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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

On Petition for Writ of Certiorari to the Court of Appeals
Appeal from Kershaw County
Honorable L. Casey Manning, Circuit Court Judge
Appellate Case No. 2022-000923

THE STATE,

Respondent,

vs.

SHERWIN ALFONZO GREEN,

Petitioner.

RETURN TO PETITION FOR WRIT OF CERTIORARI

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TABLE OF CONTENTS

TABLE OF CONTENTS..... i

STATEMENT OF ISSUES ON CERTIORARI.....1

COUNTER-STATEMENT OF ISSUES ON CERTIORARI1

STATEMENT OF THE CASE.....2

STANDARD OF REVIEW13

ARGUMENT14

I. Just as the Court of Appeals correctly recognized and held, Green waived any issue he may have had with the propriety of the circuit court judges’ rulings on his motions seeking dismissal for a purported violation of his constitutional speedy trial rights by subsequently entering unconditional guilty pleas to a variety of charges.14

II. The merits of Green’s appellate claim of a constitutional speedy trial violation should not be considered or addressed on certiorari at the present time because: (1) the Court of Appeals has not yet addressed the merits of Green’s speedy trial issue in light of its conclusion the issue was waived by Green’s entry of guilty pleas; and (2) Green did not include any arguments concerning the merits of his speedy trial claim in his petition for rehearing.20

CONCLUSION.....24

STATEMENT OF ISSUES ON CERTIORARI

I.

“Did the Court of Appeals err by holding Petitioner waived his right to a speedy trial under the Sixth and Fourteenth Amendments of the United States Constitution and Article I, Section 14 of the South Carolina Constitution by voluntarily pleading guilty since a speedy trial violation is a ground that if asserted would forever preclude the state from obtaining a valid conviction against him, regardless of how much the state might endeavor to correct the defect, and therefore cannot be waived?”

II.

“Did the circuit court err by denying Petitioner’s motion to dismiss for violation of his rights to a speedy trial as guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution and Article I, Section 14 of the South Carolina Constitution, where the unreasonable thirty-three months delay between Petitioner’s arrest and his plea was caused by the state’s intentional delay in order to secure Petitioner’s testimony in another defendant’s capital murder trial, and where Petitioner showed actual prejudice due to the state’s delay in calling his case to trial?”

COUNTER-STATEMENT OF ISSUES ON CERTIORARI

I.

Did the Court of Appeals somehow err by holding Green waived any issue he may have had with the propriety of the circuit court judges’ rulings on his motions seeking dismissal for a purported violation of his constitutional speedy trial rights by subsequently entering unconditional guilty pleas to a variety of charges?

II.

Should the merits of Green’s appellate claim of a constitutional speedy trial violation be considered or addressed on certiorari at the present time when: (1) the Court of Appeals has not yet addressed the merits of Green’s speedy trial issue in light of its conclusion the issue was waived by Green’s entry of guilty pleas; and (2) Green did not include any arguments concerning the merits of his speedy trial claim in his petition for rehearing?

STATEMENT OF THE CASE

Procedural History

In November of 2012, Petitioner Sherwin Alfonzo Green was arrested following an altercation with his estranged wife and subsequently released from custody within a few days. A short time after that, Green was arrested again following another incident with his estranged wife that involved him breaking into her home, holding her against her will at knifepoint for several hours, and threatening to harm her and her children. In May of 2013, the Kershaw County Grand Jury indicted Green for first-degree burglary, kidnapping, possession of a firearm by a person convicted of a violent crime, and possession of a stolen pistol.¹ Prior to trial, Green—amongst other things—sought for the charges to be dismissed based on an alleged violation of his speedy trial rights. Following a hearing on the matter, the Honorable Robert E. Hood, circuit court judge, denied that motion through an order issued on July 29, 2015. Subsequently, on September 29, 2015, Green—after again unsuccessfully seeking dismissal—appeared in the Kershaw County Court of General Sessions and entered guilty pleas to kidnapping, second-degree burglary, and both firearm-related charges before the Honorable L. Casey Manning, circuit court judge. At the conclusion of the plea hearing, Judge Manning accepted Green’s guilty pleas and sentenced him to an aggregate twenty-year term of imprisonment. Thereafter, Green filed several motions for reconsideration of his sentence, and a hearing was held on the matter on August 15, 2017, in the Richland County Court of General Sessions with Judge Manning again presiding. On March 8, 2019, Judge Manning issued an order that reduced Green’s sentence to an aggregate twelve-year term of imprisonment. Green then timely filed and perfected an appeal.

¹ On at least one occasion, the first-degree burglary indictment was subsequently amended by the Kershaw County Grand Jury. (R. p. 158; pp. 251-252).

On appeal, the Court of Appeals—following briefing—issued a published decision unanimously affirmed Green’s convictions. State v. Green, 436 S.C. 338, 872 S.E.2d 191 (Ct. App. 2022). Thereafter, Green timely filed a petition for rehearing, and that petition was denied. Green then filed a petition for a writ of certiorari in the Supreme Court.

Factual History

Around the Thanksgiving holiday in 2012, Green became embroiled in an altercation with his estranged wife (“Victim”) and several of her family members, including her then-fourteen-year-old son. (R. pp. 180-181; p. 194). As a result of that altercation, Green, who was a convicted felon, was arrested, and he was subsequently charged with domestic violence along with several firearm-related offenses after law enforcement officers recovered a stolen pistol he had brandished during the course of the incident.² (R. p. 5; p. 194; pp. 257-258).

Following his arrest, Green remained in custody for a few days before he obtained release on bond. (R. pp. 194-195). Once he had done so, Green waited a day or two, and then he broke into his estranged wife’s home while she was away celebrating her birthday. (R. pp. 194-195). After he made his way inside, he hid in Victim’s basement and waited there for her to return home. (R. pp. 195-196; p. 200). When she did, Green continued waiting until Victim went to sleep before emerging from the basement and awakening her by pressing a knife to her stomach. (R. pp. 195-196). Green then held Victim captive for nearly seven hours and repeatedly threatened to kill her and her children while making various demands. (R. pp. 196-197).

