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**SC Court of Appeals**

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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On Petition for Writ of Certiorari to the Court of Appeals  
Appeal from Beaufort County  
Honorable R. Lawton McIntosh, Circuit Court Judge  
Appellate Case No. 2023-000647

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CHARLES GREEN, JR.,

Petitioner,

vs.

STATE OF SOUTH CAROLINA,

Respondent.

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**PETITION FOR WRIT OF CERTIORARI**

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    The Court of Appeals erred by reversing and remanding for an entirely new evidentiary hearing in Green’s case because the post-conviction relief judge—who had the authority pursuant to the Uniform Post-Conviction Procedure Act along with other provisions of South Carolina law to require the claims being raised to be specifically identified by Green and his counsel and to prevent the introduction of matter that was not relevant to the identified claims—did not abuse his broad discretion or otherwise err by reasonably limiting the evidence and testimony introduced during the evidentiary hearing solely to matters relevant to the grounds specifically identified by Green’s counsel as having arguable merit. ....12

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## STATEMENT OF ISSUE ON CERTIORARI

Did the Court of Appeals err by reversing and remanding for an entirely new evidentiary hearing in Green's case when the post-conviction relief judge—who had the authority pursuant to the Uniform Post-Conviction Procedure Act along with other provisions of South Carolina law to require the claims being raised to be specifically identified by Green and his counsel and to prevent the introduction of matter that was not relevant to the identified claims—did not abuse his broad discretion or otherwise err by reasonably limiting the evidence and testimony introduced during the evidentiary hearing solely to matters relevant to the grounds specifically identified by Green's counsel as having arguable merit?

## STATEMENT OF THE CASE

### **Procedural History**

In April of 2011, Respondent Charles Green, Jr. was arrested following an investigation into a shooting that occurred a day earlier outside a grocery store in Beaufort, South Carolina. In May of 2011, the Beaufort County Grand Jury indicted Green for attempted murder, possession of a weapon during the commission of a violent crime, and possession of a firearm by a person convicted of a felony. On November 18, 2013, a jury trial was commenced in the Beaufort County Court of General Sessions with the Honorable J. Ernest Kinard, Jr., circuit court judge, presiding. At the conclusion of the three-day trial, the jury convicted Green of the lesser-included offense of assault and battery of a high and aggravated nature along with both weapon charges. Following the verdict, the trial judge sentenced Green to an aggregate term of imprisonment of fifteen years. Green then timely filed and perfected an appeal.

On appeal, the Court of Appeals—following briefing—issued an unpublished opinion in which it unanimously affirmed Green’s convictions. State v. Green, Op. No. 2015-UP-458 (S.C. Ct. App. filed Sept. 16, 2015). Thereafter, on October 27, 2015, remittitur was issued.

Subsequent to the issuance of the remittitur, Green timely filed an application for post-conviction relief (“PCR”), and, in response, the State filed a return requesting an evidentiary hearing. Green then filed several pro se amendments to his PCR application. On January 29, 2018, an evidentiary hearing was conducted in the Beaufort County Court of Common Pleas with the Honorable R. Lawton McIntosh, circuit court judge, presiding. At the conclusion of the hearing, the PCR judge orally denied several of the allegations raised in the application but requested briefing from the parties on some matters. Thereafter, following briefing, the PCR

judge denied and dismissed Green’s PCR application through an order filed on June 18, 2018. Green then timely filed a notice of appeal.

After initiating his appeal, Green filed a petition for a writ of certiorari with the Supreme Court, and the Supreme Court transferred the matter to the Court of Appeals. Subsequently, on October 7, 2021, the Court of Appeals granted the petition on two of the three issues raised. Thereafter, following briefing and oral argument, the Court of Appeals reversed the PCR judge’s order and remanded for a new evidentiary hearing. Green v. State, Op. No. 2023-UP-026 (S.C. Ct. App. filed Jan. 25, 2023). Following that, the State timely filed a petition for rehearing. On March 23, 2023, the Court of Appeals denied the State’s petition.

### **Factual History**

#### **Summary of Green’s Crimes, the Ensuing Investigation of Them, and His Subsequent Trial and Conviction**

On the afternoon of April 6, 2011, Clifton Henry (“Victim”) was brought to the hospital with multiple puncture wounds to his hip, thigh, and arm that were caused by pellets fired from a shotgun. (App’x p. 83; p. 85; pp. 90-91; p. 130; p. 132; p. 135). Because he was suffering from gunshot injuries, law enforcement was notified, and investigators from the Beaufort County Sheriff’s Office headed to the hospital to find out what was going on. (App’x pp. 80-82; pp. 95-96; pp. 108-109; p. 135; pp. 152-153). Once there, Investigator Jeremiah Fraser spoke with Victim, and Victim reported he had just been shot by Green outside a Food Lion grocery store without provocation after Green sought the return of money Green had just given to him and his friend, Channon Preston. (App’x pp. 130-136; pp. 142-144; pp. 153-160). Investigator Fraser then obtained a photographic lineup containing Green’s picture, and, when presented with the lineup, Victim immediately identified Green from it as the person who shot him. (App’x pp. 137-139; pp. 155-157). Meanwhile, other investigators interviewed Preston in the parking lot of

the hospital, and Preston provided an account of the shooting consistent with Victim's account. (App'x pp. 96-97; pp. 108-109; p. 144; pp. 161-162).

