed, because the crime was particularly gruesome, the lack of any

personal mitigation evidence was all the more harmful. *Id.* *Second*, the Court did not "set aside" a second murder, but rather concluded that the South Carolina *statutory factor* regarding a second murder committed during a single course of conduct should not have been considered. *See* Slip op. 32 n.10 (discussing "the aggravating factors that the jury did not find"). Applicants appear to agree with the Fourth Circuit on that point, noting that "[t]here is a difference between the fact of two murders" (not a statutory aggravating factor) and whether "the [two] murders are committed within one act or scheme" (something that is a statutory aggravating factor). *See* Application 15 n.2.

South Carolina law requires jurors to consider mitigation evidence along with statutory aggravating factors. The jury in this case heard virtually no mitigation evidence. Trial counsel's failure to set forth any personal mitigation evidence hamstrung the jury from performing its duty. Even without the mitigation evidence, there is strong reason to believe that at least one juror contemplated a life sentence. *See* JA1405. Had the jury heard about Stokes' extraordinarily traumatic childhood, there is more than a reasonable probability that one juror would have

had a change of heart. The panel applied the right analysis and reached the right result.

2. There Is No Split in Lower Court Authority.

Applicants argue that there is a "developed split" in the courts of appeals over "how to properly effect the *Strickland* test in habeas review from cases arising from weighing versus non-weighing states." Application 15–16. But Applicants do not cite or analyze any actual circuit court cases. Instead, and with no explanation or reasoning, they rely on a 2017 law review article. *See* Application 16 (citing Sarah Gerwig-Moore, *Remedial Reading: Evaluating Federal Courts' Application of the Prejudice Standard in Capital Sentences from "Weighing" and "Non-Weighing" States*, 20 U. PA. J. CONST. L. ONLINE 1 (2017)). But that article's understanding of the difference between weighing and non-weighing states is inconsistent with this Court's precedent and, in any event, the split in authority it identifies is not relevant to this case.

The article asserts that the courts are divided over how to approach *Strickland* in the context of evaluating prejudice at the penalty phase of trial. It identifies this split because, in its view, an appellate court

should never independently "reweigh" aggravating and mitigating factors in cases from a non-weighing state. But the article appears to misunderstand the difference between weighing and non-weighing states, taking the terms "weighing" and "non-weighing" too literally. As this Court explained in *Brown v. Sanders*, 546 U.S. 212 (2006), the difference is not whether "weighing" occurs but rather what aggravating factors may be considered by the jury during the penalty phase of a capital trial. In a weighing state, "the only aggravating factors permitted to be considered … [are] the specified eligibility factors" established during the eligibility phase, while in non-weighing states, the jury is entitled to consider "aggravating factors different from, or in addition to, the eligibility factors." *Id.* at 217.

In any event, any circuit split that might exist is not likely to be resolved by this case. As noted above, the Fourth Circuit properly refused to give weight to aggravating factors that the jury expressly did not find, while also considering all evidence relevant to the circumstances of the crime and defendants' character. It then reasonably concluded that Stokes was prejudiced by his counsel's failure to investigate and present to the jury compelling evidence of his traumatic upbringing.

C. Because Applicants Have Forfeited Their 28 U.S.C. § 2254(e)(2) Argument, This Case Does Not Present Any Issue Likely to Be Addressed in *Shinn v. Ramirez*.

Applicants suggest that this case could be informed by the Court's decision in *Shinn v. Ramirez* because (they say) they objected to the district court's holding an evidentiary hearing "based on the limitations in § 2254(e)(2)." Section 2254(e)(2) provides that a court "shall not hold an evidentiary hearing on the claim unless" the applicant satisfies certain statutory requirements.