² By the time of the incident, Green had been convicted of numerous crimes in several different states over the course of a criminal career that spanned multiple decades. (R. pp. 202-204). Amongst his earlier crimes, Green had previously been convicted of burglary, attempted armed robbery, assault, grand larceny, petit larceny, forgery, check fraud, credit card fraud, vandalism, breaking and entering, possession of cocaine, possession of marijuana, and destruction of property. (R. pp. 202-204). In fact, Green’s prior criminal record was so extensive the judge who subsequently accepted his guilty pleas refused to allow the solicitor to present it in its entirety because he had heard “enough.” (R. p. 201; p. 204).

Early the next morning, Victim begged Green to let her take her children to school while promising to give him anything he wanted when she returned, and Green—perhaps due to Victim’s compliance up to that point—agreed to her proposal. (R. pp. 196-198). Victim then left her home with her children, and, as soon as she was safely away, she alerted the police of what was going on. (R. p. 196). In response, officers quickly responded to Victim’s home and found Green, who did not actually live there, outside. (R. p. 196). At that point, Green rapidly took off, and a chase ensued. (R. p. 196). Ultimately, following a lengthy search, Green was eventually tracked down and taken into custody.³ (R. pp. 196-197; pp. 259-260).

Subsequent to his arrests in quick succession, Green was indicted in May of 2013 for first-degree burglary, kidnapping, possession of a firearm by a person convicted of a violent crime, and possession of a stolen pistol.⁴ (R. pp. 180-183; pp. 245-246; pp. 248-249; pp. 251-252; pp. 254-255). Approximately two months later, defense counsel filed a motion requesting a speedy trial, and a hearing was conducted on the matter before the Honorable DeAndrea G. Benjamin, circuit court judge. (R. pp. 1-2; pp. 4-5). During the course of the hearing, defense counsel requested a speedy trial on Green’s behalf, and Judge Benjamin granted that request. (R. p. 5). However, in doing so, Judge Benjamin indicated she did not want to put a specific time period in place in regard to when the case had to be tried. (R. pp. 5-6). The solicitor then confirmed the docket in Kershaw County was full for the remainder of the calendar year, and Judge Benjamin responded by suggesting the parties conduct a status conference later that year to work on setting the matter for trial once the next year’s schedule was available. (R. p. 6).

³ Based on messages Green sent to an accomplice during the course of the manhunt, Green hid under a porch in an effort to avoid being captured. (R. p. 200). Furthermore, the messages revealed Green also planned to hurt Victim when he had a chance to do so. (R. p. 200).

⁴ In addition to those charges, Green was also charged with domestic violence, and he was convicted of that offense during separate proceedings. (R. p. 194).

Thereafter, in December of 2013, a status conference was held by telephone in accordance with Judge Benjamin's suggestion, but the matter was not scheduled for trial at that time or during a number of status conferences that followed. (R. p. 29; p. 158). However, in May of 2015, another status conference was held, and, during it, Green's case was finally scheduled for a trial set to begin on July 27, 2015.⁵ (R. p. 158).

A little less than two weeks before the scheduled trial date, defense counsel submitted a motion for all Green's charges to be dismissed based on an alleged violation of Green's speedy trial rights.⁶ (R. pp. 7-8). In response to that motion, a hearing was conducted on the matter before the Honorable Robert E. Hood, circuit court judge. (R. pp. 19-20).

During the hearing, defense counsel offered an account of the events leading up to that point, and he claimed the thirty-three month period of delays that had been incurred was entirely attributable to the State's bad faith actions.⁷ (R. pp. 22-43). In making that particular claim, defense counsel alleged the State intentionally refused to allow Green's case to go forward in

⁵ Notably, Green's trial could have potentially been scheduled as early as June of 2015, but the July trial date was selected based on a continuance request made by defense counsel. (R. pp. 47-48).

⁶ In addition to the speedy trial dismissal motion, defense counsel also submitted a motion seeking the disqualification of the solicitors that were actively handling Green's case, the reinstatement of the solicitor originally assigned to handle the matter, and the enforcement of a plea agreement purportedly offered by the original solicitor. (R. pp. 10-11). In seeking that relief, defense counsel referred to a pro se letter written by Green for further details about the purported plea offer. (R. p. 11). Notably, in that letter, Green made claims suggesting the purported plea offer was a conditional one subject to defense counsel checking with another solicitor to see "if she's okay with it." (R. p. 15). Green's letter went on to explain the "infamous and notorious" solicitor who reviewed the purported plea offer was not, in fact, okay with it, which resulted in the plea offer being revoked and replaced with one apparently not to Green's liking. (R. pp. 15-16; p. 18).

⁷ Although defense counsel repeatedly asserted the period of delays involved in Green's case up to that point was thirty-three months, the actual time period that elapsed between Green's arrest date of December 4, 2012, and the hearing date of July 24, 2015, was actually thirty-one months and twenty days. (R. p. 19; p. 23).

order to secure Green’s cooperation in a capital murder case involving Nickolas Miller, who— according to Green—had sought Green’s assistance in a plot to assassinate a witness. (R. pp. 22-24; pp. 29-31; pp. 34-35; pp. 37-38; p. 40). He further asserted the State allowed Vincent Missouri, who had also provided information about Miller while in custody, to plead guilty much sooner, and he maintained Green’s case was no different than Missouri’s case involving a drug charge *aside from* the fact Green admittedly had out-of-state charges from both Maryland and Virginia that required him to be kept in custody. (R. pp. 23-25; p. 30). Additionally, as to Green’s assertion of his speedy trial rights, defense counsel noted he filed a motion requesting a speedy trial on Green’s behalf, and he contended *Judge Hood* granted that motion while extending “a little bit of leeway” as to when the case should be resolved. (R. pp. 27-28). Furthermore, defense counsel argued Green was prejudiced by the delays because two of Green’s “key” witnesses allegedly left the state, one did not want to be involved in the matter, and one purportedly had developed “some severe memory problems.” (R. pp. 32-33; pp. 35-36). Beyond that, defense counsel alleged Green claimed to have recorded his conversations with the victim during the incident and one of the recordings had apparently been lost while the other was inaudible, and he further alleged Green had suffered from depression and anxiety as a result of his incarceration.⁸ (R. p. 36; p. 39; p. 42).