Based on Victim's and Preston's statements, Investigator Fraser obtained an arrest warrant for Green, and officers immediately began searching for him. (App'x p. 162). However, he could not be located that day despite extensive efforts to find him. (App'x p. 162). Beyond the efforts to find Green, several investigators responded to the scene of the shooting, and they found blood droplets on the grounds in front of some propane tanks located outside the grocery store along with some shotgun wadding on the ground in the store's parking lot. (App'x pp. 97-101; p. 104; p. 109). Furthermore, surveillance footage was obtained from a nearby restaurant, and the events depicted in that footage were consistent with what had been reported by Victim and Preston. (App'x p. 110; p. 119; pp. 161-162).

On the following day, Investigator Fraser received a tip Green was back at his residence, and the home was surrounded by officers. (App'x pp. 162-163). Eventually, Green was coaxed out of the home, surrendered, and was placed under arrest. (App'x p. 163). As Green was being taken into custody, his girlfriend, Ashley Thomas, excitedly shouted out Green did not start "it" and "they" shot at him first. (App'x p. 161; p. 163). After that, Investigator Fraser transported Green to his office, advised him of his rights, and attempted to speak with him about the incident. (App'x pp. 163-164). However, Green reported he did not know anything and declined to make any further statements. (App'x p. 164).

Thereafter, Investigator Fraser interviewed Thomas, and, during the interview, she provided an account of the events that allegedly preceded the shooting. (App'x p. 313). Specifically, Thomas reported she saw Victim and Preston take Green's money "off the ground," Green asked for the money back, and they declined to return it. (App'x p. 313). She claimed

Victim then asked Preston to get a gun, Preston retrieved one and pointed it at Green, Victim took the gun from Preston and also pointed it at Green, and Preston took the gun back before firing two shots. (App’x p. 313). After the shots were purportedly fired, Thomas asserted Green walked away “shocked” while Victim and Preston began to walk off with Green’s money. (App’x p. 313). At that point, Thomas claimed Green again asked for his money back, Victim and Preston laughed in response, and the two headed toward the grocery store on foot while waving the gun and insisting Green was not getting anything back. (App’x p. 313). Thomas then concluded her account without mentioning anything that occurred at the grocery store, including how or why Victim was shot there. (App’x p. 313).

At the conclusion of the investigation, Green was indicted for attempted murder along with several weapon charges. (App’x pp. 3-4; pp. 332-337). He then elected to proceed forward to trial. (App’x pp. 3-4). Ultimately, at the conclusion of that trial, the jury convicted Green of the lesser-included offense of assault and battery of a high and aggravated nature along with the indicted weapon charges, and the trial judge sentenced him to an aggregate fifteen-year term of imprisonment. (App’x pp. 233-234; p. 243).

### **Summary of the PCR Proceedings**

Following an unsuccessful appeal, Green sought relief—through his initial PCR application and several subsequent *pro se* amendments to that application—on a number of grounds, including on the basis his speedy trial rights were violated, trial counsel was ineffective for a variety of different articulated and *unarticulated* reasons, appellate counsel was ineffective for not raising an *unidentified* reversible error, prosecutorial misconduct occurred, some *unspecified* false evidence was presented, his rights pursuant to a wide variety of constitutional amendments were violated, and “miscellaneous.” (App’x pp. 245-249; pp. 252-254). In

response, the State filed a return requesting an evidentiary hearing *and* further noting some of Green’s claims were simply too vague to comply with the requirements of the Uniform Post-Conviction Procedures Act. (App’x pp. 256-260).

At the outset of the ensuing hearing, the PCR judge indicated he was not sure what grounds Green was actually asserting and—while referencing Rule 11 of the South Carolina Rules of Civil Procedure *and* “other grounds”—asked PCR counsel sua sponte to definitively identify the precise grounds that were being raised. (App’x pp. 267-268; pp. 281-282). The PCR judge further cautioned he was not going to permit Green to simply “throw out anything and see if it sticks” during the hearing. (App’x pp. 267-268). Based on the PCR judge’s directives, PCR counsel ultimately indicated he believed there was a basis to proceed forward on claims of ineffective assistance of trial counsel for failing to object to prejudicial hearsay and ineffective assistance of trial counsel for failing to call Thomas as a witness. (App’x pp. 268-269; p. 278). PCR counsel further appeared to raise a claim of ineffective assistance of appellate counsel for failing to raise a speedy trial issue on appeal. (App’x pp. 290-291).

