****CAPITAL CASE****

No. _____

IN THE

Supreme Court of the United States

SEAGA EDWARD GILLARD,
Petitioner,

v.

STATE OF NORTH CAROLINA,
Respondent.

On Petition for a Writ of Certiorari to the Supreme Court of North Carolina

PETITION FOR A WRIT OF CERTIORARI

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***** CAPITAL CASE *****

QUESTION PRESENTED

The Eighth Amendment forbids the imposition of the death penalty on a defendant "who aids and abets a felony in the course of which a murder is committed by others but who does not himself kill, attempt to kill, or intend that a killing take place or that lethal force will be employed," *Enmund v. Florida*, 458 U.S. 782, 797 (1982), unless the defendant's conduct shows he was a "major" participant in the felony and personally acted with "reckless indifference to human life," *Tison v. Arizona*, 481 U.S. 137, 158 (1987).

In this case, however, state-law principles of vicarious liability short circuited the individualized consideration long required by this Court. In North Carolina, if a defendant joins with another to commit a crime, the defendant is not only guilty "if the other commits that particular crime, but he is also guilty of any other crime committed by the other in pursuance of the common purpose or as a natural or probable consequence thereof." *State v. Barnes*, 481 S.E.2d 44, 71 (N.C. 1997) (cleaned up). Applying this broad accomplice liability, the lower court upheld Mr. Gillard's death sentence based on his co-defendant's state of mind, without requiring the jury to consider Mr. Gillard's personal culpability first.

The question presented for review is:

> Whether the Supreme Court of North Carolina violated this Court's precedent when it held that a jury instruction requiring a finding of culpability under *Enmund*/*Tison* was not necessary to support Mr. Gillard's death sentence for a killing he did not personally commit?

LIST OF PROCEEDINGS

1. *State v. Gillard*, Nos. 16CRS223351, 16CRS5702 (Wake County Superior Court, March 4, 2019)

2. *State v. Gillard*, No. 316A19 (N.C., January 2, 2025)

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PETITION FOR A WRIT OF CERTIORARI

Seaga Edward Gillard respectfully petitions this Court for a Writ of Certiorari to review the judgment of the Supreme Court of North Carolina.

OPINION BELOW

The opinion of the Supreme Court of North Carolina issued on December 13, 2024, finding no error in Mr. Gillard's direct appeal, is attached as Appendix A and is available at *State v. Gillard*, 909 S.E.2d 226 (N.C. 2024).

JURISDICTION

The judgment of the Supreme Court of North Carolina denying Mr. Gillard's direct appeal was entered on January 2, 2025. *See* Appendix B. On March 18, 2025, Chief Justice Roberts granted Mr. Gillard's timely-filed motion for an extension of time within which to file this Petition until June 1, 2025. *See* Appendix C. As

Mr. Gillard asserts a deprivation of his rights secured by the Constitution of the United States, the jurisdiction of this Court is invoked under 28 U.S.C. § 1257.

CONSTITUTIONAL PROVISIONS INVOLVED

This case involves the Eighth Amendment to the United States Constitution, which provides: "Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted." U.S. Const. amend. VIII.

This case involves the Fourteenth Amendment to the United States Constitution, which provides: "No state shall . . . deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws." U.S. Const. amend. XIV, § 1.

STATEMENT OF THE CASE

A. Trial

On January 23, 2017, a Wake County, North Carolina Grand Jury indicted Mr. Gillard for the first-degree murders of April Holland and Dwayne Garvey. Brandon Hill was also indicted for their murders. The State alleged Mr. Hill shot Mr. Garvey and Mr. Gillard shot Ms. Holland. Both were killed in a hotel in Raleigh, North Carolina. The State sought the death penalty for each murder. *See State v. Gillard*, 909 S.E.2d 226, 241 (N.C. 2024).

At trial, the State alleged that Mr. Gillard acted in concert with Brandon Hill. *Id.* at 261. A video of the killing plainly showed that Mr. Hill, not Mr. Gillard, shot and killed Mr. Garvey in the hotel hallway. *Id.* at 303 (Earls and Riggs, JJ., concurring in part and dissenting in part). Mr. Gillard then shot and killed

Ms. Holland who was inside the hotel room. *See id*. at 245. The State proceeded both on the theory that the murders were premeditated and deliberated, and on the theory that the murders were committed during the perpetration of two felonies—the attempted robbery with a dangerous weapon of Ms. Holland, and the attempted first-degree rape of Ms. Holland. The State did not allege Mr. Garvey was the intended victim of any crime other than murder. *Id*. at 258, 261.