In rebuttal, the solicitor acknowledged a motion for a speedy trial had properly been filed in July of 2013 but refuted defense counsel’s claim it had been heard and granted by Judge Hood. (R. pp. 44-46). Similarly, as to the cause for the delays, the solicitor confirmed defense counsel advised the State Green wished to provide information against Miller in order to receive

⁸ Despite attributing the issues with the inaudible recording to the delays, defense counsel did not offer any explanation whatsoever as to how the delays actually caused the recording not to function. (R. p. 36).

a benefit, and she indicated defense counsel was alerted no deals would be made until after Miller's trial was concluded "if" Green wanted consideration for his cooperation. (R. p. 46). After the State's position was conveyed to defense counsel, the solicitor stated defense counsel consistently informed the State Green did, in fact, wish to cooperate and would wait until Miller's case was over to have his charges addressed. (R. p. 47). Then, after Miller's case was resolved in March of 2015, the solicitor indicated the State was prepared to try Green's case by June of that year but the matter was continued until July at the request of the defense. (R. pp. 47-48). Moreover, as to defense counsel's prejudice claims, the solicitor asserted defense counsel never attempted to examine Green's phone prior to June of 2015, the State was never in possession of the recording defense counsel claimed was missing, and there was no evidence any efforts had been made on the part of the defense to locate or secure the witnesses defense counsel claimed were unavailable as a result of the delays. (R. pp. 47-50).

Following those remarks, defense counsel did not at any point dispute the solicitor's claim he had consistently informed the State Green wished to wait until Miller's case was resolved in an effort to receive a reward for the cooperation he was offering. (R. pp. 51-62). Instead, defense counsel simply asserted Green had personally been sending him "volumes of letters" indicating he did not personally agree to "sit and wait for three years." (R. pp. 55-56; p. 59). Beyond that, defense counsel requested a continuance in Green's case until September of 2015 in order for additional evidence to be analyzed. (R. pp. 59-60). In response to that request, Judge Hood asked Green directly if he wished to and was willing to waive his speedy trial claims by seeking yet another continuance, and Green responded: "Yes, sir." (R. pp. 60-61). Judge Hood then took the matter under advisement. (R. p. 62).

Just a few days later, Judge Hood issued an order denying the dismissal motion after analyzing the factors relevant to a speedy trial claim. (R. pp. 145-147). In doing so, Judge Hood initially looked to Green’s assertion of his speedy trial rights and found those rights were first validly exercised through a motion filed—but not ruled upon—in July of 2013, and, significantly, his basis for that particular finding was defense counsel’s inaccurate representation the judge had personally granted the motion, which Judge Hood knew not to be accurate. (R. pp. 145-146). Likewise, Judge Hood looked to the reasons for the delays and found Green “chose not to have his charges disposed” until after Miller’s case was resolved in an effort to obtain a benefit for providing cooperation.⁹ (R. p. 146). As a result, Judge Hood determined the majority of delays incurred were incurred with Green’s consent for the purpose of securing an advantage, and he further determined the remainder of the delays resulted from continuances sought by the defense. (R. pp. 146-147). Beyond that, Judge Hood looked to the prejudice suffered by Green, and, upon doing so, he concluded the prejudice Green claimed to have suffered as a result of the delays—the loss of four witnesses—was not actually the result of the delays but, instead, was the result of Green’s failure to make any efforts to locate, secure, or speak with the witnesses at any point prior to July of 2015 even though he knew of them as far back as 2012. (R. p. 147). For those reasons, Judge Hood found Green’s speedy trial rights had not been violated. (R. p. 147).

Following Judge Hood’s ruling, defense counsel requested several more continuances for a variety of different reasons, including due to a swollen knee, before Green’s case could be brought to trial, and Judge Benjamin even threatened defense counsel with sanctions for doing

⁹ Perhaps tellingly, Green did not acknowledge Judge Hood’s express finding Green chose to wait to have his case resolved until after he had an opportunity to provide assistance in Miller’s case at any point in the appellate brief he submitted to the Court of Appeals. (App. Br. pp. 1-20). Instead, Green elected to wait to make such an acknowledgement for the first time in his petition for a writ of certiorari. (Pet. for Cert. p. 7).

so.¹⁰ (R. pp. 158-159; pp. 164-165). After several more weeks elapsed due to defense counsel's continuance requests, defense counsel filed another motion for Green's case to be dismissed based on an alleged violation of Green's speedy trial rights. (R. pp. 148-149). In that motion, defense counsel repeated the same arguments made in the dismissal motion he had filed several months earlier while failing to acknowledge at any point his earlier motion had been denied by Judge Hood. (R. pp. 10-11; pp. 148-149).