As the evidentiary hearing proceeded forward, trial counsel testified about several instances in which alleged hearsay was admitted without objection, including Thomas’s statements at the time of Green’s arrest. (App’x pp. 273-277). Likewise, trial counsel confirmed she attempted to subpoena Thomas—unsuccessfully—because she believed Thomas’s testimony could have potentially been beneficial to Green. (App’x pp. 278-279). However, due to her personal knowledge of Thomas, trial counsel further indicated she was concerned about Thomas’s credibility, about whether Thomas would have actually testified in a manner consistent with her earlier written statement, and about whether Thomas’s testimony “could have done more harm than good.” (App’x pp. 279-280). In light of those concerns, trial counsel stated she

did not seek a continuance due to Thomas's absence. (App'x p. 280). Trial counsel further confirmed she believed Green was better served through the admission of the limited statements from Thomas that were elicited during Investigator Fraser's testimony.<sup>1</sup> (App'x p. 280).

Beyond trial counsel's testimony, Green testified on his own behalf solely as to the issues identified following the PCR judge's demand for a more definite statement of the claims being raised. (App'x pp. 281-282; pp. 287-295). In support of the ineffective assistance of trial counsel claim, Green asserted trial counsel should have subpoenaed Thomas—who, significantly, did not testify during the PCR hearing—because she purportedly would have told the jury “the dudes” robbed him. (App'x p. 278; pp. 287-288). Similarly, while claiming he was being “real true,” Green disclosed—for the first time—he observed Thomas in the lobby of the courthouse during the course of trial when he took a bathroom break. (App'x pp. 288-289). However, he conceded he did not talk with trial counsel about Thomas testifying. (App'x p. 295). Furthermore, Green testified—as support for his claim of a violation of his right to a speedy trial—he had trial counsel file a speedy trial motion in his case in an effort to get out of jail, was not tried by the date set in the bond order subsequently issued by a circuit court judge, and was released from jail as a result. (App'x p. 293).

Following Green's testimony, appellate counsel testified about his representation of Green on appeal and indicated he elected to raise an issue with the trial judge's failure to instruct the jury on self-defense after reviewing the record from trial. (App'x pp. 302-304). He further explained he was aware trial counsel had filed a motion to dismiss toward the beginning of

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<sup>1</sup> During his trial testimony, Investigator Fraser confirmed—in response to questions from both the solicitor and trial counsel—Thomas excitedly shouted out Green did not start “it” and “they” shot at him first when Green was being arrested. (App'x p. 163; p. 168). However, Investigator Fraser was not asked by either party to recount the statements Thomas made during her subsequent interview, which would have clearly constituted inadmissible hearsay. (App'x pp. 152-172).

Green's trial based on the State's failure to comply with a scheduling order. (App'x pp. 302-304). However, he indicated he reviewed that issue, considered it, and elected not to raise it out of a belief it would not have proved to be meritorious on appeal due to the fact he did not think dismissal was warranted under the circumstances because "[i]t would take something in addition to have a charge thrown out besides a mere failure to meet a deadline."<sup>2</sup> (App'x pp. 304-307).

Thereafter, once all the testimony and evidence had been introduced, the PCR judge denied relief on the claim of ineffective assistance of trial counsel based on the failure to object to hearsay testimony. (App'x p. 308). Furthermore, the PCR judge determined Green failed to meet his burden of proof in regard to his speedy trial claim and specifically found any delays that occurred did not cause the loss of Thomas's testimony. (App'x p. 309). However, the PCR judge expressed concern over trial counsel's failure to present Thomas as a witness, and, based on that, he requested briefing from the parties as to whether Green could meet his burden of proof solely by relying on Thomas's written statement along with as to whether trial counsel was, in fact, ineffective for failing to call Thomas as a witness. (App'x pp. 309-310). He then denied relief on the remaining allegations and took the matter under advisement. (App'x p. 310).

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<sup>2</sup> Toward the outset of Green's trial, trial counsel indicated Green wanted her to move to dismiss the case at that time. (App'x pp. 41-42). As support for the motion, trial counsel asserted bond paperwork that had been signed by a circuit court judge ordered the State to try Green's case by a certain date in 2012, and she contended "an interpretation" of that order would be the State lost the ability to try the case by failing to try it by the specified date. (App'x p. 42). Based on that and that alone, trial counsel asserted Green's charges should be dismissed "per that order." (App'x p. 42). In rebuttal, the solicitor contended the appropriate remedy for the State's failure to try Green by the date specified in the order was for Green to be released from custody, and she noted he was, in fact, released. (App'x p. 42). Additionally, the solicitor indicated the circuit court judge's order contained nothing stating Green's charges should be dismissed if his case was not tried by the specified date, and she further contended she was unaware of any prejudice suffered by Green. (App'x p. 42). Upon considering the matter and reviewing the relevant order, the trial judge denied the motion to dismiss while confirming the circuit court judge's order did not address dismissal as a sanction for non-compliance, and trial counsel responded by indicating she did not have anything further on the matter. (App'x pp. 42-43).