During the guilt phase of the trial, the State presented evidence under North Carolina's Evidence Rule 404(b) of the alleged rape and robbery of two different sex workers at different hotels by Mr. Gillard and Mr. Hill. Based on these separate incidents, the State alleged that Mr. Gillard arranged to meet Ms. Holland at a hotel to rape and rob her under the guise of paying Ms. Holland for sex. The defense disputed this claim by pointing out several differences between the encounter with Ms. Holland and those with the other sex workers. Most significantly, in the other incidents, both Mr. Gillard and Mr. Hill immediately entered the sex worker's hotel room together and tied her up. In this case, Mr. Gillard entered Ms. Holland's hotel room while Mr. Hill left the area. *Id*. at 242.

At some point, Mr. Hill encountered Mr. Garvey. Mr. Garvey was Ms. Holland's boyfriend. Mr. Garvey was aware of Ms. Holland's sex work and acted as her protector. *Id*. at 241.

Approximately four minutes after Mr. Gillard entered Ms. Holland's room, Mr. Garvey ran back to the room and started pounding on the door. Mr. Hill

followed Mr. Garvey, gun in hand. Mr. Hill and Mr. Garvey exchanged words then Mr. Hill started to shoot at Mr. Garvey, ultimately killing him. *Id.*

Mr. Gillard came to the door of Ms. Holland's room after the shooting started, turned, and fired two shots into the room. Those shots struck and killed Ms. Holland. In a ten second span, nine shots were fired: seven from one gun and two from another. *Id.*

Ms. Holland's body was found undressed near the door to the hotel room. There was no evidence to show Holland had been assaulted, had been in a fight, or had been tied up. *Id.* at 246. Police found $140, the agreed-upon price, in Ms. Holland's room. *Id.* at 306 (Earls and Riggs, JJ., concurring in part and dissenting in part).

The jury found Mr. Gillard guilty of first-degree murder of both Ms. Holland and Mr. Garvey under theories of premeditation and deliberation and felony murder. The underlying felonies for felony murder were attempted robbery and attempted rape of Ms. Holland. The jury was instructed on acting in concert regarding Mr. Garvey's death. *See generally id.* at 257-62 (majority opinion).

During the sentencing hearing, additional 404(b) evidence was introduced related to other alleged robberies and rapes of sex workers committed by Mr. Hill and Mr. Gillard at different hotels. In each of those incidents, both Mr. Hill and Mr. Gillard immediately entered the hotel room together. In one instance, when a friend came to check on the sex worker, Mr. Hill and Mr. Gillard robbed them as well. Even though there was evidence that both Mr. Hill and Mr. Gillard were

armed during these incidents, no one was shot in any of the other incidents. *Id.* at 291-294 (Earls and Riggs, JJ., concurring in part and dissenting in part).

Defense counsel did not request, and the trial court did not provide, an instruction under *Enmund v. Florida*, 458 U.S. 782 (1982) or *Tison v. Arizona*, 481 U.S. 137 (1987) at sentencing. *Gillard*, 909 S.E.2d at 262. At the conclusion of the sentencing hearing, the jury recommended that Mr. Gillard be sentenced to death for both killings. *Id.* at 242. For Mr. Garvey, under "any other circumstances or circumstances arising from the evidence which you deem to have mitigating value," the jury wrote in that Mr. Gillard "did not pull the trigger." *Id.* at 303 (Earls and Riggs, JJ., concurring in part and dissenting in part).

B. Appeal

On direct appeal, Mr. Gillard argued, *inter alia*, that the trial court plainly erred under this Court's precedent when it failed to instruct the jury during the sentencing phase that it had to determine whether Mr. Gillard killed or attempted to kill Mr. Garvey; intended to kill Mr. Garvey; intended that deadly force would be used in the course of the attempted rape and robbery of Ms. Holland; or was a major participant in the underlying felony and exhibited reckless indifference to human life. Mr. Gillard argued his death sentence was not authorized under the Eighth Amendment in the absence of a finding addressing his personal culpability for Mr. Garvey's death.

