

No. 22-5536

---

IN THE  
SUPREME COURT OF THE UNITED STATES

---

MIKAL D. MAHDI,

*Petitioner,*

v.

BRYAN P. STIRLING, Commissioner, South Carolina Department of Corrections,  
LYDELL CHESTNUT, Deputy Warden of Broad River  
Correctional Institution Secure Facility,

*Respondents.*

---

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED  
STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

---

**BRIEF OF RESPONDENTS**

---

ALAN WILSON

Attorney General of South Carolina

DONALD J. ZELENKA

Deputy Attorney General

\*MELODY J. BROWN

Senior Assistant Deputy Attorney General

J. ANTHONY MABRY

Senior Assistant Attorney General

P.O. Box 11549

Columbia, South Carolina 29211

(803) 734-6305

*\*counsel of record*

*Counsel for Respondents*

## TABLE OF CONTENTS

TABLE OF AUTHORITIES .....	ii
PETITIONER’S QUESTION PRESENTED .....	1
LIST OF PARTIES .....	2
STATEMENT OF RELATED PROCEEDINGS .....	3
INTRODUCTION .....	4
CITATIONS TO OPINION BELOW.....	4
CONSITITUTIONAL AND STATUTORY PROVISIONS INVOLVED.....	4
STATEMENT OF THE CASE.....	6
A.    State Court Procedural History: Trial, Direct Appeal and State Post-Conviction Relief.....	6
B.    Federal Court Procedural History: The 28 U.S.C. § 2254 Action.....	7
C.    Facts of the Crime.....	7
REASONS WHY THE PETITION SHOULD BE DENIED.....	10
The state court record fully and fairly supports the state court’s denial of relief; therefore, the Fourth Circuit appropriately affirmed the district court’s denial of federal habeas relief pursuant to proper application of 28 U.S.C. § 2254 review .....	11
A.    Treatment of the issue in the state court was fairly based on the facts of record as developed in the state court proceedings.....	11
B.    The Fourth Circuit correctly recognized and applied Section 2254 deference.....	13
CONCLUSION .....	38

## TABLE OF AUTHORITIES

### Cases

<i>Bobby v. Van Hook</i> , 558 U.S. 4 (2009) .....	14, 30
<i>Burger v. Kemp</i> , 483 U.S. 776 (1987) .....	33
<i>Dunn v. Reeves</i> , 594 U.S. ___, 141 S. Ct. 2405 (2021) .....	13
<i>Harrington v. Richter</i> , 562 U.S. 86, 112 (2011).. .....	14
<i>Jones v. State</i> , 504 S.E.2d 822 (S.C.1998) .....	30
<i>Mahdi v. South Carolina</i> , 137 S.Ct. 1081 (2017) .....	3, 7
<i>Mahdi v. State</i> , 678 S.E.2d 807 (S.C. 2009) .....	3, 7
<i>Mahdi v. Stirling</i> , No. 8:16-cv-03911-TMC, 2018 WL 4566565 (D.S.C. Sept. 24, 2018) .....	3, 5
<i>Mahdi v. Stirling</i> , 20 F.4th 846 (4th Cir. 2021) .....	3, 5
<i>Marshall v. Lonberger</i> , 459 U.S. 422 (1983) .....	24, 29
<i>Plath v. Moore</i> , 130 F.3d 595 (4th Cir. 1997) .....	34
<i>Porter v. McCollum</i> , 558 U.S. 30 (2009) .....	32
<i>Rompilla v. Beard</i> , 545 U.S. 374 (2005) .....	30, 32
<i>Simpson v. Moore</i> , 627 S.E.2d 701 (S.C. 2006) .....	30
<i>Strickland v. Washington</i> , 466 U.S. 668 (1984) .....	passim
<i>Wiggins v. Smith</i> , 539 U.S. 510 (2003) .....	13, 30, 32
<i>Williams v. Taylor</i> , 529 U.S. 362 (2000) .....	13
<i>Wong v. Belmontes</i> , 130 S.Ct. 383 (2009) .....	14,15, 33, 38
<i>Woods v. Donald</i> , 575 U.S. 312 (2015) .....	13

## Statutes

28 U.S.C. § 2254.....	passim
28 U.S.C. § 2254(d) .....	5, 13
U.S. Const. amend. VI .....	5, 13

**\*CAPITAL CASE\***

**\*PETITIONER'S QUESTION PRESENTED\***

Did the state post-conviction court misapply this Court's Sixth Amendment precedent when it held that Mikal Mahdi's trial attorneys reasonably ended their investigation into mitigating evidence.

(Petition, p. i).

## **LIST OF PARTIES**

Respondents agree with Petitioner that the caption will reflect the parties to the proceeding; however, the correct party warden for the Secure Facility where Death Row is located is Deputy Warden Lydell Chestnut. Pursuant to Supreme Court Rule 35(3), Respondents have listed Lydell Chestnut, Deputy Warden of Broad River Correctional Institution Secure Facility as the correct party warden in this matter.

## STATEMENT OF RELATED PROCEEDINGS

*Mahdi v. Stirling*, 20 F.4<sup>th</sup> 846 (4<sup>th</sup> Cir. 2021) opinion and order issued December 2021, and order denying rehearing *en banc* issued on April 8, 2022.

[2254 action, appeal from district court, D.S.C.]

*Mahdi v. Stirling* No. 8:16-cv-03911-TMC, 2018 WL 4566565 (D.S.C. Sept. 24, 2018)

[2254, order denying habeas petition]

*Mahdi v. South Carolina*, 137 S.Ct. 1081 (2017); No 16:741 (February 21, 2017).

[post-conviction relief appeal, denial of petition for writ of certiorari]

*Mahdi v. State of South Carolina*, Appellate Case No. 2014-002131, S.C. Supreme Court, September 8, 2017 Order denying petition for writ of certiorari to review the post-conviction relief order of dismissal (J.A. 7721, 7835-36).

[post-conviction relief appeal]

*Mahdi v. State*, 2009-CP-09-00164, Court of Common Pleas (PCR Court), Amended Order Denying Post-Conviction Relief (J.A. 7507-637)

*Mahdi v. State*, 678 S.E.2d 807 (S.C. 2009)

[Opinion on direct appeal affirming convictions and death sentence]

**\*CAPITAL CASE\***  
**BRIEF IN OPPOSITION**

---

**INTRODUCTION**

Petitioner Mikal Mahdi is under a death sentence in South Carolina for the murder of Captain James Myers. Circuit Court Judge Clifton Newman accepted Mahdi's guilty pleas to murder, burglary 2<sup>nd</sup> degree (violent), and grand larceny, then conducted a separate capital proceeding. He concluded death was the appropriate sentence. After denial of relief in his direct appeal and state post-conviction proceedings, Mahdi turned to the federal courts. The District Court of South Carolina, and the Fourth Circuit Court of Appeals, correctly applying 28 U.S.C. § 2254 deference, denied relief. Mahdi now petitions for further review, but his complaints lack support both in fact and law. In fact, Mahdi admits he raises the same issue he raised to this Court on appeal from the denial of post-conviction relief (PCR) in state court. (Petition, p. 22, ll. 8-12). Mahdi had previously alleged counsel failed to investigate, discover, and present *7 non-family lay community members/school officials as witnesses* in mitigation at sentencing. This Court denied certiorari. (J.A. 7838, 8179). Mahdi now raises the same claim to this Court again, after additional review by the lower federal courts, but has reduced the number of *non-family lay witnesses* to *4 of the same 7 non-family lay witnesses*. (Petition, pp. 13-21; 29-30). Mahdi has still failed to show the intensely fact-based issue warrants review by this Court, and has failed to show any error in the 28 U.S.C. § 2254 review, much less error that would warrant review. The petition should be denied.