Subsequently, upon considering the matter along with the briefs submitted by the parties, the PCR judge issued an order formally denying Green's PCR application. (App'x pp. 317-331; pp. 338-345). In denying relief, the PCR judge again rejected the hearsay-based claim and specifically determined Green's allegation in regard to trial counsel's failure to present Thomas's testimony also failed due to the fact Green solely presented a written statement from Thomas that constituted inadmissible hearsay instead of offering her testimony at the evidentiary hearing. (App'x pp. 324-326). Additionally, the PCR judge concluded Green failed to prove prejudice in regard to the failure to call Thomas as a witness because trial counsel identified a valid trial strategy for not calling her and also attempted to locate and subpoena her. (App'x pp. 326-327). Moreover, the PCR judge found Thomas's statement—even if true—did not establish Green was acting in self-defense. (App'x pp. 327-329). Finally, the PCR judge found Green failed to establish either deficiency or prejudice in regard to his claim of ineffective assistance of appellate counsel. (App'x pp. 329-330).

**Summary of Green's Appeal of the PCR Judge's Ruling and the Ensuing Decision of the Court of Appeals**

Following the PCR judge's denial of relief, Green timely appealed and raised several issues through the filing of a petition for a writ of certiorari. (Supp. App'x pp. 1-21). More specifically, Green contended the PCR judge erred by: (1) relying upon Rule 11 of the South Carolina Rules of Civil Procedure to limit the testimony and questioning during the evidentiary hearing; (2) failing to grant relief based on trial counsel's failure to introduce Thomas's out-of-court statement or request a continuance in order to secure Thomas's testimony; and (3) failing to grant relief based on appellate counsel's failure to raise a purportedly meritorious speedy trial issue on appeal. (Supp. App'x pp. 1-21). Ultimately, the Court of Appeals—following a transfer of the case—partially granted Green's petition for writ of certiorari and requested further

briefing on Green’s claims related to the limitations imposed by the PCR judge and appellate counsel’s alleged constitutional ineffectiveness. (Supp. App’x pp. 49-50).

Thereafter, following briefing and oral argument, the Court of Appeals—through an unpublished opinion—reversed the PCR judge’s order denying relief to Green and remanded for a “new” evidentiary hearing. (Supp. App’x pp. 103-107). In reversing, the Court of Appeals concluded the PCR judge improperly limited Green’s ability to fully present his claims by “requir[ing] Green’s counsel to evaluate and effectively discard Green’s claims under the limitations of Rule 11 before effectively presenting them” to the court. (Supp. App’x pp. 105-107). Furthermore, the Court of Appeals appeared to recognized Green’s claim of “miscellaneous” was not a legitimate ground upon which he could properly seek relief but nevertheless determined Green’s “other claims did not lend themselves to summary dismissal.” (Supp. App’x p. 107). Accordingly, the Court of Appeals reversed the PCR’s judge’s order—including the portions of it addressing the claims Green was fully permitted to litigate—and remanded for an entirely new evidentiary hearing in which all his claims—including the ones that have already been fully litigated—will be considered anew.<sup>3</sup> (Supp. App’x p. 107).

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<sup>3</sup> Meanwhile, the Court of Appeals decided not to address Green’s claim of ineffective assistance of appellate counsel based on its ruling on the claim it did address. (Supp. App’x p. 105).

## STANDARD OF REVIEW

In PCR cases, the standard of review to be applied on appeal is directly dependent on the specific issues raised. Smalls v. State, 422 S.C. 174, 180, 810 S.E.2d 836, 839 (2018). When reviewing a PCR judge’s factual findings on appeal, the appellate court will defer to those findings and uphold them if they are supported by any evidence of probative value appearing in the record. Sellner v. State, 416 S.C. 606, 610, 787 S.E.2d 525, 527 (2016); see Buckson v. State, 423 S.C. 313, 320, 815 S.E.2d 436, 440 (2018) (“Under the proper standard of review, the appellate court’s ‘view’ must be limited to whether there is probative evidence to support the PCR court’s factual findings.”). Meanwhile, when reviewing a pure question of law, an appellate court will consider such a matter de novo and is not required to give deference to the PCR judge’s rulings. Jamison v. State, 410 S.C. 456, 465, 765 S.E.2d 123, 127 (2014). Furthermore, when reviewing “a PCR court’s resolution of procedural questions arising under the Post-Conviction Procedure Act or the South Carolina Rules of Civil Procedure,” the appellate court will analyze the matter solely to determine whether an abuse of discretion occurred. Mangal v. State, 421 S.C. 85, 92, 805 S.E.2d 568, 571 (2017); see Sweet v. State, 255 S.C. 293, 296, 178 S.E.2d 657, 658 (1971) (applying an abuse of discretion standard when reviewing a procedural ruling in a PCR matter). Ultimately, if the PCR judge’s decision is controlled by an error of law, an appellate court will reverse that decision on appeal. Goins v. State, 397 S.C. 568, 573, 726 S.E.2d 1, 3 (2012).