On December 13, 2024, the Supreme Court of North Carolina issued an opinion affirming Mr. Gillard's convictions and sentences. *Id.* at 241. In North

Carolina, "If two persons join in a purpose to commit a crime, each of them, if actually or constructively present, is not only guilty as a principal if the other commits that particular crime, but he is also guilty of any other crime committed by the other in pursuance of the common purpose or as a natural or probable consequence thereof." *State v. Barnes*, 481 S.E.2d 44, 71 (N.C. 1997) (cleaned up). In *Barnes*, the court explicitly overruled a case that required each defendant to "individually possess[] the requisite mens rea to commit th[e] crime." *Id.* at 69.

Applying *Barnes*, the lower court found sufficient evidence to support Mr. Gillard's conviction for first-degree murder, specifically relying on the fact that Mr. Hill premeditated and deliberated the killing of Mr. Garvey, stating "the evidence demonstrates that Garvey's murder resulted from premeditation and deliberation on the part of Hill." *Gillard*, 909 S.E.2d at 262. The court then concluded, "Regardless of whether defendant knew of Garvey's presence, because Garvey's murder occurred in the pursuit of and as a natural and probable consequence of defendant and Hill's plan to rob and rape Holland, this charge was properly submitted to the jury." *Id.*

The lower court relied on concerted action to uphold Mr. Gillard's conviction based on a felony murder theory as well. It stated, "The State presented sufficient evidence that defendant and Hill had engaged in a common plan or scheme to commit rape and robbery with a dangerous weapon against Holland through the State's Rule 404(b) evidence. Even though Garvey was not the intended victim of this common scheme or plan, he was killed in pursuit thereof." *Id.* at 261. The

court concluded, "Because a defendant can be held guilty of a murder committed in the pursuit of [a] common plan, we conclude that the trial court properly submitted this issue to the jury." *Id.* (internal quotation and citation omitted).

Regarding the *Enmund/Tison* instruction, the lower court concluded that because Mr. Gillard was convicted of both premeditated and deliberated murder as well as felony murder for Mr. Garvey's death, an instruction was not needed. *Id.* at 264. The court further stated that Mr. Gillard was not prejudiced by the lack of a jury instruction related to *Enmund/Tison*, because he was a "'major participa[nt] in the felony committed' and demonstrated 'a reckless indifference to human life, [which] is sufficient to satisfy the *Enmund* culpability requirement." *Id.*

REASONS FOR GRANTING THE PETITION

The jury never found Mr. Gillard personally intended to kill Mr. Garvey. Evidence showed Mr. Gillard and his codefendant planned a robbery and rape, but the shooting of Mr. Garvey started when Mr. Gillard was not with the codefendant. The Supreme Court of North Carolina failed to specifically address Mr. Gillard's personal culpability and *mens rea* for Mr. Garvey's death before upholding his death sentence for Mr. Garvey's murder. A finding that his codefendant intended to kill Mr. Garvey cannot justify the death penalty for Mr. Gillard.

Likewise, the jury's finding that Mr. Gillard participated in felonies against Ms. Holland alone is insufficient to show the "reckless indifference to human life" required for a death sentence when the defendant does not personally kill, attempt to kill, or intend that the killing take place. *See Enmund*, 458 U.S. at 797; *Tison*,

481 U.S. at 158. The North Carolina Supreme Court's decision that an instruction on Mr. Gillard's *mens rea* was not required to impose the death penalty conflicts with this Court's precedent in *Enmund* and *Tison* and fails to show that Mr. Gillard's death sentence for the killing of Mr. Garvey is constitutional under the Eighth Amendment. *See* Sup. Ct. R. 10(c).

This Court has long made clear that "individualized consideration is a constitutional requirement in imposing the death sentence," *Lockett v. Ohio*, 438 U.S. 586, 605 (1978) (footnote omitted), which means that the focus must be on the "relevant facets of the character and [the] record of the individual offender," *Woodson v. North Carolina*, 428 U.S. 280, 304 (1976). In line with that focus, this Court held in *Enmund v. Florida* that the Eighth Amendment does not permit imposition of the death penalty on a defendant "who aids and abets a felony in the course of which a murder is committed by others but who does not himself kill, attempt to kill, or intend that a killing take place or that lethal force will be employed." 458 U.S. 782, 797 (1982). However, in *Tison v. Arizona*, this Court qualified the *Enmund* rule and held that the Eighth Amendment permits a death sentence if the defendant's conduct showed "major participation in the felony committed, *combined with* reckless indifference to human life[.]" 481 U.S. 137, 158 (1987) (emphasis added). While the necessary showings may "often overlap," *id.* at 158 n.12, each requirement must be satisfied.