## CITATIONS TO OPINIONS BELOW

The District Court of South Carolina’s September 24, 2018 order denying habeas relief is unreported but available at *Mahdi v. Stirling*, C/A No. 8:16-3911-TMC, 2018 WL 4566565 (D.S.C. Sept. 24, 2018), and is attached at App. 136a. The published opinion of the Fourth Circuit affirming the district court’s denial of habeas corpus relief is reported at *Mahdi v. Stirling*, 20 F.4<sup>th</sup> 846 (4th Cir. 2022) and provided at App. 1a. The S.C. Supreme Court’s denial of certiorari in the PCR appeal is unreported but is contained in the Joint Appendix in the Fourth Circuit Court of Appeals at pp. 7221, 7835-36.<sup>1</sup> The state PCR Court’s Amended Order Denying Relief is not reported but may be found at J.A. pp. 7507-637.

## CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

This case involves the Sixth Amendment to the United States Constitution, which provides: “In all criminal prosecutions, the accused shall enjoy the right ...to have the Assistance of Counsel for his defense.” U.S. Const. amend. VI.

This case also involves the following portion of 28 U.S.C. Section 2254:

(d) An application for a writ of habeas corpus on behalf of a person in custody pursuant to the judgment of a State court shall not be granted with respect to any claim that was adjudicated on the merits in State court proceedings unless the adjudication of the claim---

- (1) resulted in a decision that was contrary to, or involved an unreasonable application of, established Federal law, as determined by the Supreme Court of the United States; or
- (2) resulted in a decision that was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding.

---

<sup>1</sup> Citations hereafter to the Fourth Circuit are JA 4<sup>th</sup>.

## STATEMENT OF THE CASE

Mahdi murdered James E. Myers on June 18, 2004, in Calhoun County, S.C. He was arrested 3 days later in Florida as a fugitive, returned to South Carolina, arrested for Myers' murder, the theft of his truck, and the burglary of his shed/cabin.

A. State Court Procedural History: Trial, Direct Appeal and State Post-Conviction Relief.

Mahdi was indicted for murder, grand larceny, and burglary, and the State instituted capital proceedings. Attorneys Carl Grant and Glenn Walters were appointed to represent Mahdi. The case was set for trial in January of 2006. Counsel moved for a continuance in order to complete their mitigation investigation. The court granted the motion moving the trial to November 26, 2006.

(JA 4<sup>th</sup> 2798-2799, Resp. Ex. 16 & 17).<sup>2</sup> On November 29, 2006, jury selection was completed. However, on November 30, 2006, Mahdi waived his right to a jury determination on guilt and sentencing and entered guilty pleas to all charges which Judge Newman accepted. (JA 4<sup>th</sup> 1185-1217). The sentencing proceeding was conducted December 1-6, 2006. On December 8, 2006, Judge Newman issued his sentencing decision. (JA 4<sup>th</sup> 1575-1591; 1659-1675, 1677-1688). He found 2 statutory aggravating circumstances proven beyond a reasonable doubt: the murder was committed (1) in the commission of a grand larceny; and (2) in the commission of a burglary. After considering all of the evidence, Judge Newman sentenced Mahdi to

---

<sup>2</sup> Mr. Grant was seriously injured in the summer of 2006 and relieved as counsel. Mr. Walters was substituted as 1<sup>st</sup> chair counsel and Josh Kroger was appointed as 2<sup>nd</sup> chair counsel.

death for murder. (JA 4<sup>th</sup> 1575-1591; 1659-1675, 1680).<sup>3</sup> Mahdi directly appealed only his death sentence. On June 15, 2009, the S.C. Supreme Court affirmed. *Mahdi v. State*, 678 S.E.2d 807 (S.C. 2009). Mahdi did not seek certiorari from this Court in his direct appeal.

Mahdi then filed a PCR application and Judge Doyet Early, III, was assigned the matter. On March 9, 2011, a merits hearing was held. On December 18, 2012, the PCR Court found the application to be without merit and denied and dismissed the action. The State filed a Motion to Alter or Amend one finding in the Order which Judge Early granted the motion and entered an Amended Order of Dismissal. (JA 4<sup>th</sup> 7507-637). Mahdi appealed raising the issue he now raises to this Court in a petition for writ of certiorari to the state supreme court. On September 8, 2016, the state supreme court denied the petition. (JA 4<sup>th</sup> 7721, 7835-36). Mahdi then filed a Petition for Writ of Certiorari in this Court raising the same issue he raises here. This Court denied certiorari. (JA 4<sup>th</sup> 7838, 8179).

B. Federal Court Procedural History: The 28 U.S.C. § 2254 Action.

Mahdi next sought federal habeas corpus relief which the District Court denied. (J.A. 4<sup>th</sup> 447-544). Mahdi appealed raising several issues, including this one, and the Fourth Circuit affirmed. (App. at 1a). Mahdi filed a petition for rehearing *en banc*, which was denied on April 8, 2022. (App. at 135a).

C. Facts of the Crime.

Mahdi murdered Captain Jim Myers, an off-duty policeman with 31 years'

---

<sup>3</sup> Mahdi received 15 years for burglary and 10 years for grand larceny.

public service. Mahdi was a fugitive wanted for crimes he committed outside South Carolina. (JA 4<sup>th</sup> 1190–1217).

On July 14, 2004, in Virginia, Mahdi burglarized a home stealing a chrome .380 caliber pistol. He stole license plates from a car rental agency and a car from a car lot. He then left Virginia, where detectives were pursuing him for the murder of a drug dealer. Mahdi later indicated he was involved in another homicide in which the body was never discovered.<sup>4</sup> Mahdi was headed to Florida. (JA 4<sup>th</sup> 1347–1376, 1206-1216, 2681-2683, 2714-2715, 2751, 2805, 2889-2890).

The next day Mahdi entered an *Exxon* station in N.C. carrying the stolen pistol. He took a beer from the cooler and placed it on the counter. While the clerk, Christopher Boggs, verified Mahdi's age, Mahdi pulled the stolen .380 and shot Boggs multiple times killing him. Mahdi then attempted to rob the cash register, but could not open it, leaving the store with only the beer. (JA 4<sup>th</sup> 1332-1347, 1416-1445, 1542-1543, 1626–1627. State's Ex. 94).<sup>5</sup>

Two days later, Corey Pitts was sitting at a traffic light in Columbia, S.C., when Mahdi car-jacked him of his SUV, using the chrome .380.<sup>6</sup> (JA 4<sup>th</sup> 1377-1389). Mahdi drove the SUV, which now bore stolen Virginia license plates, to a gas station at Exit 139 off I-26 in Calhoun County, S.C. Mahdi tried unsuccessfully to use a stolen credit card at a pump and store clerks notified police. Mahdi abandoned

---

<sup>4</sup> Mahdi's involvement in 2 homicides in Virginia was developed at the PCR hearing as a result of Mahdi's PCR allegations.

<sup>5</sup> Mahdi pled guilty in N.C. to 1st degree murder for Boggs' death.

<sup>6</sup> The car stolen from Virginia was found nearby. (JA 4<sup>th</sup> 1208).

the SUV; and, as police arrived, fled into woods nearby. Police concluded Mahdi obtained a ride nearby. Mahdi was, instead, on foot headed toward Jim Myers' farm, about 1/3 of a mile from the gas station. Mahdi came upon Myers' shed/cabin and broke into it. He watched T.V., converted Myers' shotgun into a sawed-off shotgun, and went through State police files kept by Myers' wife, an agent. Mahdi armed himself with Myers' .22 rifle kept in the shed. (JA 4<sup>th</sup> 1209-1211, 1248-1250, 1260, 1452-1453, 1263-1265).