Thereafter, in September of 2015, Judge Manning conducted a hearing on the successive speedy trial dismissal motion. (R. pp. 154-155). During the course of the hearing, defense counsel reasserted his contention Green's case should be dismissed based on a purported violation of Green's speedy trial rights and recounted the various things that had occurred up to that point. (R. pp. 155-174). In doing so, defense counsel conceded the defense was responsible for all the delays incurred since June of 2015. (R. pp. 158-159). However, defense counsel contended the State was solely responsible for the remaining thirty-month period of delays while maintaining Green never personally acquiesced in any of those delays. (R. pp. 161-163). Significantly though, defense counsel appeared to acknowledge his own role in the delays and candidly stated:

In our prior hearing in front of Judge Hood, Judge Hood asked how it was that Mr. Green -- because through the course of all of this I was performing what I thought was my ethical obligation to my client to try and seek the best sort of plea deal that I could get for my client. So I did ask the [S]tate several times, well, what kind of deal are we looking at if, you know, he testifies, I know you're not going to promise anything, I'm just trying to figure out

¹⁰ In the appellate brief he submitted to the Court of Appeals, Green bizarrely claimed defense counsel broke his leg instead of simply had a swollen knee, and, in doing so, Green did not identify anything that actually supported that incorrect claim. (App. Br. p. 8). Meanwhile, in his petition for a writ of certiorari, Green has pivoted his position and now asserts defense counsel merely reported suffering a knee injury. (Pet. for Cert. p. 8).

what help you may or may not be willing to give and even further trying to figure out if they even needed his help to -- for the trial.

(R. pp. 162-163).

Following defense counsel's remarks, the solicitor noted Judge Hood had already denied Green's speedy trial dismissal motion and, based on that, asserted defense counsel's successive motion was improper pursuant to Rule 4 of the South Carolina Rules of Criminal Procedure. (R. p. 172). The solicitor further noted Judge Hood denied the motion after determining Green consented to the delays in an attempt to secure an advantage for himself by testifying in Miller's case. (R. p. 172). In rebuttal, defense counsel contended Rule 4 was inapplicable because new evidence had been found. (R. p. 173). As to that new evidence, defense counsel asserted he was able to obtain information related to the hearing conducted before Judge Benjamin in July of 2013. (R. p. 173). He also alleged Judge Hood had stated the defense would be "more than free" to make the same motions again when the matter was before a trial judge. (R. pp. 173-174). Ultimately, after considering the matter, Judge Manning denied defense's counsel's motion. (R. pp. 172-174).

On the following day, Green again appeared before Judge Manning, and the solicitor stated the parties had reached a plea agreement.¹¹ (R. pp. 175-176). Specifically, the solicitor indicated Green would be pleading guilty with the understanding he would not receive a sentence of more than twenty years and, in exchange, would no longer be facing mandatory life without parole. (R. pp. 175-176; p. 218). As the plea hearing continued forward, Green confirmed he understood all his charges, his potential sentences, and his constitutional rights. (R. p. 179; pp. 184-186). He further confirmed he wished to waive his rights, including his right to trial, and

¹¹ By the time of Green's guilty pleas, thirty-three months and twenty-one days had elapsed since his most-recent arrest. (R. p. 155; p. 175).

plead guilty to kidnapping, second-degree burglary, and the two firearm-related charges. (R. pp. 180-186). Green then admitted his guilt to the offenses and confirmed he was entering the guilty pleas because he was, in fact, guilty. (R. pp. 187-189). At that point, the solicitor recounted the facts of Green’s crimes, and Judge Manning accepted Green’s guilty pleas. (R. pp. 193-201). Thereafter, Judge Manning sentenced Green to an aggregate twenty-year term of imprisonment for his convictions and expressly noted Green would receive credit for the entirety of the time he served in pre-plea incarceration. (R. pp. 208-210).

Subsequent to the plea hearing, defense counsel filed a motion seeking reconsideration of Green’s sentence and requested an opportunity to “elaborate on” instances of help Green had provided to the State. (R. p. 211). Roughly eight months later, defense counsel submitted an amended motion for reconsideration. (R. pp. 213-215). In that revised motion, defense counsel again asked the plea judge to reconsider Green’s sentence based on assistance that had been provided to the State. (R. pp. 213-214). Beyond that, defense counsel alleged—inaccurately—Green “ha[d] never gotten a ruling based on the merits” of the “compelling” speedy trial dismissal motions that had been filed because Judge Hood purportedly denied relief on the basis “he was not the proper judge to hear the motion” while Judge Manning solely denied the motion based on the State’s “creative” argument regarding Rule 4.¹² (R. pp. 213-214). Furthermore, defense counsel alleged Green’s due process rights had been violated. (R. pp. 145-147; p. 213).

In response to the motions, a hearing was held on the matter. (R. pp. 216-217). During that hearing, defense counsel presented several witnesses who provided details about an incident

¹² Notably, to the extent the amended motion sought for additional matters to be addressed beyond those identified in the initial timely post-trial motion, that motion was not proper since those matters had not been timely raised as required. See State v. Pfeiffer, 427 S.C. 10, 13, 828 S.E.2d 764, 766 (2019) (explaining an untimely successive post-trial motion cannot be used to raise matters not raised in or related to the matters properly raised in a timely post-trial motion).

in which Green alerted them of another inmate’s purported plan to kill an officer at the detention center. (R. pp. 218-224). One of those witnesses further confirmed Green routinely provided information about other inmates, and he stated the information Green provided was “most often” true. (R. pp. 221-223). Following the presentation of that testimony, defense counsel asked for Green’s sentence to be reduced to five years. (R. p. 226). Furthermore, defense counsel appeared to again contend the speedy trial dismissal motion had not yet been ruled upon. (R. p. 225). Judge Manning then took the matter under consideration. (R. p. 235).

Subsequently, over a year later, Judge Manning issued an order denying—once again—the motion for Green’s case to be dismissed based on an alleged violation of Green’s speedy trial rights without further explanation. (R. pp. 236-237). However, in addition to denying the dismissal motion, Judge Manning elected to grant Green’s request for reconsideration of his sentence and reduced Green’s aggregate sentence to a twelve-year term of imprisonment. (R. p. 237). Furthermore, Judge Manning again confirmed Green would be given credit for all the time he had already served. (R. p. 237).