In *Tison*, this Court addressed "whether the petitioners' participation in the events leading up to and following the murder of four members of a family makes

the sentences of death imposed by the Arizona courts constitutionally permissible although neither petitioner specifically intended to kill the victims and neither inflicted the fatal gunshot wounds." *Id.* at 138. In that case, Arizona tried each of the petitioners for armed robbery, kidnapping, car theft, and four counts of capital murder. *Id.* Each petitioner "was convicted of the four murders under [Arizona's] accomplice liability and felony-murder statutes." *Id.* at 141-42.

On appeal, the Arizona Supreme Court affirmed. It concluded that "Intent to kill includes the situation in which the defendant intended, contemplated, or anticipated that lethal force would or might be used or that life would or might be taken in accomplishing the underlying felony." *Id. at* 144 (cleaned up). However, this Court rejected that reasoning and held the lower court erred by applying "an erroneous standard in making the findings required by *Enmund v. Florida*, 458 U.S. 782 (1982)." *Id.* at 138. In particular, this Court stated Arizona had attempted "to reformulate 'intent to kill' as a species of foreseeability," and concluded this reformulation "amount[ed] to little more than a restatement of the felony-murder rule itself." *Id.* at 150-51.

Having reaffirmed that mere participation in a felony that might foreseeably result in the use of lethal force does not automatically suffice to show reckless indifference to human life, this Court determined that the petitioners in *Tison* fell into a middle ground. On one hand, this Court concluded, "Petitioners do not fall within the 'intent to kill' category of felony murderers for which *Enmund* explicitly finds the death penalty permissible under the Eighth Amendment." *Id.* at 151. But

on the other, it concluded that the petitioners fell "outside the category of felony murderers for whom *Enmund* explicitly held the death penalty disproportional" because their participation was "major rather than minor, and the record would support a finding of the culpable mental state of reckless indifference to human life." *Id.*

When considering how to address an intermediate case like the Tisons', this Court stated, "A critical facet of the individualized determination of culpability required in capital cases is the mental state with which the defendant commits the crime." *Id.* at 156. In line with this insight, this Court observed that many who intentionally kill are not criminally liable, or are undeserving of the death penalty, while "some nonintentional murderers may be among the most dangerous and inhumane of all -- the person who tortures another not caring whether the victim lives or dies, or the robber who shoots someone in the course of the robbery, utterly indifferent to the fact that the desire to rob may have the unintended consequence of killing the victim as well as taking the victim's property." *Id.* at 157. This Court held, "the reckless disregard for human life implicit in knowingly engaging in criminal activities known to carry a grave risk of death represents a highly culpable mental state, a mental state that may be taken into account in making a capital sentencing judgment when that conduct causes its natural, though also not inevitable, lethal result." *Id.* at 157-58.

This Court did "not attempt to precisely delineate the particular types of conduct and states of mind warranting imposition of the death penalty" in *Tison*,

481 U.S. at 158. Instead, it reiterated, "we simply hold that major participation in the felony committed, combined with reckless indifference to human life, is sufficient to satisfy the *Enmund* culpability requirement." *Id.* The Court concluded, "The Arizona courts have clearly found that the former exists," vacated the judgments, and remanded "for determination of the latter[.]" *Id.* Seemingly recognizing this "simple" holding would not always be so simple to apply, this Court explained:

> Although we state these two requirements separately, they often overlap. For example, we do not doubt that there are some felonies as to which one could properly conclude that any major participant necessarily exhibits reckless indifference to the value of human life. Moreover, even in cases where the fact that the defendant was a major participant in a felony did not suffice to establish reckless indifference, that fact would still often provide significant support for such a finding.

Id. at 158 n.12.

In this case, the North Carolina Supreme Court formulated the *Enmund* culpability requirement in the same way Arizona attempted in *Tison*: By effectively equating foreseeability with intent, it merely restated the felony murder rule. It failed to specifically address Mr. Gillard's personal culpability and *mens rea.* A finding that Mr. Hill intended to kill Mr. Garvey cannot justify the death penalty for Mr. Gillard. Mere participation in an attempted rape and attempted robbery is insufficient to show "reckless indifference to human life." The North Carolina Supreme Court misinterpreted this Court's precedent when concluding a jury instruction on the *Enmund*/*Tison* issue of culpability was not warranted.

I. Under *Enmund* and *Tison,* a finding of premeditation and deliberation by the shooter is insufficient to justify a death sentence for a non-shooter codefendant.