## ARGUMENT

**The Court of Appeals erred by reversing and remanding for an entirely new evidentiary hearing in Green’s case because the post-conviction relief judge—who had the authority pursuant to the Uniform Post-Conviction Procedure Act along with other provisions of South Carolina law to require the claims being raised to be specifically identified by Green and his counsel and to prevent the introduction of matter that was not relevant to the identified claims—did not abuse his broad discretion or otherwise err by reasonably limiting the evidence and testimony introduced during the evidentiary hearing solely to matters relevant to the grounds specifically identified by Green’s counsel as having arguable merit.**

Through its decision in Green’s case, the Court of Appeals reversed the PCR judge’s order denying relief and remanded for an entirely new evidentiary hearing based purely on the PCR judge’s decision to limit the evidence and testimony introduced during the evidentiary hearing solely to matters relevant to the grounds specifically identified by Green’s counsel as having arguable merit. In doing so, the Court of Appeals found the PCR judge reversibly erred by relying on Rule 11 of the South Carolina Rules of Civil Procedure to place limitations on the claims permitted to be raised and addressed during the hearing. To the contrary, the PCR judge properly exercised the authority afforded to him—and that must necessarily exist in order for the PCR process to properly function—pursuant to the provisions of the Uniform Post-Conviction Procedure Act, our state’s civil procedure rules, and our state’s evidentiary rules to require Green and his PCR counsel to specifically identify the grounds upon which there was a legitimate basis to proceed forward and to the limit the evidence and testimony subsequently introduced solely to matter relevant to the specified grounds. As a result, the PCR judge’s discretionary decision to place proper limits on the matter raised and discussed during the evidentiary hearing did not constitute either an abuse of discretion or error of law, and the decision of the Court of Appeals reaching a conclusion to the contrary was itself erroneous. The State’s petition for a writ of

certiorari should be granted, and the PCR judge's order denying relief to Green should ultimately be affirmed.

When seeking relief, every PCR applicant is entitled to a full and fair opportunity to present claims in a single application. Odom v. State, 337 S.C. 256, 261, 523 S.E.2d 753, 755 (1999). Importantly though, pursuant to the requirements of the Uniform Post-Conviction Procedure Act, the applicant must set forth any claims being raised with *specificity*. See S.C. Code Ann. § 17-27-50 (“The application shall identify the proceedings in which the applicant was convicted, give the date of the entry of the judgment and sentence complained of, *specifically set forth the grounds upon which the application is based*, and clearly state the relief desired.” (emphasis added)); see also Coardes v. State, 262 S.C. 493, 497, 206 S.E.2d 264, 265 (1974) (“[M]ere allegations of incompetency or ineffectiveness of counsel will not ordinarily suffice as grounds for a new trial under the Post-Conviction Procedure Act. The bare assertion by the appellant that he was deprived of adequate and effective assistance of counsel is *insufficient*.” (emphasis added)). If the applicant's claims are not set forth with sufficient specificity and clarity, it is incumbent on appointed counsel—when counsel has been appointed—to ensure the application complies with the necessary requirements. See Rule 71.1(d), SCRPC (“Counsel shall insure that all available grounds for relief are included in the application and *shall amend the application if necessary*.” (emphasis added)). Beyond that, the PCR judge is also vested with authority to require the applicant or appointed counsel to amend the application to conform to the requirements of the Uniform Post-Conviction Procedure Act when necessary. See S.C. Code Ann. § 17-27-70(a) (“At any time prior to entry of judgment the court may, when appropriate, *issue orders for amendment of the application or any pleading or motion*, for pleading over, for filing further pleadings or motions, or for extending the time of the

filing of any pleading.” (emphasis added)); see also Rule 12(e), SCRCP (permitting a circuit court judge to require a more definite statement when vague or ambiguous pleadings are filed).

In the case sub judice, Green filed a PCR application along with a number of pro se amendments to it raising a wide variety of vague and unspecific claims, including a claim of simply “miscellaneous.” See Coardes, 262 S.C. at 497, 206 S.E.2d at 265 (instructing bare assertions of ineffective assistance are not sufficient to constitute valid PCR claims). Based on the vague and unspecific nature of Green’s claims, the PCR judge was unclear as to what claims were actually being raised and, therefore, sensibly asked PCR counsel to specifically identify the supportable claims that were going to be pursued during the hearing, and his decision to do so was—and, for the PCR process to be able to properly function, necessarily had to be—wholly permissible, reasonable, and proper under the circumstances. See S.C. Code Ann. § 17-27-70(a) (authorizing the PCR judge to require a PCR application to be amended when necessary). At that point, PCR counsel specifically identified the claims that could legitimately be raised as he was required to do by both our civil procedure rules and his ethical responsibilities, and the hearing proceeded forward solely on those claims as was proper. See Rule 3.1, RPC, Rule 407, SCACR (“A lawyer shall not bring or defend a proceeding, or assert or controvert an issue therein, unless there is a basis in law and fact for doing so that is not frivolous, which includes a good faith argument for an extension, modification or reversal of existing law.”); Rule 71.1(d), SCRCP (mandating PCR counsel amend a PCR application when necessary); see also Jones v. Barnes, 463 U.S. 745, 751 (1983) (explaining no authority suggests an “indigent defendant has a constitutional right to compel appointed counsel to press nonfrivolous points requested by the client, if counsel, as a matter of professional judgment, decides not to present those points”). Thereafter, during the course of the hearing, Green was permitted to present all the evidence and

testimony he wished in support of the claims that had been validly identified to the PCR judge, and the PCR judge solely placed limitations on the questioning and testimony as needed to ensure relevant evidence, which was the only type of evidence that could properly be introduced, alone was admitted. See Rule 402, SCRE (“Evidence which is not relevant is not admissible.”); State v. Saltz, 346 S.C. 114, 127, 551 S.E.2d 240, 247 (2001) (“*Only* relevant evidence is admissible.” (emphasis added)).