After receiving his sentence reduction, Green appealed, arguing his constitutional speedy trial rights were violated. (App. Br. pp. 1-20). On appeal, the Court of Appeals affirmed. State v. Green, 436 S.C. 492, ___, 872 S.E.2d 869, 869 (Ct. App. 2022). In doing so, the Court of Appeals noted the entry of a guilty plea in South Carolina constitutes a waiver of non-jurisdictional defects and claims of violations of constitutional rights. Id. at ___, 872 S.E.2d at 870. The Court of Appeals then looked to Green’s appellate claim and his “speedy trial defense [was] not a jurisdictional claim or other claim that would have prevented the State from prosecuting him in the first place.” Id. As a result, the Court of Appeals held “Green waived his constitutional right to a speedy trial when he voluntarily pled guilty.” Id.

STANDARD OF REVIEW

In criminal cases, appellate courts sit to review errors of law only. State v. Wilson, 345 S.C. 1, 5, 545 S.E.2d 827, 829 (2001). When reviewing a ruling on a speedy trial motion on appeal, the appellate court must review the trial judge's ruling under an abuse of discretion standard. State v. Hunsberger, 418 S.C. 335, 342, 794 S.E.2d 368, 371-372 (2016); see State v. Reaves, 414 S.C. 118, 132, 777 S.E.2d 213, 220 (2015) (“[A] trial court’s decision as to whether to dismiss an indictment based on speedy trial grounds is reviewed for an abuse of discretion.”); see also State v. Palmer, 415 S.C. 502, 522, 783 S.E.2d 823, 833 (Ct. App. 2016) (affirming the trial judge’s ruling no speedy trial violation occurred after finding that ruling was supported by the evidence and based upon consideration of the appropriate factors). “An abuse of discretion occurs when the conclusions of the trial court either lack evidentiary support or are controlled by an error of law.” State v. McDonald, 343 S.C. 319, 325, 540 S.E.2d 464, 467 (2000); see also United States v. Summers, 666 F.3d 192, 197 (4th Cir. 2011) (instructing an appellate court will not find a trial judge’s ruling constituted an abuse of discretion unless it was arbitrary and irrational).

ARGUMENT

I.

Just as the Court of Appeals correctly recognized and held, Green waived any issue he may have had with the propriety of the circuit court judges' rulings on his motions seeking dismissal for a purported violation of his constitutional speedy trial rights by subsequently entering unconditional guilty pleas to a variety of charges.

Green maintains the Court of Appeals was wrong when it found his entry of guilty pleas waived his ability to appeal the circuit court judges' rulings denying his pre-plea motions seeking dismissal based on a purported violation of his speedy trial rights. As support for that contention, Green maintains his *assertion* of a violation of his constitutional speedy trial rights would forever preclude the State from obtaining a valid conviction and, therefore, his claim of such a violation could not be waived by pleading guilty. To the contrary, Green's speedy trial claim was not jurisdictional in nature, and, as a result, Green could and did waive that claim when he entered valid guilty pleas to a variety of criminal offenses. Accordingly, the Court of Appeals correctly rejected Green's attempt to appeal the circuit court judges' speedy trial rulings following Green's entry of his guilty pleas because that claim had been waived. Green's petition for a writ of certiorari should be denied.

When charged with a crime, a criminal defendant may choose to—and has a right to—enter a guilty plea to the offense. State v. Armstrong, 263 S.C. 594, 597, 211 S.E.2d 889, 890 (1975). By entering a guilty plea in South Carolina, a criminal defendant admits all elements of the charged offense, waives all other non-jurisdictional defects and defenses, and leaves open for review *only* the sufficiency of the indictment. State v. Thomason, 341 S.C. 524, 526, 534 S.E.2d 708, 710 (Ct. App. 2000); see State v. Snowdon, 371 S.C. 331, 333, 638 S.E.2d 91, 92 (Ct. App. 2006) (“Generally, a knowing and voluntary guilty plea waives all non-jurisdictional defects and defenses, including claims of constitutional violations.”). As a result, “[a] defendant who pleads

guilty usually may not later raise independent claims of constitutional violations.” Gibson v. State, 334 S.C. 515, 523, 514 S.E.2d 320, 324 (1999). In fact, once a guilty plea has been entered, nothing remains but for a circuit court judge to enter judgment against the defendant and determine the appropriate punishment for the admitted crime. See Boykin v. Alabama, 395 U.S. 238, 242 (1969) (“A plea of guilty is more than a confession which admits that the accused did various acts; it is itself a conviction; nothing remains but to give judgment and determine punishment.”); see also State v. Sims, 423 S.C. 397, 400, 814 S.E.2d 632, 633 (Ct. App. 2018) (“Few principles of South Carolina criminal law are as ingrained as the notion that a knowing, voluntary, and intelligent guilty plea constitutes a waiver of nonjurisdictional defects and claims of violations of constitutional rights.” (citation and internal quotations omitted)).

In the case sub judice, Green sought for his case to be dismissed based on an alleged violation of his speedy trial rights, and, after analyzing and weighing the facts and circumstances before him, Judge Hood, who was the first circuit court judge to consider the speedy trial dismissal request, rejected Green’s claim of a constitutional violation and found Green’s speedy trial rights had not been transgressed. Thereafter, Green reasserted his claim to another circuit court judge a few weeks later, and that circuit court judge—Judge Manning—also rejected Green’s speedy trial claim. At that point, Green chose to waive his constitutional rights, including his right to trial, and unconditionally plead guilty, and his validly-entered guilty pleas were properly accepted by Judge Manning.¹³

¹³ Demonstrating the unconditional nature of Green’s guilty pleas, Green did *not* improperly condition those pleas on anything, including on an ability to appeal the circuit court judges’ denials of his speedy trial claims, but, instead, unreservedly admitted his guilt with no conditions attached. Cf. State v. Downs, 361 S.C. 141, 146, 604 S.E.2d 377, 379-380 (2004) (finding Downs’s guilty plea was unconditional because Downs “never attempted to reserve the right to later deny his guilt”).