Capt. Myers was off work June 18, 2004, having returned home from vacation. After visiting with his father, Myers headed to his farm about 6:45 p.m., where Mahdi was lying in wait. When Myers entered the shed, Mahdi shot Myers 9 times with the .22 rifle, killing him. Mahdi then poured fuel on and around the body and set it on fire. He stole Myers' police issued truck, a license plate from another truck, the .22, an assault rifle, and the shotgun and fled S.C. Myers' wife began missing him, drove to the shed, and found Myers' truck missing. She entered the shed and found Myers' burned and bullet riddled body in a pool of blood. She screamed for an unknown time, called 911, and waited for police. Near Myers' body, police found the keys to Pitts' stolen SUV, multiple fired .22 shell casings, and 7 fired .22 bullets. (JA 4<sup>th</sup> 1244-1274, 1212-1275, 1390-1415, 1262-1263, 1545).

Three days later, in Florida, Mahdi was spotted in Myers' truck. After a police pursuit, Mahdi jumped from the truck and fled carrying the fully-loaded assault rifle. Police were about to use deadly force when Mahdi dropped the gun and ran into a building. He was apprehended using a police dog. While driving Mahdi to jail, the arresting officer thanked Mahdi for not shooting him with the

assault rifle. Mahdi responded the gun was “stuck on a three shot.” Mahdi said with “cold eyes,” “I couldn’t have shot you, the other cop, and ... that fucking dog.” (JA 4<sup>th</sup> 1226-1243).

Police discovered the license plate on Myers’ stolen truck had been replaced with one off Myers’ personal truck. Clothing in the stolen truck matched that Mahdi was wearing at the S.C. gas station. Shorts in the truck matched those worn by Mahdi in Boggs’ murder, and shoes matched footwear impressions near Myers’ murder. The assault rifle was recovered, and the sawed-off shotgun and ammo were in the truck, along with an “Atlas” from Myers’ shed, with Mahdi’s fingerprints on the Jacksonville page. This led police to 2 men in Jacksonville, who purchased a .380 and .22 from Mahdi after Myers’ death, who identified Myers’ truck as the one Mahdi was driving, and identified Mahdi in a photo lineup, as the person who sold them the guns. Ballistics confirmed the .380 was used to murder Boggs, and the .22 was used to murder Myers. (JA 4<sup>th</sup> 1408-1411, 1243-1244, 1215, 1414, 1267-1270, 1441-1445).

Capt. Myers died from multiple gunshot wounds, after being shot 9 times, including 4 in the chest and 3 in the head. Myers was shot first in the chest and possibly once in the head. After collapsing, he possibly raised his head and was shot again and was shot again in the head while lying on the floor. (JA 4<sup>th</sup> 1108).

### **REASONS WHY THE PETITION SHOULD BE DENIED**

Mahdi fails to show anything other than an ordinary application of the correct restrictive review of this state criminal matter under 28 U.S.C. § 2254. The State of South Carolina provided Mahdi ample opportunity in post-conviction relief

proceedings to explore trial counsel's strategy and investigations for the sentencing phase. Mahdi simply failed to show error. He then failed to show an unreasonable adjudication of the issue in the state court that could support federal habeas corpus relief. As such, relief was properly denied. Further, Mahdi's precise ineffective assistance issue – again, one that Mahdi had already presented in a prior petition to his Court<sup>7</sup> – relates to sentencing evidence and requires an intensive fact review of the record that this Court generally avoids, and rightly so, especially where, as is the case here, the law is settled. Mahdi has failed to present an issue that would warrant review by this Court.

**The state court record fully and fairly supports the state court's denial of relief; therefore, the Fourth Circuit appropriately affirmed the district court's denial of federal habeas relief pursuant to proper application of 28 U.S.C. § 2254 review.**

**A. Treatment of the issue in the state court was fairly based on the facts of record as developed in the state court proceedings.**

In PCR action, Mahdi alleged counsel erred in not having: (a) interviewed and called at sentencing several of his extended family members and also community members and school officials to testify to his family, social, scholastic, and mental health history; (b) presented the testimony he presented [at PCR] through a different social worker than the one used at sentencing; (c) introduced testimony of an expert regarding the effect of Mahdi's life of incarceration on him;

---

<sup>7</sup> Mahdi alleges counsel was ineffective in failing to further investigate, locate, and call 4 *lay non-family members* from Mahdi's community and elementary schools as mitigation witnesses, the same issue he raised to this Court before. While Mahdi emphasizes the failure to investigate more in this petition, it is the same ground raised to this Court previously, *i.e.*, counsel failed to investigate further, locate, and call the same non-family and community lay witnesses in mitigation. Mahdi admits the same in his current petition. (Petition, p. 22, ll. 5-12).

(d) investigated, developed, and presented evidence concerning his mental health history or mentality; specifically, the testimony presented at PCR by Drs. Schwartz-Watts and Myers and provided certain records to their own mental health experts; and (e) introduced certain records at sentencing such as his school, DJJ, and Walter Carter Center records, and his father's records.

At the PCR hearing, the vast majority of the evidence in support of these allegations came from Mahdi's extended family, several experts, and records of Mahdi's commitment to the Walter Carter Center, to DJJ, and his school records. On appeal, and now before this Court again, Mahdi has abandoned all of these witnesses' testimony, the records themselves, and the above claims, except one, and only raises a subpart of that one (1) claim. Mahdi alleges IAC in not investigating further, locating, and calling *4 community members and school officials* from his early life. Mahdi abandoned the other related claims because the credible testimony at PCR established: (1) Mahdi's immediate and extended family was not cooperative with counsel, except for providing background information, and refused to testify or would say bad things about Mahdi if called to testify; (2) calling the experts Mahdi presented at PCR would have resulted in testimony before Judge Newman that Mahdi was involved in other homicides before the Boggs' and Myers' murders along with a diagnosis of anti-social personality disorder (ASPD); and, (3) introduction of the records would have resulted in the introduction of Mahdi's bad behavior in school, extensive testimony of his disciplinary violations in DJJ, and his horrible



behavior in the Carter Center.<sup>8</sup>

**B. The Fourth Circuit Correctly recognized and applied Section 2254 deference.**

Congress placed sharp limitations on a federal court's review of state criminal convictions and sentencing under 28 U.S.C. § 2254, which the Fourth Circuit acknowledged in review of Mahdi's issue:

... federal courts cannot grant habeas relief under § 2254 unless the state PCR court's decision: (1) "was contrary to" clearly established Supreme Court case law; (2) "involved an unreasonable application" of the same; or (3) "was based on an unreasonable determination of the facts in light of the" record before it.

(App. 74a, citing 28 U.S.C. § 2254(d)). Consistent with the precedent of this Court, the Fourth Circuit further acknowledged that the standard is "intentionally difficult to meet" by design "to safeguard to principles of comity, finality, and federalism." *Id.*, (quoting *Woods v. Donald*, 575 U.S. 312, 316 (2015) (per curiam)). Essentially, "[f]ederal habeas courts must defer to reasonable state-court decisions" in Section 2254(d) review. *Dunn v. Reeves*, 594 U.S. \_\_\_, \_\_\_, 141 S. Ct. 2405, 2407 (2021). The record supports that there was no failure to apply this standard based on the facts of this record.