Because the limits placed on the testimony presented and questioning conducted were entirely proper and supported by a multitude of provisions of South Carolina law, the PCR judge neither abused his discretion nor committed an error of law by imposing the reasonable limits imposed. Cf. Sweet, 255 S.C. at 296, 178 S.E.2d at 658 (finding no abuse of discretion occurred by the circuit court judge’s discretionary decision to decide a post-conviction relief issue without hearing testimony from a witness who was not present when nothing was presented to establish the witness’s testimony would have been relevant or material to the issue raised). Moreover, since the PCR judge’s discretionary decision to impose reasonable limitations was authorized by various provisions of South Carolina law, the fact the PCR judge—who did not impose any sanctions on Green or PCR counsel—referenced Rule 11 of the South Carolina Rules of Civil Procedure was irrelevant to the propriety of his ruling despite the fact that rule was not truly applicable under the circumstances involved. See Sec. & Exch. Comm’n v. Chenery Corp., 318 U.S. 80, 88 (1943) (“[W]e do not disturb the settled rule that, in reviewing the decision of a lower court, it must be affirmed if the result is correct although the lower court relied upon a wrong ground or gave a wrong reason. The reason for this rule is obvious. It would be wasteful to send a case back to a lower court to reinstate a decision which it had already made but which the appellate court concluded should properly be based on another ground within the power of

the appellate court to formulate.” (citations and internal quotations omitted)); Weir v. Citicorp Nat’l Servs., Inc., 312 S.C. 511, 517, 435 S.E.2d 865, 868 (1993) (“A correct decision of the trial court on the wrong ground will be affirmed on appeal.”); see also Hiott v. State, 381 S.C. 622, 629, 674 S.E.2d 491, 494-495 (2009) (“[W]e hold that Rule 11 of the South Carolina Rules of Civil Procedure does not apply in PCR proceedings.”).

In reaching a conclusion to the contrary and finding reversible error was committed in Green’s case, the Court of Appeals heavily focused on the PCR judge’s reference to Rule 11 as *part* of the justification for his decision to impose limitations at the outset of the evidentiary hearing. And, as the Court of Appeals correctly recognized, Rule 11 has previously been determined by this Court to be inapplicable to PCR proceedings. Hiott, 381 S.C. at 629, 674 S.E.2d at 494-495. Therefore, to the extent the PCR judge relied upon Rule 11 in Green’s case, his decision to do so was—just as the Court of Appeals concluded—not a correct one. Id.; but see S.C. Code Ann. § 56-36-10 (authorizing both counsel and pro se litigants to be sanctioned for—amongst other things—“making frivolous arguments a reasonable attorney would believe were not reasonably supported by the facts” and including no exception indicating a lack of applicability to post-conviction relief actions).

Nevertheless, the PCR judge in Green’s case did *not* rely solely on Rule 11 in his attempt to determine with clarity and specificity what claims were actually being pursued by Green. Instead, in directing PCR counsel to identify the allegations to be addressed during the evidentiary hearing with specificity, the PCR judge indicated he was doing so based on “other grounds” as well. And, significantly, those “other grounds” are what truly mattered in Green’s case. See Helvering v. Gowran, 302 U.S. 238, 245 (1937) (“In the review of judicial

proceedings the rule is settled that, if the decision below is correct, it must be affirmed, although the lower court relied upon a wrong ground or gave a wrong reason.”).

As to those “other grounds,” the PCR judge could first properly rely on the Uniform Post-Conviction Procedure Act itself. More specifically, Section 17-27-50 of that act requires all the grounds for relief being pursued to be “specifically set forth,” which was all the PCR judge was seeking. Likewise, Section 17-27-70 allows a PCR judge at any time prior to the issuance of a final judgment to *order* amendment to a PCR application or any pleading. Through those mechanisms, the PCR judge was authorized by our legislature to demand clarity and specificity in regard to the allegations being pursued before expending valuable—and limited—court time and resources conducting an evidentiary hearing. *Cf. Hiott*, 381 S.C. at 629-630, 674 S.E.2d at 494-495 (recognizing other systems exist aside from Rule 11 to prevent the “potential abuse of PCR proceedings” and expressing concern about how allowing Rule 11 sanctions would “create an additional burden on the resources of the court”).