Because he unconditionally admitted his guilt and entered his guilty pleas, Green waived any non-jurisdictional defects and defenses he may have had in his case. See Vogel v. City of Myrtle Beach, 291 S.C. 229, 231, 353 S.E.2d 137, 138 (1987) (“A plea of guilty constitutes a waiver of nonjurisdictional defects and defenses, including claims of violations of constitutional rights prior to the plea. It conclusively disposes of all prior issues *including independent claims of deprivations of constitutional rights.*” (emphasis added and citations omitted)). Critically, amongst the claims waived by his act of pleading guilty, Green—just as the Court of Appeals correctly recognized—waived his ability to challenge the propriety of the circuit court judges’ rulings on his speedy trial claim since such a claim was *not* jurisdictional in nature.¹⁴ See

¹⁴ In arguing he can properly appeal the denial of his speedy trial claim despite the fact he subsequently pled guilty, Green primarily relied upon—and continues to rely upon—the United States Supreme Court’s decision in Class v. United States, ___ U.S. ___, 138 S. Ct. 798 (2018). Importantly though, the decision in Class involved the exercise of federal supervisory authority and, thus, was not controlling as to state court criminal procedures. See Class, 138 S. Ct. at 803 (“The question is whether a guilty plea by itself bars a *federal* criminal defendant from challenging the constitutionality of the statute of conviction on direct appeal.” (emphasis added)); see also Murphy v. Florida, 421 U.S. 794, 797-798 (1975) (“Noting that the jurors had been exposed to information with a high potential for prejudice, this Court [in Marshall v. United States, 360 U.S. 310, 311-312 (1959)] reversed the conviction. It did so, however, expressly ‘(i)n the exercise of (its) supervisory power to formulate and apply proper standards for enforcement of the criminal law in the federal courts,’ and not as a matter of constitutional compulsion. In the face of so clear a statement, it cannot be maintained that Marshall was a constitutional ruling now applicable, through the Fourteenth Amendment, to the States.” (citation omitted)). Moreover, looking to the nature of his appellate argument, Green is seeking to be able to appeal rulings on a speedy trial claim, which, notably, is a claim that does *not* preclude a case from going forward merely by being asserted and, instead, only leads to dismissal *if* a violation is determined to have occurred following the weighing and balancing of a number of relevant factors concerning case-related conduct. See Hunsberger, 418 S.C. at 342-343, 794 S.E.2d at 371-372 (recognizing the evaluation of a speedy trial claim involves analyzing a number of factors to determine whether a speedy trial violation has been established and instructing the merits of such a claim fall within the trial judge’s discretion); see also Ortberg v. Moody, 961 F.2d 135, 138 (9th Cir. 1992) (explaining a claim of a speedy trial claim does *not* “challenge the authority of the state to hale [a criminal defendant] into court” and, thus, such a constitutional claim is waived through the entry of a guilty plea); United States v. Curcio, 712 F.2d 1532, 1539 (2d Cir. 1983) (stating a “defendant who has been convicted on a plea of guilty may challenge his conviction on any constitutional ground that, *if asserted* before trial, would forever preclude

Washington v. Sobina, 475 F.3d 162, 166 (3d Cir. 2007) (“[T]he right to a speedy trial is non-jurisdictional, and is therefore waived by an unconditional and voluntary guilty plea.”); Speed v. United States, 518 F.2d 75, 77 (8th Cir. 1975) (“[I]t is well settled that a plea of guilty waives any claim to denial of a speedy trial.”); Griffin v. State, 604 S.E.2d 155, 156 (Ga. 2004) (“Having voluntarily entered a plea of guilty, appellant cannot raise as a defense his right to a speedy trial.”); Anderson v. State, 577 So. 2d 390, 392 (Miss. 1991) (explaining the “right to a speedy trial, whether of constitutional or statutory origin[,]” is waived by entry of a guilty plea and identifying numerous state and federal decisions reaching the same conclusion); State v. Walker, 600 S.W.3d 891, 893 (Mo. Ct. App. 2020) (“[A] defendant’s voluntary and knowing guilty plea bars any claims he or she may have that are based on either statutory or constitutional guarantees of a speedy trial.” (citation and internal quotations omitted)); Village of Montpelier v. Greeno, 495 N.E.2d 581, 582 (Ohio 1986) (“[C]ontentions that speedy trial violations may be

the state from obtaining a valid conviction against him, regardless of how much the state might endeavor to correct the defect” (emphasis added)); People v. Egbert, 68 Cal. Rptr. 2d 913, 915 (Cal. Ct. App. 1997) (“[T]he weighing process required to establish a constitutional speedy trial violation necessitates consideration of prejudice to the accused in the particular context of the case. By pleading guilty, a defendant concedes the absence of prejudice, having admitted all matters essential to the conviction.” (citations and internal quotations omitted)). As a result, the decision in Class, which only addressed the narrow question of whether a federal defendant could appeal a conviction due to the alleged unconstitutionality of the statute it was based on, did not establish Green’s current claim related to *case-related government conduct* that occurred before he pled guilty could properly be appealed following the entry of a valid guilty plea. See Class, 138 S. Ct. at 803 (“A valid guilty plea . . . renders irrelevant—and thereby prevents the defendant from appealing—the constitutionality of case-related government conduct that takes place before the plea is entered.”). Thus, like the denial of an immunity claim or a claim seeking dismissal for a violation of the Interstate Agreement on Detainers Act, Green’s non-jurisdictional speedy trial claim could be—and was—waived by his choice to plead guilty in a South Carolina state court, which is exactly what the Court of Appeals correctly held on appeal. Cf. Sims, 423 S.C. at 402, 814 S.E.2d at 634 (“Sims’ statutory immunity claim warrants no exception to the rule against conditional pleas and the key role it plays in ensuring the finality of judgments.”); State v. Tucker, 376 S.C. 412, 418, 656 S.E.2d 403, 406-407 (Ct. App. 2008) (holding Tucker waived any and all claims related to a violation of the Interstate Agreement on Detainers Act, which would require dismissal if violated, by entering a valid guilty plea).