The Sixth Amendment requires counsel in a capital case conduct a reasonable and thorough investigation into mitigation evidence. *Wiggins v. Smith*, 539 U.S. 510 (2003); *Williams v. Taylor*, 529 U.S. 362, 296 (2000). Because Mahdi

---

<sup>8</sup> In Mahdi's "Statement of the Case" in this action, he has "cherry picked" from the testimony of extended family and expert witnesses he called at PCR, **but whom he does not now claim on appeal counsel should have called at sentencing**, and also from his own sentencing phase mitigation expert [social worker Marjorie Hammock] **who the sentencing judge heard from**, in an attempt to create a narrative to show deficient performance *and* prejudice. (Petition, pp. 2-10).

challenged counsel's performance, he had to show an unreasonable application of the two-prong test from *Strickland v. Washington*, 466 U.S. 668 (1984): (1) that "counsel's representation fell below an objective standard of reasonableness," and (2) that deficiency prejudiced him. 466 U.S. at 688. A court considering a claim of ineffective assistance must apply a "strong presumption" that representation was within the "wide range" of reasonable professional assistance and counsel made all significant decisions in the exercise of reasonable professional judgment. *Id.*, at 689.<sup>9</sup>

As to prejudice, Mahdi was required to show that had counsel acted competently, there is a reasonable probability a different sentence would have resulted. *Wong v. Belmontes*, 558 U.S. 15, 19 (2009) (citing *Strickland*, 466 U.S. at 694). To make that determination, a review court must consider the old mitigation evidence and the new mitigation evidence, along with the evidence in aggravation produced at sentencing, and the aggravating evidence that would likely come in with the new mitigation. *Id.*, at 20. "The likelihood of a different result must be substantial, not just conceivable." *Harrington v. Richter*, 562 U.S. 86, 112 (2011). Again, "[t]he pivotal question" in Section 2254 review "is whether the state court's application of the *Strickland* standard was unreasonable." *Id.*, at 101.

Though Mahdi submits the Fourth Circuit, the district court, and the state court erred in finding he failed to prove ineffective assistance he finds error by

---

<sup>9</sup> The ABA Guidelines for counsel in death penalty cases are not the definition of what reasonableness means under *Strickland*, and they are not "inexorable commands with which all capital defense counsel must comply." *Bobby v. Van Hook*, 558 U.S. 4, 8 (2009).

failing to consider **all of the mitigation Mahdi presented at PCR** – not just the select portion he now raises on appeal – which contained even more aggravating evidence that would have come in with the new mitigation. The Fourth Circuit, properly considering all the evidence, *Belmontes, supra*, correctly found no relief was due. Evaluation of that decision requires rigorous review of specific factual details in the record.

At the state PCR hearing, Mahdi called 2 community witnesses (George Smith, a community activist, and Sharon Pond), and offered the affidavits of 2 community witnesses (Sheriff James Woodley, who testified for the State at sentencing, and Douglas Pond). Mahdi also called 2 school officials (Myra Harris and Carrol Wilson, 2 of his elementary school teachers) and offered the affidavit of 1 school official (Dora Wynn, his kindergarten teacher and elementary school principal for a time). Mahdi now contends in this appeal that counsel was deficient **only** in failing to locate and call 4 of these 7 *community witnesses and school officials* at sentencing, and he alleges he was prejudiced by this.<sup>10</sup> Mahdi is wrong.

At PCR, George Smith, by affidavits James Woodley and Douglas Pond, and Sharon Pond discussed Mahdi's father's behavior in the community. All 4 testified or averred to an incident where Mahdi's father, an African-American, jumped into a segregated [all white] swimming pool and would not leave in protest. He was arrested and began throwing items at the jail. As a result, he was sent for a mental evaluation which eventually determined Mahdi's father had no major

---

<sup>10</sup> Mahdi now only alleges ineffective assistance for failing to locate and call Myra Harris, Carol Wilson, George Smith, and James Woodley. (Petition, pp. 13-21). Mahdi no longer claims ineffective

mental illness. Mr. Smith also testified Mahdi's father did not like white people and especially disliked Jews, though he thought this may be because Mahdi's father is Muslim. Mr. Woodley also averred to Mahdi's father's conversion to Islam, his defiant behavior in the community, his inability to hold a job, and his physically abusive behavior and acts toward his wife and mother which were witnessed by Mahdi and his brother. Woodley did not witness this domestic violence, he found out this information from others. (JA 4<sup>th</sup> 2925-97 and JA 4<sup>th</sup> 2925-97).

Myra Harris testified she was Mahdi's 3<sup>rd</sup> grade teacher after he was released from the Carter Center for what she termed a suicide attempt. She worked with Mahdi, and he improved over the course of the year. She admitted Mahdi was a discipline problem in her class at the beginning of the year but she was able to correct that. Mahdi remained a discipline problem in other classrooms, and she would often see him in detention. If called as a witness she would have asked Judge Newman for mercy. She admitted when not in her class, Mahdi refused to do his work or was defiant, engaged in angry outbursts in classes or the hallway, including making loud verbal gestures, and left classes without permission. She was not surprised Mahdi's I.Q. tested as high at 118. She admitted her classroom was one in which children with discipline problems were placed. (JA 4<sup>th</sup> 2310-2328).

Carol Wilson testified Mahdi was in her class in the 5<sup>th</sup> grade. She taught special education, but Mahdi was not mentally retarded; he had an I.Q. of 118 and was very intelligent. Mahdi was classified as emotionally disabled (ED) and referred for services in reading and language skills. She admitted his emotional

outbursts and refusal to do school-work were probably the reason he was evaluated and referred to her class, and records showed he had difficulty in reading, which could cause him to be frustrated with school work and become angry. Counseling was also recommended. She testified he was sad/depressed at times in her class, but she did not know the reason for the sadness. Mahdi had low self-esteem, and officials believed changing schools numerous times may have contributed to his school difficulties. She had to put Mahdi's desk next to hers to make him do his school-work. Mahdi's father initially was adamant and upset school officials wanted to place him in special education, but he eventually acquiesced and agreed to the placement. Mahdi was eventually pulled out of her class by Mr. Mahdi to home school him. Mahdi's father was fired as a substitute teacher after he told 5<sup>th</sup> grade girls in a class he was teaching they should use birth control, not have babies out of wedlock, and end up on welfare. Wilson believed Mahdi fell through the cracks and would have asked Judge Newman for mercy because she felt Mahdi's father interrupted Mahdi's schooling. She admitted however the school district records showed Mahdi's father was strongly concerned about Mahdi. She contradicted other witnesses, who testified at PCR there was not enough food in Mahdi's home, describing Mahdi as plump, chubby, and overweight in her class.

Ms. Wynn averred when Mahdi was in her kindergarten class, he was bright, but quiet and shy. He was more of an observer, and she had to encourage him to engage with other children. She was Mahdi's 4<sup>th</sup> grade principal. Mahdi misbehaved often and was regularly in her office. She believed Mahdi had trust issues. He refused to do his work, to eat, and would leave school. She also described him as

angry. He was recommended for placement in special education and was not in special education long before his father pulled him out of school. She also averred Mahdi's father was a substitute teacher but she stopped him from teaching because he was engaging in what she termed "irrational behavior" and cursing students. (JA 4<sup>th</sup> 2922).

In response to the allegation counsel failed to investigate and present mitigation evidence, Respondent called counsel who represented Mahdi [Grant, Walters, & Kroger], counsel's mitigation investigator [Paige Tarr Haas] ("Tarr"), their private investigator James Gordon, counsel's psychiatric/psychological experts, and introduced the testimony of Marjorie Hammock, the forensic social worker, from the sentencing proceeding, exhibits introduced through her at sentencing, and exhibits generated during counsel's mitigation investigation.

The record shows counsel retained a mitigation investigator (Tarr), a forensic social worker (Hammock), and a private investigator (Gordon), to investigate and develop Mahdi's family and social history for mitigation evidence to be presented at sentencing and retained 2 experts, Dr. Thomas Martin (a forensic psychiatrist) and Dr. Geoffrey McKee (a forensic psychologist), to investigate Mahdi's psychiatric history and mentality at the time of the crime *and* uncover any mental deficiencies or disorders that would mitigate punishment. The mitigation investigator and social worker interviewed numerous members of Mahdi's family, a member of Mahdi's community, and school officials, and counsel also interviewed potential mitigation witnesses themselves. Counsel and the investigators also consulted with

Mahdi's North Carolina defense team [Boggs' murder] and obtained the mitigation evidence they uncovered. Counsel moved for, and obtained, a continuance of almost 1 year in order to completely and thoroughly investigate and develop the mitigation on Mahdi's behalf. (JA 4<sup>th</sup> – 2707-2911, 1595-1596, 2798-2799 – Resp, Ex. 16 & 17).