Next, the PCR judge’s actions in Green’s case were proper in light of several provisions of the South Carolina Rules of Civil Procedure. Specifically, Rule 71.1—in conjunction with Section 17-27-60—affords petitioners like Green a right to the assistance of counsel in PCR proceedings. *See* Rule 71.1, SCRCP (“If, after the State has filed its return, the application presents questions of law or fact which will require a hearing, the court shall promptly appoint counsel to assist the applicant if he is indigent.”). Importantly though, South Carolina does *not* permit hybrid representation in legal proceedings. *See Miller v. State*, 388 S.C. 347, 347, 697 S.E.2d 527, 527 (2010) (explaining hybrid representation that is partially *pro se* and partially by counsel is not permitted in South Carolina). Thus, once counsel has been provided in a PCR case, that counsel—and not the individual petitioner—is tasked with controlling and presenting

the case on the petitioner's behalf, and, as part of counsel's responsibilities in doing so, counsel is required to review the case to determine the *available* grounds and amend the application when needed, which necessarily involves clarifying the claims that need to be clarified and winnowing out weak or meritless ones that cannot be established. See Rule 71.1, SCRCP ("Counsel shall be given a reasonable time to confer with the applicant. Counsel shall insure that all available grounds for relief are included in the application and *shall* amend the application if necessary." (emphasis added)). In addition to that, Rule 12 permits a PCR judge to require a more definite statement when the claims raised are too vague or ambiguous to be reasonably understood or addressed. See Rule 12(e), SCRCP ("If a pleading to which a responsive pleading is permitted is so vague or ambiguous that a party cannot reasonably be required to frame a responsive pleading, he may move for a more definite statement before interposing his responsive pleading. The motion shall point out the defects complained of and the details desired. If the motion is granted and the order of the Court is not obeyed within 15 days after notice of the order or within such other time as the Court may fix, the Court may strike the pleading to which the motion was directed or make such order as it deems just."). In light of those provisions, it was not improper for the PCR judge to require Green's PCR counsel to carry out his role in the process and identify with specificity all the viable, non-frivolous claims Green wished to pursue before the evidentiary hearing moved forward.

Furthermore, our state's evidentiary rules provide some support for the PCR judge's actions in Green's case. In particular, Rule 401 and Rule 402 together ensure only relevant evidence is and will be admitted during the proceedings. See Rule 401, SCRE (" 'Relevant evidence' means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be

without the evidence.”); Rule 402, SCRE (“All relevant evidence is admissible, except as otherwise provided by the Constitution of the United States, the Constitution of the State of South Carolina, statutes, these rules, or by other rules promulgated by the Supreme Court of South Carolina. Evidence which is not relevant is not admissible.”); see also State v. Douglas, 369 S.C. 424, 430, 632 S.E.2d 845, 848 (2006) (explaining only relevant evidence should be admitted). In light of those rules, the PCR judge had the ability to restrict the testimony and evidence presented during the evidentiary hearing in Green’s case to only matter that was relevant to the case.

Finally, the South Carolina Rules of Professional Conduct also provide justification for the limitations imposed by the PCR judge in Green’s case. Specifically, Rule 3.1—which must be viewed in conjunction with the assistance of counsel provided in PCR cases through Rule 71.1 and Section 17-27-60—precludes lawyers from asserting or controverting issues unless a non-frivolous basis in law and fact exists. See Rule 3.1, RPC, Rule 407, SCACR (“A lawyer shall not bring or defend a proceeding, or assert or controvert an issue therein, unless there is a basis in law and fact for doing so that is not frivolous, which includes a good faith argument for an extension, modification or reversal of existing law. A lawyer for the defendant in a criminal proceeding, or the respondent in a proceeding that could result in incarceration, may nevertheless so defend the proceeding as to require that every element of the case be established.”). Based on that provision, PCR counsel, who had been appointed to provide Green with the assistance and “professional judgment” necessary to seek relief in a legally-sound manner, could not properly advance claims unless he had first determined there was a basis in law and fact for doing so. Id. And, relatedly, he could not be forced to surrender his ethical obligations and pursue frivolous claims without notifying the PCR judge even if Green had wished him to do so. See Barnes, 463

U.S. at 751 (explaining no authority suggests an “indigent defendant has a constitutional right to compel appointed counsel to press nonfrivolous points requested by the client, if counsel, as a matter of professional judgment, decides not to present those points”); see also Anders v. California, 386 U.S. 738, 744 (1967) (“Of course, if counsel finds his case to be wholly frivolous, after a conscientious examination of it, *he should so advise the court and request permission to withdraw.*” (emphasis added)); cf. Austin v. State, 305 S.C. 453, 454, 409 S.E.2d 395, 396 (1991) (confirming the Anders process, which requires counsel to brief “arguable issues” while *also* submitting a request to be relieved as counsel, remains applicable to appeals in PCR cases).