But that argument is forfeited and has not been preserved for this Court's review. Applicants' brief to the Fourth Circuit does not so much as mention § 2254(e)(2). Moreover, because Applicants chose not to cross-appeal the district court's decision to hold an evidentiary hearing, they cannot belatedly challenge that decision, which would go beyond "simply attacking (or supporting) the lower court's reasoning" and instead would lessen Stokes' rights by depriving him of the right to a hearing. *Thompson v. Gansler*, 734 F. App'x 846, 853–54 (4th Cir. 2018) (unpublished) (holding "that the State waived its right to challenge the issuance of the certificate by failing to file a cross-appeal" because it lessened petitioner's "right to appeal"); *see also United States v. Burr*, 294

F. App'x 800, 802 n.* (4th Cir. 2008) (per curiam) (declining to increase a sentence "[b]ecause the government ha[d] not cross-appealed"); *Thurston v. United States*, 810 F.2d 438, 447 (4th Cir. 1987) (rejecting government's argument that the district court erred in awarding $200 to the plaintiff where the government raised the argument in its response brief but failed to cross appeal).

Applicants argue, in the alternative, that the panel erred by setting aside the district court's factual findings without identifying those findings as clearly erroneous. That argument fails for one simple reason: Applicants do not identify what factual findings the Fourth Circuit in fact disregarded. They contend only that the district court "set out a fair recitation of the relevant facts of record, and specifically considered the possible use of the offered new opinion in 'explain[ing] the likely consequences of' the background mitigation." Application 18 (citing Slip op. 33). That unexplained reference bears no relation to the Fourth Circuit's carefully reasoned decision, which explains in detail why the district court clearly erred in failing to appreciate the significance of counsel's failure to present powerful mitigation evidence to the jury. Applicants' cursory argument is not enough to justify this Court's review.

CONCLUSION

The application should be denied.

Respectfully submitted,

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October 19, 2021

Exhibit A

FILED: October 12, 2021

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 18-6
(1:16-cv-00845-RBH)

SAMMIE LOUIS STOKES

Petitioner - Appellant

v.

BRYAN P. STIRLING, Director, South Carolina Department of Corrections; MICHAEL STEPHAN, Warden of Broad River Correctional Institution

Respondents - Appellees

M A N D A T E

The judgment of this court, entered August 19, 2021, takes effect today.

This constitutes the formal mandate of this court issued pursuant to Rule 41(a) of the Federal Rules of Appellate Procedure.

/s/Patricia S. Connor, Clerk

Exhibit B

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
AIKEN DIVISION

Sammie Louis Stokes, Petitioner, v. Bryan P. Stirling, *Director, South Carolina Department of Corrections*; and Lydell Chestnut, *Deputy Warden of Broad River Road Correctional Secure Facility*, Respondents.	Civil Action No.: 1:16-cv-00845-RBH **ORDER**

This case is before the Court on remand from the United States Court of Appeals for the Fourth Circuit. *See Stokes v. Stirling*, 10 F.4th 236, 256 (4th Cir. 2021) (reversing and remanding "with instructions that the district court issue the writ of habeas corpus unless the State of South Carolina grants Stokes a new sentencing hearing within a reasonable time"). The Fourth Circuit issued the mandate on October 12, 2021, and that same day, the undersigned directed the parties to file a joint status report addressing what constitutes "a reasonable time" for the State's grant of a new sentencing hearing. ECF Nos. 237 & 238. The parties have now filed the joint status report stating they "report a suggestion of one-year as a 'reasonable time' in this matter."[1] ECF No. 239 at p. 1. The Court agrees one year is a reasonable time.

Accordingly, consistent with the Fourth Circuit's mandate, the Court **ISSUES** Petitioner a writ of habeas corpus vacating his death sentence unless the State of South Carolina grants him a new

[1] The joint status report explains, "[J]uror panels have been difficult to handle in the [state judicial] circuit due to rather limited facilities and COVID precautions/concerns. Selecting a capital jury is likely to be even more difficult." ECF No. 239 at p. 2.