Tarr was retained by counsel on recommendation of an experienced capital defense attorney and previously served as mitigation investigator in 30 to 40 capital cases and was thoroughly familiar with the necessity of, and how to conduct, a capital mitigation investigation. Tarr investigated Mahdi's social, family, school, institutional, and mental health history by interviewing Mahdi, his father, mother, grandmother, paternal uncles Carson and Nathan Burwell, paternal aunts Lawanda and Kathy Burwell, maternal aunts Sophie Gee and Corlis Artis, and school officials, and by obtaining records of Mahdi's background including his DJJ records, *school records*, and commitment records to a psychiatric facility (the Walter Carter Center) in Baltimore at age 9. Tarr also summarized these particular psychiatric records and Mahdi's school records for counsel and their retained experts. (JA 4<sup>th</sup> 2790, 2763-2776 – Resp. Ex. 12).

As part of her investigation, Tarr requested Mahdi's school records. Although she no longer had her file in this case, she testified it was her common practice to request records from any school Mahdi or his family informed her Mahdi had attended. She also went to the schools Mahdi attended. She spoke with teachers in Lawrenceville who were familiar with Mahdi. She also spoke with individuals from a school Mahdi attended in Baltimore. Tarr testified she regularly

summarized school records in capital cases and would have included all pertinent information *helpful to Madhi* in her school record summary, which was introduced at sentencing before Judge Newman. (JA 4<sup>th</sup> 2766, 2786-2788).

Tarr traveled to North Carolina and met with Mahdi's attorneys on the Boggs' murder; those attorneys had conducted a mitigation investigation, and their information was shared with her. Tarr learned Mahdi's Uncle Carson had told them Mahdi was a "demon" when he lived with Carson and Lawanda, a fact established by notes made by Tarr at the time and shared with counsel in South Carolina. (JA 4<sup>th</sup> 2770-2776, 2704-2706 – Resp. 12 & Ex. 7).

Tarr traveled to Lawrenceville, VA and contacted Mahdi's grandmother Nancy and Uncle Nathan, and traveled to Baltimore, MD and contacted Mahdi's Aunts Kathy and Lawanda, and Uncle Carson. Tarr located Mahdi's maternal aunts Corliss Artis and Sophie Gee in Richmond, VA, and located Mahdi's mother, from whom Mahdi was estranged. Tarr tried to speak with Mahdi's brother, Saleem, however, he was repeatedly unavailable to speak with her. Tarr provided counsel with summaries of these witnesses' potential testimony and relayed to counsel the information collected by her. She returned to Virginia, Maryland, and Pennsylvania with the forensic social worker, where they interviewed members of Mahdi's immediate and extended family. A month before sentencing, Tarr had spent 170 hours interviewing witnesses, collecting documents, and producing data in her quest to put together an appropriate mitigation presentation. She anticipated working 75 more hours in preparing the case. (JA 4<sup>th</sup> 2764-2776 – Resp. Ex. 10).



Hammock, the forensic social worker, had previously worked in numerous capital cases in several states including South Carolina. At the time of sentencing, Hammock had testified and been qualified as an expert in social work in 14 cases, worked on 25 capital cases, and was working on another 5 capital cases, here, in Florida, and Alabama. She traveled with Tarr to Lawrenceville and interviewed Mahdi's grandmother Nancy and Uncle Nathan. Hammock traveled to Richmond and attempted to speak in person with Mahdi's mother, who was not cooperative, and was finally able to speak with her but only by phone. Hammock also interviewed a family friend. She interviewed Mahdi's aunts Sophie and Corlis. She traveled to Baltimore and interviewed Mahdi's uncle and aunt, Carson and Lawanda. She also interviewed Mahdi's father, Shareef Mahdi, while in Philadelphia, PA. (JA 4<sup>th</sup> 1588-1612, 2764-2776).

Counsel also participated in the mitigation investigation. Counsel traveled to North Carolina and met with those attorneys and mitigation team, who shared with counsel the results of their investigation. Counsel testified there were team meetings at which their own mitigation investigator, social worker, retained psychiatric/psychological experts, and counsel were present, and each shared what their investigation had uncovered. (JA 4<sup>th</sup> 2796-2798).

Counsel testified they interviewed Mahdi with regard to mitigation evidence. Mahdi was intelligent, and they had no problems communicating with him. Counsel was aware Mahdi had been placed in special education classes in elementary school, but Mahdi informed them he never should have been placed in those classes. Counsel obtained Mahdi's DJJ records, which revealed Mahdi admitted he had;

difficulties in school adjustment, been frequently suspended, a history of verbal and physical aggression, conflicts with educational authorities, and difficulties getting along with classmates. He also admitted he had injured someone in a fight and had hit or attacked someone who was not in his family. Counsel relied on their mitigation investigator and social worker to get all of the information with regards to Mahdi's schooling and education and testified there were team meetings where the mitigation investigator and social worker shared with them and their experts what they found in their investigation. Counsel testified Mahdi was dysfunctional in the school system and from Mahdi's own statements to counsel he had problems in the school system. Counsel testified they would have forwarded any records they received to their experts, and Drs. Martin and McKee testified they were aware Mahdi was in special education. (JA 4<sup>th</sup> 6320-6323, 2793-2794, 2804-2812, 2830-2832, 2838, 2889-2891, 2901).

Counsel traveled to Virginia and spoke with Mahdi's grandmother Nancy and Uncle Nathan. Nathan was not cooperative in their mitigation investigation, and counsel was hesitant to call Nathan as a witness because he assisted police in identifying Mahdi in the surveillance video of the North Carolina murder and was proud of that fact. Tarr testified similarly. Mahdi's grandmother was cooperative in their mitigation investigation, and they had her present at sentencing to testify, but she was unwilling to assist Mahdi regarding mitigation testimony, stating she was there [at sentencing] to defend the Burwell family name.

Counsel also talked with Mahdi's Uncle Carson and Aunt Lawanda. While they provided background information on Mahdi and his family, Carson informed

counsel he and his wife were not going to help Mahdi, stating Mahdi was defiant and manipulative in their home and almost had he and Lawanda arrested when Mahdi made a false claim of child abuse and manufactured false evidence of abuse. Their position was they were glad Mahdi was out of their home. Carson stated if called to testify he would have bad things to say about Mahdi. Lawanda testified at PCR she would have been reluctant to testify at Mahdi's sentencing. Tarr produced her notes detailing Carson told her Mahdi was manipulative *and* the incident leading to his commitment to the Carter Center was more of Mahdi's manipulative behavior, not a real suicide attempt. (JA 4<sup>th</sup> 2819-2821, 2828-2829, 2850-2851, 2894-2898, 2773-2775).

Counsel interviewed Mahdi's aunt Kathy Burwell. She indicated she did not wish to participate in Mahdi's sentencing. Counsel interviewed Mahdi's brother, Saleem, who was not helpful or interested in testifying. Counsel testified Mahdi's father was not cooperative ("standoffish") and did not want to be involved. Mahdi told counsel he did not want his father involved in his sentencing proceeding. Mahdi's mother was completely uncooperative and did not want to participate in Mahdi's sentencing. Neither Mahdi's mother, nor father, or brother testified at PCR or offered affidavits. (JA 4<sup>th</sup> 2837, 2803-2911, 2202-2921).