In its opinion, the North Carolina Supreme Court upheld Mr. Gillard's conviction for the first-degree murder of Mr. Garvey, stating, "the evidence demonstrates that Garvey's murder resulted from premeditation and deliberation *on the part of Hill*." *Gillard*, 909 S.E.2d at 262 (emphasis added). When assessing Mr. Gillard's argument that the jury should have been instructed under *Enmund/Tison*, the lower court claimed to act based on "direction from the Supreme Court." However, the lower court only relied on its own precedent to hold that an *Enmund/Tison* instruction is not required (1) when a defendant is found guilty of first-degree murder on "the basis of premeditation and deliberation under the theory that he committed all the elements or that he acted in concert," or (2) when a defendant is convicted of both premeditated and deliberated murder and felony murder. *Id.* at 264.

Importantly, North Carolina's acting-in-concert liability extends beyond the crimes the participants intended to commit. Under North Carolina law, if "two persons join in a purpose to commit a crime, each of them, if actually or constructively present, is not only guilty as a principal if the other commits that particular crime, but he is also guilty of any other crime committed by the other in pursuance of the common purpose . . . or as a natural or probable consequence thereof." *Barnes*, 481 S.E.2d at 70 (quoting *State v. Erlewine*, 403 S.E.2d 280, 286 (N.C. 1991)). So a defendant may be convicted of a crime he never intended to

commit so long as the person with whom he acted in concert had the requisite *mens rea* for the crime—even if that *mens rea* was not shared. As a result, absent appropriate instructions, the broad availability of accomplice liability in North Carolina threatens to undercut the individualized consideration this Court has held is required when imposing the death penalty.

Here, the trial court recognized that evidence of common purpose of committing premeditated murder of Mr. Garvey was lacking. Yet, the North Carolina Supreme Court concluded the finding of premeditation and deliberation—essentially intent to kill—by Mr. Hill was sufficient to show that Mr. Gillard possessed the mental state required by this Court's decisions in *Enmund* and *Tison*.

In *Enmund*, this Court emphasized that when it came to imposition of the death penalty, the "focus" must be on the person sentenced to death and "on *his* culpability, not on that of those who committed the robbery and shot the victims." *Enmund*, 458 U.S. at 798 (emphasis in original). But by relying on *Mr. Hill's* mental state, the North Carolina Supreme Court ignored this Court's directive that "individualized consideration" is "a constitutional requirement in imposing the death sentence[.]" *Id.*

In short, the key question was not whether *Mr. Hill* possessed the requisite mental state but rather whether *Mr. Gillard* did. The North Carolina Supreme Court sidestepped that question. In doing so, it violated this Court's precedent and upheld a death sentence in violation of the Eighth Amendment.

II. A finding of reckless indifference to human life is required under *Enmund/Tison* even if a defendant was a major participant in dangerous crimes.

The North Carolina Supreme Court stated that this Court had "essentially concluded that major participation in felonious conduct in which there is a significant risk of death is no different for Eighth Amendment purposes than the intent to kill issue that *Enmund* confronted." *Gillard*, 909 S.E.2d at 263 (citing *Ross v. Davis*, 29 F.4th 1028, 1043-44 (9th Cir.), *cert. denied sub nom. Ross v. Bloomfield*, 143 S. Ct. 375 (2022)). In doing so, that court opined that "[u]nlike the defendant in *Enmund*, here, defendant was not a minor participant. Rather, like the brothers in *Tison*, he was a major participant in criminal conduct known to carry a grave risk of death." *Gillard*, 909 S.E.2d at 264.

The State relied on other instances to show that Mr. Gillard planned to rob and rape Ms. Holland, and the court relied on that same evidence to find Mr. Gillard was a "major participant." But the other incidents did not show that Mr. Gillard acted with a reckless indifference to human life in this case. None of the sex workers were shot in those instances. Once the alleged rapes were completed and items were taken from the hotel rooms, the sex workers were left behind. Without pointing to any evidence purportedly showing Mr. Gillard acted with reckless indifference to human life beyond preparation and participation in the attempted felonies, the lower court concluded the *Enmund/Tison* culpability requirement was met.

In *Enmund* and *Tison*, those killed were the victims of the underlying felonies. Here, Mr. Garvey was not the intended victim of the allegedly planned rape and robbery. Ms. Holland was the intended victim of those crimes. For reasons unknown at Mr. Gillard's trial, Mr. Hill followed Mr. Garvey back to Ms. Holland's room and shot him in the hallway outside her hotel room. This was unconnected to the felonies Mr. Gillard and Mr. Hill had allegedly planned to commit (namely, the rape and robbery of Ms. Holland). Mr. Gillard was unaware the shooting was happening and could not have prevented it.