The parties also submit that "Respondents' application to recall and stay the mandate is still pending in the Supreme Court. The Chief Justice has called for a response to be filed not later than 4:00 pm next Tuesday, October 19, 2021. Respondents intend to file a petition for writ of certiorari on or before December 22, 2021." *Id.*

sentencing hearing with one year (365 days) of the date of this Order. If the State of South Carolina has not commenced jury selection in the new sentencing hearing within 365 days (i.e., October 15, 2022), the State must sentence Petitioner to life imprisonment.

IT IS SO ORDERED.

Florence, South Carolina
October 15, 2021

s/ R. Bryan Harwell
R. Bryan Harwell
Chief United States District Judge

Exhibit C

AO 450 (SCD 04/2010) Judgment in a Civil Action

UNITED STATES DISTRICT COURT
for the
District of South Carolina

Sammie Louis Stokes,

Petitioner

v.

Bryan P Stirling *Director, South Carolina Department of Corrections*; Lydell Chestnut *Deputy Warden of Broad River Road Correctional Secure Facility*.

Respondents

) Civil Action No. 1:16-cv-0845-RBH

JUDGMENT IN A CIVIL ACTION

The court has ordered that *(check one):*

■ Petitioner, Sammie Louis Stokes' death sentence is vacated.

This action was *(check one)*:

❒ tried by a jury, the Honorable _____ presiding, and the jury has rendered a verdict.

❒ tried by the Honorable _____ presiding, without a jury and the above decision was reached.

■ decided by the Honorable Judge R. Bryan Harwell, Chief United States District Judge, presiding. The court having issued a writ of habeas corpus.

Date: October 15, 2021

ROBIN L. BLUME, CLERK OF COURT

s/L. Baker

Signature of Clerk or Deputy Clerk

Exhibit D

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA

Sammie Louis Stokes, #5069, Petitioner, vs. Bryan P. Stirling, *Director, South Carolina Department of Corrections*; and Willie D. Davis, *Warden of Kirkland Correctional Institution*, Respondents.[1]	C/A No. : 1:16 –845- RBH (Capital Case) STATUS REPORT

On October 12, 2021, this Court called for a joint status report following a reversal by a panel majority in the Fourth Circuit Court of Appeals. (ECF No. 238). The Court directed the parties to confer as to what constitutes a "reasonable time" to allow the State to conduct resentencing. *Id.* After conferring, the parties submit:

1. Respondents' application to recall and stay the mandate is still pending in the Supreme Court. The Chief Justice has called for a response to be filed not later than 4:00 pm next Tuesday, October 19, 2021. Respondents intend to file a petition for writ of certiorari on or before December 22, 2021.

2. Further, the parties, through undersigned counsel for Respondents, report a suggestion of one-year as a "reasonable time" in this matter. The *Barnes v. Thomas* case as noted in the text order would tend to support an expanded timeframe. These are the supporting reasons Respondents have offered: This case was originally tried in 1999. There will need to be significant time devoted to reconstruct the matter for presentation. Counsel for Respondents have

[1] Due to changes in location for the Death Row inmates, the caption should be modified to reflect Lydell Chestnut, Deputy Warden of Broad River Road Correctional Secure Facility, as the correct party warden in this matter.

consulted the present solicitor for the circuit. Counsel is informed that there is a significant backlog on the criminal docket due to COVID shutdowns. Further, trials have already been scheduled for the next 90 days. That immediately reduces the actual time available to work on the matter to less than 300 days. Counsel was further advised that the juror panels have been difficult to handle in the circuit due to rather limited facilities and COVID precautions/concerns. Selecting a capital jury is likely to be even more difficult.

3. Counsel for Respondents are filing this report after consultation with opposing counsel, Diana Holt, Esq., who has reviewed the above assertions. Ms. Holt has communicated via email that she consents to filing the above as the parties' joint status report.

Respectfully submitted,

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DONALD J. ZELENKA
Deputy Attorney General

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s/Melody J. Brown
By:_____.
ATTORNEYS FOR RESPONDENTS

October 14, 2021