Both Drs. Martin and McKee also took a social history from Mahdi, and a psychiatric history. Both were aware of Mahdi's commitment to a psychiatric facility at age 9 and reviewed those records. Martin also reviewed Tarr's interview summaries of Mahdi's family. Martin testified at PCR that Mahdi informed him he

had been placed in special education but told Martin he should not have been placed there and became ODD (Oppositional Defiant Disorder) after that because he did not belong there. Mahdi begged the school principal to take him out of special education, but this was unsuccessful. He asked his father to take him out of special education, and his father eventually pulled him out of public school and home schooled him. Dr. Martin testified students are classified as emotionally disabled and placed in special education classes because they are behavioral problems. Sometimes this behavior is fueled by depression, sometimes its incorrigible behavior, or sometimes they are truant or have conduct disorder. Martin testified Mahdi's acting-out behaviors such as irritability, talking back to teachers, and disrespectful attitude were in other reports he reviewed and in information Mahdi provided. Dr. McKee was also aware Mahdi had been placed in special education as a child. Both testified there were team meetings where they shared their findings with counsel and the other experts. (JA 4<sup>th</sup> 2716-2717, 2743 – Resp. Ex. 8).

The PCR judge found the testimony of counsel, their investigators and experts to be credible – a finding particularly and best left to the state court judge. *See Marshall v. Lonberger*, 459 U.S. 422, 434 (1983) (“28 U.S.C. § 2254(d) gives federal habeas courts no license to redetermine credibility of witnesses whose demeanor has been observed by the state trial court, but not by them.”). Both Drs. Martin and McKee were present at team meetings where information was shared regarding the joint investigation into Mahdi's past. Both found separately Mahdi was not suffering from any major mental illness when he murdered Myers and

diagnosed him with ASPD. While Martin found Mahdi suffered from some recurrent depression in his life, he did not find any evidence Mahdi was suffering from any depression at the time of Myers' murder.<sup>11</sup> Both testified Mahdi was very intelligent, and he informed them he left Virginia, before the Boggs' and Myers' murders, because detectives were closing in on him for the murder of a drug dealer.

Mahdi related to Martin he was involved in another homicide where the body had not been found.<sup>12</sup> (JA 4<sup>th</sup> 2709-2762).

Counsel testified they wanted a family member at sentencing to testify regarding Mahdi's family and social history mitigation; however, the only person who was willing to come and testify was the grandmother Nancy; the rest of the family, including aunts, were not willing to participate. Counsel had Nancy present to testify and worked with her; but she did not want to discuss Mahdi and how he came to be where he was; she wanted to talk about the accolades of the family, and even though Mahdi committed these horrible crimes, the Burwell family was still a good family. And, counsel's mitigation investigation revealed Mahdi was in trouble or misbehaved in school. As a result of the lack of cooperation from the family, including extended family, counsel presented the mitigation evidence including Mahdi's family, social, scholastic, and mental health history through their forensic social worker. (JA 4<sup>th</sup> 2837, 2839, 2850-2851, 2892-2898, 2821-2822, 2892-2893,

---

<sup>11</sup> Martin testified the records introduced by Mahdi at PCR would not change his diagnosis. McKee testified similarly. Neither changed their diagnosis based on records shown them at PCR.

<sup>12</sup> Counsel made a strategic decision not call either expert at sentencing, because their testimony would not be helpful and damaging information would have come out on cross-examination. (JA 4<sup>th</sup> 2709-2724, 2746-2762, 2890-2891, 2827-2828).

2825).

For the sentencing proceeding, Hammock conducted a bio-social assessment of Mahdi's life and family history and presented the same at sentencing. She interviewed Madhi's grandmother Nancy, his uncles Carson and Nathan, his aunts Lawanda, Sophie, and Corlis, his mother, his father, and a family friend. She conducted her bio-social assessment by also reviewing records, interviewing Mahdi, and taking information from anyone who would give information about him, his life, and development. She also reviewed a synopsis of Madhi's school records and reviewed a report from his admission in Baltimore to the Carter Center psychiatric facility at age 9. With regard to the testimony Mahdi now raises, it was largely cumulative to that Hammock presented through her testimony and the exhibits introduced through her. (JA 4<sup>th</sup> 1588-1612 – Def. Trial Ex. 1, 2 & 3).

As a result of Hammock's testimony and the exhibits, Judge Newman was aware of the difficulties Mahdi's father had growing up, particularly that he was unwanted by his mother; he was forced to go to an integrated school that was traumatic; he did not finish high-school; he was discharged from the military under less than honorable conditions, and he suffered from depression for most of his life including after his wife left he, Mahdi, and Mahdi's brother. He was aware of Mahdi's father's inability to get along with others, including his own family and members of the community, to parent effectively, to obey the law, to hold a job, and support his family. He was aware of the domestic violence within Mahdi's immediate family committed by Mahdi's father on both his wife and mother. He was aware of Mahdi's father's defiant behavior in the community including

committing assaults on his own family members, a number of incidents involving police including a series of misdemeanors, all said to be racially motivated, and an 8- hour stand-off with police. He was also aware of his conversion to Islam and his changing his name from Thomas Burwell to Shareef Mahdi, and this caused consternation within the Burwell family.

Judge Newman was well aware Mahi himself had a life of deprivation, including being born into a family in which his parents' marriage was an arranged marriage Mahdi's mother was forced to join when she was only age 16; Mahdi's father changed his mother's birth name to "Tilea;" there was conflict in the marriage from its beginning and Mahdi and his brother witnessed this; Mahdi was abandoned by his mother around age 5; Mahdi's mother was forced to abandon Mahdi to escape the physical abuse committed by Mahdi's father; Mahdi's father could not provide for Mahdi and his brother, and as a result, Mahdi and his brother were sent to live with different aunts and uncles; because of this separation, shortly thereafter Mahdi was committed to the Carter Center and diagnosed as suffering from major depression and suicidal ideation;<sup>13</sup> when Mahdi, his brother, and father finally reunited on the Burwell family farm, there was little food in the home, no heat, and no money; Mahdi experienced difficulties in his adolescence which led to his juvenile incarceration; and, after his release from juvenile prison Mahdi attempted unsuccessfully to reconcile with his mother and Mahdi had not seen his

---

<sup>13</sup> The testimony at the competency hearing was Mahdi was not suffering from any mental illness. Mahdi stated at his guilty plea, under oath, he had not been previously treated for alcohol or drug abuse or mental illness. When asked if he had any physical, emotional or nervous problem that might keep him from understanding what he was doing, Mahdi stated "I have none of those

mother since. Mahdi and his brother witnessed their father assaulting [committing domestic violence] on their mother and grandmother; Mahdi lacked a proper role model, and Mahdi's father had a criminal record.

Judge Newman was also aware of the incident described by family members at PCR and by Sheriff Woodley in his affidavit: After Mahdi's mother left initially to escape the abuse, Mahdi's mother was forcibly taken from Richmond to Lawrenceville by Mahdi's father, who then assaulted and abused Mahdi's mother. As a result, Mahdi witnessed more abuse and violence, specifically his father committing domestic violence on his mother. Mahdi's mother moved again, without the children, to escape Mahdi's father.<sup>14</sup>

Judge Newman was also aware of Mahdi's school difficulties including that: his education was interrupted many times; Mahdi had difficulty reading throughout his schooling; Mahdi had many absences, and Mahdi's father pulled him out of school after the 5<sup>th</sup> grade to *home school* Mahdi, and there was no indication or evidence this *home schooling* had occurred.

The State did not cross-examine Marjorie Hammock or challenge the accuracy of the exhibits introduced through her. All of this evidence was before Judge Newman uncontested.

Further, the portions of Mahdi's DJJ records introduced at sentencing

---

problems." JA 4<sup>th</sup> 1069, 1195-1196.