Further, the State admitted it did not prove a rape or a robbery was completed and instead relied only on an attempt to commit the crimes. The lower court relied on evidence of planning and other alleged incidents not involving Mr. Garvey or Ms. Holland to show that Mr. Gillard was a major participant in an "armed, violent felony." *Id.* at 264. There was simply no evidence that Mr. Gillard was a major participant in any crime involving Mr. Garvey. Regardless of any intended crime against Ms. Holland, Mr. Gillard could not have known what was happening outside the hotel room he was in with Ms. Holland, and he could not have stopped Mr. Hill from killing Mr. Garvey.

The commission of felonies alone cannot satisfy the Eighth Amendment's requirement that the defendant act with reckless disregard for human life before a death sentence can be imposed. *Enmund* made that much clear, and *Tison* reaffirmed this Court's holding on that point. But by holding that "major participation in felonious conduct in which there is a significant risk of death is no

different for Eighth Amendment purposes than the intent to kill issue that *Enmund* confronted," *Gillard*, 909 S.E.2d at 263, the North Carolina Supreme Court effectively collapsed two separate constitutional requirements into one. It also repeated the exact error this Court corrected in *Tison*.

III. This direct appeal presents a straightforward vehicle for the Court to remediate North Carolina's failure to follow *Enmund* and *Tison*. Summary reversal would be appropriate given the fundamental nature of the error and its importance.

Mr. Gillard fully litigated the failure to give an instruction under *Enmund*/*Tison* on direct appeal. As such, this case makes an uncomplicated vehicle for this Court to provide much needed remedial instruction to North Carolina's courts on when acting-in-concert liability is insufficient to support a death sentence.

This is the rare instance where the Court should consider a disposition of summary reversal. Summary reversal is appropriate "for cases where 'the law is settled and stable, the facts are not in dispute, and the decision below is clearly in error.'" *Pavan v. Smith*, 582 U.S. 563, 567–68 (2017) (Gorsuch, J., dissenting) (quoting *Schweiker v. Hansen*, 450 U.S. 785, 791 (1981) (Marshall, J., dissenting)). "[S]ummarily deciding a capital case, when circumstances so warrant, is hardly unprecedented." *Wearry v. Cain*, 577 U.S. 385, 395 (2016); *see also*, *e.g.*, *Lynch v. Arizona*, 578 U.S. 613 (2016); *Christeson v. Roper*, 574 U.S. 373 (2015); *Hinton v. Alabama*, 571 U.S. 263 (2014); *Sears v. Upton*, 561 U.S. 945 (2010); *Jefferson v. Upton*, 560 U.S. 284 (2010); *Porter v. McCollum*, 558 U.S. 30 (2009). The Court has also "not shied away from summarily deciding fact-intensive cases where, as here, lower courts have egregiously misapplied settled law." *Cain*, 577 U.S. at 395

(summarily deciding that a capital defendant's due process rights were violated). The Court should do so here.

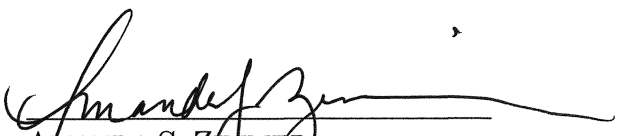
The rules governing imposition of a death sentence under *Enmund* and *Tison* are well-settled, and the North Carolina Supreme Court's error is evident: The culpability of the shooter cannot for all purposes be transferred to another. To the contrary, for a death sentence to be permitted under the Eighth Amendment, "individualized consideration" must occur. The court's reliance on Mr. Hill's mental state to justify imposition of a death sentence on Mr. Gillard violates the Eighth Amendment. The lower court's further reliance on only Mr. Gillard's participation in the underlying felonies for felony murder violated this Court's rule from *Enmund* and *Tison*.

This Court should grant this Petition, vacate the judgment below, and instruct North Carolina that its courts must consider whether the defendant *personally* acted with the requisite indifference to human life needed to sustain a death sentence. Otherwise, violations of the Eighth Amendment will persist.

CONCLUSION

For the reasons set forth above, this Court should grant Mr. Gillard's Petition for a Writ of Certiorari.

Respectfully submitted,



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