raised on appeal following a guilty plea have been widely rejected by federal and other state authorities.”); Smith v. State, 871 P.2d 186, 188 (Wyo. 1994) (“Constitutional challenges to pretrial proceedings, including speedy trial violations, are non-jurisdictional defenses.”); see also People v. Sanders, 137 Cal. Rptr. 3d 830, 836 (Cal. Ct. App. 2012) (“In criminal proceedings, the essence of a speedy trial issue or a due process claim based on delay is that the passage of time has frustrated the defendant’s ability to defend the allegations against him. The weighing process required to establish a constitutional speedy trial violation necessitates consideration of prejudice to the accused in the particular context of the case. By pleading guilty, a defendant concedes the absence of prejudice, having admitted all matters essential to the conviction. . . . In essence, a defendant who pleads guilty after the court denies a motion to dismiss for a speedy trial violation waives the right to a speedy trial. Thus, a guilty plea forecloses a defendant from asserting on appeal a claimed violation of the constitutional right to a speedy trial.” (citations, brackets, and internal quotations omitted)).

Accordingly, because Green waived all non-jurisdictional defects and defenses—including his allegation of a violation of his speedy trial rights—by entering his guilty pleas, the issue of whether the circuit court judges abused their discretion or otherwise erred when ruling on Green’s speedy trial dismissal motions could not appropriately be considered or addressed on appeal, which is exactly what the Court of Appeals correctly determined in Green’s case. See Whetsell v. State, 276 S.C. 295, 297, 277 S.E.2d 891, 892 (1981) (“[G]uilty pleas, freely and voluntarily entered, act as a waiver of all non-jurisdictional defects and defenses, including the claims of a violation of a constitutional right prior to the plea.”); see also United States v. O’Donnell, 539 F.2d 1233, 1237 (9th Cir. 1976) (concluding O’Donnell waived his ability to validly raise a constitutional speedy trial claim on appeal by entering a guilty plea and

explaining: “The protections afforded by the Fifth and Sixth Amendments are different [from those afforded by the Double Jeopardy Clause]. Their purpose is to insure that factual guilt is validly established. That is, their purpose is to guarantee that the accused’s right to a fair trial is not substantially prejudiced by either pro- or post-accusation delays. The existence of such violations is consistent with guilt as a matter of fact. If guilt can be validly established such violations are not logically inconsistent therewith. While such violations preclude the establishment of guilt by trial, that is the extent of their reach. The establishment of guilt by a proper plea is not condemned by these protections.”), superseded on other grounds as recognized by *United States v. Smith*, 60 F.3d 595 (9th Cir. 1995); cf. *State v. Rice*, 401 S.C. 330, 333, 737 S.E.2d 485, 486 (2013) (holding Rice, who was a juvenile at the time of his offense, could not appeal an order transferring his case from family court to the court of general sessions after entering a guilty plea because such an order was not jurisdictional in nature and, thus, any claimed error Rice wished to appeal “would be a judicial error—not a jurisdictional error”). Green’s petition for a writ of certiorari should be denied.

II.

The merits of Green’s appellate claim of a constitutional speedy trial violation should not be considered or addressed on certiorari at the present time because: (1) the Court of Appeals has not yet addressed the merits of Green’s speedy trial issue in light of its conclusion the issue was waived by Green’s entry of guilty pleas; and (2) Green did not include any arguments concerning the merits of his speedy trial claim in his petition for rehearing.

In addition to contending the Court of Appeals erred by finding he waived his ability to validly appeal the merits of the circuit court judges’ rulings on his claim of a speedy trial violation by pleading guilty, Green—as a separate and distinct question presented on certiorari—contends the circuit court judges incorrectly denied his dismissal motions because his constitutional speedy trial rights were purportedly violated. Significantly though, the Court of Appeals did *not* address the merits of Green’s appellate claim of a speedy trial violation due to its conclusion the issue was waived by Green’s entry of guilty pleas. Beyond that, Green did *not* raise any arguments to the Court of Appeals in his petition for rehearing concerning the merits of his claim of a speedy trial violation and, instead, only asked the Court of Appeals to reconsider its decision not to consider the merits of that claim. Under such circumstances, the merits of Green’s speedy trial claim should not be considered or addressed on certiorari at the present time, and, instead, the matter should be remanded to the Court of Appeals in the event—and only in the event—Green’s other contention in his petition for a writ of certiorari was somehow correct. Green’s petition for a writ of certiorari should be denied.

Pursuant to our state’s appellate court rules, “[o]nly those questions raised in the Court of Appeals *and in the petition for rehearing* shall be included in the petition for writ of certiorari as a question presented to the Supreme Court.” Rule 242(d)(2), SCACR (emphasis added). Meanwhile, this Court generally does not consider an issue on certiorari unless that issue was first considered and addressed by the Court of Appeals. Baggott v. S. Music, Inc., 330 S.C. 1, 6,

496 S.E.2d 852, 855 (1998). Based on that, a remand to the Court of Appeals would typically be the appropriate relief when the Court of Appeals failed to address an appellate issue due to a decision it reached on another matter that was subsequently reversed on certiorari. Cf. State v. Larmand, 415 S.C. 23, 33, 780 S.E.2d 892, 896 (2015) (remanding an appeal to the Court of Appeals following a reversal of its decision on one issue in order for it to address the merits of several other previously-unaddressed issues); S.C. Second Inj. Fund v. Am. Yard Prod., 330 S.C. 20, 24, 496 S.E.2d 862, 864 (1998) (“In view of the conclusion of the Court of Appeals, other issues raised by the parties were not addressed; therefore, this matter is remanded to the Court of Appeals for consideration of those issues.”).