<sup>14</sup> Sheriff Woodley in his affidavit described this incident as an attempted murder. However, at the sentencing hearing before Judge Newman, under oath, Sheriff Woodley testified the only violations of the criminal law Mahdi's father had committed that he was aware of were "simple assaults" on family members. Sheriff Woodley did not appear at the PCR hearing and subject himself to cross-examination on his affidavit. Nor did he witness this incident.



confirmed much of what Hammock testified to regarding Mahdi's upbringing and family: Mahdi lacked appropriate parental discipline and support; he was not supervised as a child or given appropriate structure and guidelines; he began smoking marijuana at 12, had been smoking marijuana every day since, and began selling crack at 14. He needed self-esteem training, family services, and values clarification; he suffered from the lack of a mother; his father was not involved in his life; his father had a criminal record for malicious damage to property and escape; Mahdi had no supervision, no curfew, and his father did not care about Mahdi's criminal behavior. Mahdi came from a dis-functional 1 parent family; his father believed the justice system was prejudiced and voiced his belief many white supremacists were in the area; and, a young Mahdi made similar racial comments. (JA 4<sup>th</sup> 1289-1291, 1295, 1588-1612, 1702-1703, 1706-1707, 1980, 1988 – State's Trial Ex. 85).

Based on this state court record, the Fourth Circuit correctly found Mahdi had not shown an unreasonable adjudication. The PCR Court found the testimony of counsel and their team *to be credible* on this issue. That finding is particularly entitled to deference. *Marshall v. Lonberger, supra*. The Fourth Circuit honored that deference. (App. at 94a). Further, it is reasonable and correct. The finding is supported by the testimony of counsel, their mitigation team, and their contemporaneous notes. Further, based on the credible evidence, the PCR Court reasonably and correctly found counsel conducted a reasonable mitigation investigation, which included talking with all of Mahdi's immediate family, several

members of his extended family, including aunts and uncles, and a family friend, regarding Mahdi's family and social background, and attempted to develop live mitigation witnesses from Mahdi's family, including extended family, but were unable to do so due to the family's reluctance and/or refusal to testify, or refusal or inability to testify in a helpful fashion. *See Wiggins*, 539 U.S. at 512 (*Strickland* does not "require[] counsel to investigate every conceivable line of mitigating evidence no matter how unlikely the effort would be to assist the defendant at sentencing").

The Fourth Circuit also correctly found Mahdi failed to demonstrate deficient performance here because much, if not all, of the evidence he offered at PCR regarding his family and social history, whether from family, community, or school witnesses, was cumulative to that presented in the sentencing proceeding. (App. 97a). In fact, the mitigation evidence presented by Hammock was from many of the same people who testified at PCR. *See generally Bobby*, 558 U.S. at 11 ("[T]here comes a point at which evidence ...can reasonable be expected to be only cumulative, and the search for it distractive from ore important duties."); *Rompilla*, 545 U.S. at 389 ("Questioning a few more family members and searching for old records can promise less than looking for a needle in a haystack, when a lawyer truly has reason to doubt there is any needle there"); *Simpson v. Moore*, 627 S.E.2d 701 711-12 (S.C. 2006)(counsel did in fact do adequate investigation and presented similar mitigation evidence); *Jones v. State*, 504 S.E.2d 822 (S.C. 1998)(mitigation evidence presented at PCR was not that different from evidence presented at trial).

Additionally, Sheriff Woodley testified under oath **at sentencing**. His *affidavit* offered at PCR contains serious credibility problems: He attempts to blame the standoff with police on Mahdi's father; however, at sentencing he blamed the standoff on both Mahdi and his father; he also speculates throughout the affidavit, which would not have been admissible; he avers to the incident where Mahdi's mother was kidnapped as an attempted murder; however, at sentencing under oath he testified he was only aware of prior "simple assaults" on family members by Mahdi's father; contrary to his affidavit, Woodley was anything but a cooperative witness to the defense at sentencing; and, finally, Woodley did not witness any of these events.

Further, the mitigating value of the incident related by community members where Mahdi's father jumped into a segregated swimming pool is negligible. Mahdi's father was protesting the wrongful segregation of that facility and was determined at that time not to suffer from any major mental illness.

Mahdi also failed to show deficient performance for not calling elementary school officials or introducing the school records. The PCR Court carefully reviewed the records, the testimony of the school officials, and the affidavit. The Court correctly found there was no merit to this allegation. Mahdi now alleges *only* that counsel should have called *the school officials*, **not introduced the school records**.

As discussed, counsel obtained Mahdi's school records. Tarr also interviewed school officials at various schools Mahdi attended. Counsel also

obtained Mahdi's DJJ records. Counsel and their experts also *interviewed Mahdi* regarding his time in school. Counsel's investigation revealed Mahdi was a discipline problem in the school system. *Strickland* (what investigation decisions are reasonable depends critically on *such information*). The school records and DJJ records reflected this. Mahdi also confirmed this. *See Wiggins, supra.* (counsel is not obligated to "investigate every conceivable line of mitigate[ion]"). Mahdi also related to counsel and his experts he never should have been in special education. Mahdi was placed in special education and diagnosed as E.D. mainly because of his misconduct or bad behavior in school such as defiance and aggressiveness toward other students. (JA 4<sup>th</sup> 6315, 4274, 6312, 6314). Further, there was expert testimony a diagnosis of ED many times means simply a misbehaving child. (JA 4<sup>th</sup> 2743). This testimony would have further exposed Mahdi's conduct disorder, a pre-cursor to ASPD, which counsel did not want admitted. Additionally, Mahdi was also referred for special education services because of his inability to read, which Judge Newman already knew of through Hammock. Further still, Mahdi's *own PCR witnesses* undercut the validity of his being placed in special education.<sup>15</sup> Mahdi's I.Q. was 118; he was not mentally retarded.

Mahdi's claim the Fourth Circuit ignored *Porter v. McCollum*, 558 U.S. 30 (2009)(applying *Strickland* to claim of ineffective assistance at sentencing), and *Rompilla*, is simply not correct. Counsel made a reasonable and thorough

---

<sup>15</sup> Dr. Cooper-Lewter, a PCR expert, testified Mahdi told him he should not have been placed in special education and after placed there he put forth no effort, because he did not belong there. Cooper-Lewter agreed with Mahdi's assessment. Mahdi's aunt Lawanda, a credentialed school administrator, with a master's degree from Harvard, testified Mahdi

investigation into Mahdi's school experience and was entitled to stop the investigation at this point as they did not believe it would produce favorable evidence. *Wong v. Belmontes*, 558 U.S. at 19 (reasonable for counsel not to offer evidence that would "open the door" to "damaging evidence"); *Burger v. Kemp*, 483 U.S. 776, 793 (1987)(when defendant's background is "by no means uniformly helpful" to him since it "suggest[s] violent tendencies," it is reasonable to choose not to present it).

At the sentencing proceeding, Hammock testified in detail to Mahdi's difficulties in school and that his education basically ended in the 5<sup>th</sup> grade. What she did not testify to was the extensive misconduct and bad behavior in school, which came out at PCR through the records and school officials. Counsel conducted a reasonable investigation of Mahdi's school history and presented the same at sentencing.

Further, the school officials' testimony was not all favorable. All indicated Mahdi had behavioral problems in school, was often in the principal's office or detention, engaged in angry outbursts and left class without permission, was placed in a class for children with disciplinary problems, and still misbehaved in other classes. Given Hammock's testimony and exhibits regarding Mahdi's life, his father's behavior, and Mahdi's school difficulties, there was not a voluminous amount of mitigation here through school officials and the Fourth Circuit did not ignore this Court's precedent as Mahdi alleges. (*See App. at 92a-99a*). Counsel made an objectively reasonable decision to present Mahdi's school history and learning

difficulties through Hammock in a sanitized fashion that removed Mahdi's bad school behavior. Counsel conducted a reasonable and thorough investigation regarding mitigation evidence and presented the mitigation they could present at sentencing favorable to Mahdi without exposing Mahdi to negative character evidence. Mahdi has failed to show the State PCR Court unreasonably applied this Court's precedent and has failed to show by clear and convincing evidence the PCR Court reached an unreasonable determination of the facts given the record before that Court. The PCR Court's determination of this issue is fully supported by the record. As the Fourth Circuit correctly found, Mahdi failed to show habeas relief was due. (App. at 98a-99a).

Further, in the alternative, the Fourth Circuit also found, if they had to continue to consider *Strickland* prejudice, the panel majority would agree with the district court and the State that Mahdi could not show the required prejudice. (App. at 99a).

The evidence in aggravation at the plea and sentencing was overwhelming. *Plath v. Moore*, 130 F.3d 595 (4<sup>th</sup> Cir. 1997) (given magnitude of aggravating evidence, defendant failed to show prejudice from not presenting certain mitigation). Mahdi admitted he murdered Myers, burglarized his cabin, stole his guns and truck, and acted completely alone. Mahdi burglarized a home in Virginia, stole a gun, stole a license plate, and a car, and drove eventually to Columbia. He car-jacked an SUV, replaced the tag with a stolen tag, and drove to a gas station. He attempted using a stolen credit card there and fled into woods when police

arrived. He came upon Myers' shed, burglarized it, and while inside manufactured a sawed-off shotgun and armed himself with a .22 rifle. When Myers entered his shed, Mahdi murdered Myers by shooting him 9 times including several times in the head after he was helpless. Mahdi attempted to burn Myers' body and shed, replaced the tag on Myers' truck with a stolen tag, and stole Myers' guns and truck. Myers' wife found Myers' body, screamed for an unknown period before calling 911, and remained there until police arrived. Mahdi fled to Jacksonville, sold the .380, and .22; but kept other guns including the assault rifle. Mahdi was captured after an extensive police chase with the use of a dog and considered shooting officers before arrest. Myers' guns and other evidence were recovered in or near his truck.

Mahdi was previously adjudicated for car-breaking, larceny, escape, breaking and entering, grand larceny, obstruction of justice, and contempt. Mahdi stated his strength was robbing; and he was engaged in selling crack. During 1 break-in, Mahdi stole a .44 magnum. When police tried to arrest him, he refused to come out of his home, an 8-hour standoff ensued. Mahdi stated: "I'm going to kill a cop before I die." At 17, Mahdi slashed his mother's tires and resisted arrest. He said he should have killed "that bitch," his mother. As an adult, Mahdi was convicted of stabbing Moises Rivera 5-6 times after Mahdi tried to burglarize an apartment where Rivera worked. Rivera's heart stopped and was revived by EMS. Mahdi served 3 years in prison but not rehabilitated. Upon release, Mahdi tried to assemble a 9mm, bragged he was dealing drugs and was going to knock off dealers, and tested positive for drugs. This was all while on supervised release from prison. (JA 4<sup>th</sup> 1286, 1289-1291, 1277-1278, 1280, 1306-1311, 1461, 1322-1324, 1332-1360).

Mahdi brutally murdered Christopher Boggs, a store clerk, in North Carolina, by shooting him in the face and shooting him again in the head after he collapsed to the floor. Mahdi then tried to rob the cash register. Mahdi is on the store video, his prints were found on the counter, Mahdi's friends and relatives identified him in the video, and the gun was sold by Mahdi and matched to Boggs' murder. Mahdi did not even give Boggs the opportunity to comply with the robbery.

Mahdi assaulted a DJJ inmate almost immediately upon entering DJJ and assaulted guards and cursed and threatened staff. In Virginia's adult DOC, Mahdi set fire to his cell, refused to obey orders, and assaulted a non-inmate. In South Carolina prisons, Mahdi assaulted a guard, threatened to kill another, made a hammer weapon, and threatened other guards. Finally, Mahdi attempted to escape during trial by use of a handcuff key he fashioned and kept in his mouth. (JA 4<sup>th</sup> 1284-1305, 1334-1335, 1461-1462, 1465-1478, 1495-1497, 1501-1506, 1510-1511).

Judge Newman also heard victim impact regarding Myers as a human being and member of the community from his father, widow, daughter, and best friend.

Mahdi's PCR mitigation centered on extended family members, expert witness' testimony on his mentality, and records. Mahdi has abandoned counsel should have presented this mitigation and cannot contend it changes the sentencing equation. However, Judge Early had to consider the aggravating evidence that would have come in with *all* the new mitigation offered at PCR.

If counsel had offered this evidence, more aggravating evidence would have come in: Mahdi was "a demon" when living with Carson and Lawanda and engaged



in manipulative behavior and only talked of suicide when he did not get his way or was about to be punished. Mahdi's "suicide attempt" leading to his Carter Center' commitment was not a real attempt but more manipulative behavior, undercutting the Carter Center' diagnosis offered in mitigation. Mahdi almost had Carson and Lawanda arrested on a false claim of child abuse and evidence manufactured by him. Mahdi engaged in horrible behavior at the Carter Center such as hitting patients, attempting to escape, cursing staff, pulling a fire alarm, throwing chairs, and threatening to suffocate someone. Later, Mahdi threw a cement block through an aunt's car window and slashed his mother's tires for not letting him use it. Mahdi never should have been in special education in school, because he did not belong there. Mahdi had 41 disciplinary violations in DJJ including: assaulting guards, inmates, and a teacher; leading an escape attempt where he assaulted a female guard and demanded keys from another; planning and enlisting the support of others in an assault in which the victim was injured; refusing to comply or be disciplined; cursing staff, destroying property, and faking a suicide to manipulate the prison. He was diagnosed with conduct disorder. Mahdi was diagnosed in adult DOC with intermittent explosive disorder and ASPD. After transfer to a maximum-security prison, his misconduct continued. After prison, Mahdi had to move out of 1 home because he would not follow its rules. Mahdi had an I.Q. of 118, obtained his GED, held several jobs, and obtained college credits, but rather than maintain employment, dealt drugs and committed 2 murders in Virginia.

With regard to the testimony Mahdi now raises, it was largely cumulative to the testimony presented before Judge Newman through the forensic social worker.

In fact, many details testified to by community members were related by Hammock to Judge Newman or are set forth in the Exhibit detailing Mahdi's family history. Judge Newman was also familiar with Mahdi's school difficulties and brief education through Hammock's testimony and the exhibit chronically those. Neither her testimony, nor the Exhibit was challenged by the State. The evidence presented from community members and/or school officials would not entitle him to relief.

The school officials also added aggravating evidence admitting Mahdi was a discipline problem in school and in the principal's office or detention often. He was aggressive with other students, prone to outbursts, and left class without permission. He was placed in a class for children with discipline problems. Judge Newman was not aware of this aggravating evidence.

As the Fourth Circuit noted, "each witness who testified during the PCR hearing would have likely introduced evidence that would have undermined Mahdi's mitigation strategy at sentencing." (App. at 100a). That would not have been beneficial to Mahdi. Considering the evidence in aggravation at sentencing, the mitigation presented at sentencing, along with the new mitigation, and the aggravating evidence that would have come in with it, there is no reasonable probability Judge Newman would have returned with a different sentence. *Belmontes, supra*. Again, Mahdi is due no relief.

## **CONCLUSION**

The Petition for Writ of Certiorari should be denied.

Respectfully submitted,

ALAN WILSON  
Attorney General

\*MELODY J. BROWN  
Assistant Deputy Attorney General

J. ANTHONY MABRY  
Senior Assistant Attorney General

*Counsel for Respondents*

*\*counsel of record*  
November 10, 2022