In the case at bar, the Court of Appeals did not address the merits of Green’s appellate claim concerning a supposed violation of his constitutional speedy trial rights because it held Green waived his ability to raise such a claim on appeal by pleading guilty. Green, 436 S.C. at ___, 872 S.E.2d at 870. Following that, Green petitioned the Court of Appeals for rehearing, but, in doing so, he only asked the Court of Appeals to reconsider its decision not to address the merits of his appellate issue while raising no arguments concerning the actual merits of that issue. (Pet. for Reh. pp. 1-9).

Because the Court of Appeals has not yet addressed the merits of Green’s appellate issue regarding a purported violation of his speedy trial rights and because the Green did not petition for rehearing on the merits of his speedy trial issue, it would be premature for that particular matter to be addressed on certiorari. Rule 242(d)(2), SCACR; see Baggott, 330 S.C. at 6, 496 S.E.2d at 855 (explaining the Supreme Court “generally do[es] not consider issues which were not addressed by the Court of Appeals”). Instead, should Green somehow prevail on certiorari on his claim the Court of Appeals allegedly erred by finding he waived his speedy trial claim by

pleading guilty, the appropriate relief would then—and only then—be to remand the matter for Green’s speedy trial claim to be addressed on the merits by the Court of Appeals.¹⁵ Cf.

Larmand, 415 S.C. at 33, 780 S.E.2d at 896 (“[B]ecause the court of appeals did not address the

¹⁵ Notwithstanding the fact Green waived his ability to challenge the circuit court judges’ denials of his speedy trial dismissal motions on appeal by pleading guilty and notwithstanding the fact it would be premature to address the merits of Green’s speedy trial claim even assuming the matter could somehow properly be raised on appeal despite that waiver, Green nonetheless would not be entitled to relief on appeal because the circuit court judges did not abuse their discretion or otherwise err by denying Green’s dismissal motion. See State v. Langford, 400 S.C. 421, 442, 735 S.E.2d 471, 482 (2012) (“A court’s decision on whether to dismiss on speedy trial grounds is reviewed for an abuse of discretion.”). That is true because the relevant factors—when properly considered—supported a conclusion the thirty-three-month period of delays between Green’s arrest and entry of guilty pleas to charges stemming from the terrifying acts he inflicted upon his estranged wife primarily resulted from a decision on the part of the defense to delay the trial in an effort to gain a benefit for cooperation in another case and did not cause any undue prejudice to Green. See Barker v. Wingo, 407 U.S. 514, 530 (1972) (explaining a court analyzing a constitutional speedy trial claim should consider the following factors: (1) the length of the delay; (2) the reason for the delay; (3) the defendant’s assertion of his right; and (4) whether any prejudice was suffered by the defendant as a result of the delay); see also State v. Smith, 307 S.C. 376, 380, 415 S.E.2d 409, 411 (Ct. App. 1992) (finding the defendant bears the burden of showing a speedy trial delay was due to the neglect and willfulness of the State’s prosecution). Most significantly, Judge Hood expressly found—with evidentiary support—Green chose to wait to have his case resolved until after Miller’s case was resolved in order to potentially obtain a reward for the cooperation he sought to provide, which meant the delays in Green’s case were primarily attributable to a strategic and self-serving choice *made by Green*. See State v. Dukes, 256 S.C. 218, 223, 182 S.E.2d 286, 288 (1971) (“The delay must be attributable to the State before the appellants can complain.”); see also State v. Johnson, 413 S.C. 458, 467, 776 S.E.2d 367, 371 (2015) (“Credibility findings are treated as factual findings, and therefore, the appellate inquiry is limited to reviewing whether the trial court’s factual findings are supported by any evidence in the record.”); cf. United States v. Anderson, 902 F.2d 1105, 1110 (2d Cir. 1990) (finding no speedy trial violation where “defense counsel agreed to delays and continuances for purposes of plea negotiations”); Millard v. Lynaugh, 810 F.2d 1403, 1406 (5th Cir. 1987) (“In large part the delay is attributable to the petitioner rather than to the state. Petitioner’s motions for speedy trial were not consistent with his other actions. He and his counsel were engaged in ongoing plea negotiations which included an offer to testify at a trial in the future. Petitioner’s waiver of the state speedy trial act together with the nature of his extended plea negotiations are evidence that his efforts were directed toward the cultivation of a favorable plea bargain and not toward an early trial date. As already stated, the finding that petitioner’s motions were filed in order to create an issue to be kept in reserve and not in a sincere effort to obtain a speedy trial is supported by the evidence. Further the petitioner has not established any improper reason for the delay.”). Accordingly, the complete absence of any violation of Green’s constitutional speedy trial rights constitutes another compelling reason for certiorari to be denied in Green’s case.

remainder of [Larmand]’s arguments on appeal, we remand the matter to the court of appeals for further action not inconsistent with this opinion.”); Connolly v. People’s Life Ins. Co. of S.C., 299 S.C. 348, 353, 384 S.E.2d 738, 741 (1989) (“This matter is remanded to the Court of Appeals for consideration of the remaining exceptions raised but not addressed in its previous opinion.”). Green’s petition for a writ of certiorari should be denied.

CONCLUSION

For all the foregoing reasons, it is respectfully submitted English's petition for a writ of certiorari should be denied.

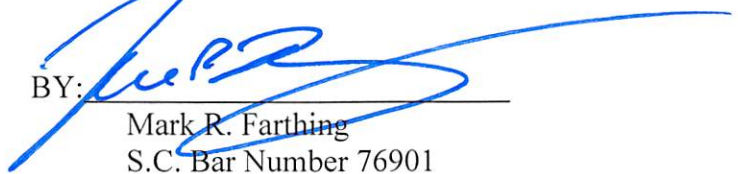
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