Based on all those different provisions of South Carolina law, the limitations placed by the PCR judge on the testimony presented and questioning conducted during the evidentiary hearing in Green’s case were entirely proper and prudent. As a result, the Court of Appeals—which functionally determined the PCR judge was powerless to require specificity as to the claims being raised or to place limitations on what could be presented during the evidentiary hearing—itsself erred by reversing the PCR judge’s order denying relief based purely on the PCR judge’s incorrect reliance upon Rule 11 *at the same time* he correctly relied upon “other grounds” to impose the sensible limitations imposed.<sup>4</sup> See Foster v. Taylor, 210 S.C. 324, 329,

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<sup>4</sup> Moreover, in light of the nature of the issue the Court of Appeals found existed in regard to the limitations imposed by the PCR judge, the relief granted on appeal—a remand for an entirely new evidentiary hearing—was not proper. Demonstrating that fact, Green was *not*—despite the limitations imposed by the PCR judge—prevented from presenting all the testimony and evidence he wished to present in support of his claims regarding trial counsel’s failure to object to hearsay testimony, trial counsel’s failure to present the testimony of Thomas, and appellate counsel’s failure to raise a speedy trial issue on appeal, and all those claims have already been ruled upon by the PCR judge in a manner entirely unimpacted by the limitations he placed at the outset of the evidentiary hearing. (App’x pp. 317-331). Since those specific claims have already been fully litigated and ruled upon, Green has already received his “one bite at the apple” concerning those claims and, thus, is not entitled to—and should not receive—the windfall of a

42 S.E.2d 531, 534 (1947) (“No principle in the disposition of appeals is more firmly established than that a right decision upon a wrong ground will be affirmed.”); Robertson v. Blair, 56 S.C. 96, \_\_\_, 34 S.E. 11, 16 (1899) (“We have not deemed it necessary to consider such of the exceptions as impute error to the circuit judge in some of the reasons which he assigns for his conclusion. It is too well settled to require either argument or authority to show that the province of this court is to inquire whether there is any error in the judgment or order appealed from, and not whether the reasons given for the conclusion reached are tenable.”). The State’s petition for a writ of certiorari should be granted, and the PCR judge’s order denying relief to Green should ultimately be affirmed.

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second opportunity to prove those claims after his first full opportunity proved to be unsuccessful for him. See Odom v. State, 337 S.C. 256, 261, 523 S.E.2d 753, 755 (1999) (“Under the PCR rules, an applicant is entitled to a fully adjudication on the merits of the original petition, or ‘one bite at the apple.’ ”). Accordingly, at a minimum, the State’s petition for a writ of certiorari should be granted to ensure the relief afforded to Green is narrowly tailored to fairly address the error found while not simultaneously causing unnecessary litigation of issues that have already once before been fully and fairly litigated. See id. at 261, 523 S.E.2d at 755 (explaining successive PCR applications are permitted in rare circumstances and can allow for grounds *not* addressed in an earlier hearing to be addressed).

**CONCLUSION**

For all the foregoing reasons, it is respectfully submitted the petition for a writ of certiorari should be granted. In requesting this relief, counsel for Petitioner certifies a petition for rehearing was made and finally ruled upon by the Court of Appeals.

Respectfully submitted,

ALAN WILSON  
Attorney General

MARK R. FARTHING  
Assistant Deputy Attorney General



BY: \_\_\_\_\_  
Mark R. Farthing  
S.C. Bar Number 76901

ATTORNEYS FOR PETITIONER

May 8, 2023

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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**RECEIVED**

**May 08 2023**

**SC Court of Appeals**

On Petition for Writ of Certiorari to the Court of Appeals  
Appeal from Beaufort County  
Honorable R. Lawton McIntosh, Circuit Court Judge  
Appellate Case No. 2023-000647

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CHARLES GREEN, JR.,

Petitioner,

vs.

STATE OF SOUTH CAROLINA,

Respondent.

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**PROOF OF SERVICE**

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I, Caroline Collins, certify I have served the within Petition for Writ of Certiorari and accompanying Appendix and Supplemental Appendix on Respondent by sending electronic copies via email to the address listed in AIS for the following individual:

Kathrine H. Hudgins, Esquire  
S.C. Commission on Indigent Defense  
Division of Appellate Defense  
Post Office Box 11589  
Columbia, SC 29211

I further certify all parties required by Rule to be served have been served.  
This 8th day of May, 2023.



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CAROLINE COLLINS  
Administrative Coordinator  
Office of the Attorney General

## Caroline Collins

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**From:** Caroline Collins  
**Sent:** Monday, May 8, 2023 5:18 PM  
**To:** Hudgins, Kathrine  
**Cc:** Stock, Chris; Mark Farthing  
**Subject:** Charles Green, Jr., v. State of South Carolina (2023-000647)  
**Attachments:** Green.Pet for Cert (Rule 242 Certiorari) (03286135xD2C78).PDF; Green.Appendix (Rule 242 Certiorari) (03285139xD2C78).PDF; Green.Supplemental Appendix (Rule 242 Certiorari) (03285144xD2C78).PDF

Good Afternoon Ms. Hudgins,

Attached please find the Petition for Writ of Certiorari and accompanying Appendix and Supplemental Appendix in Charles Green, Jr., v. State of South Carolina (2023-000647). These will be submitted to the South Carolina Supreme Court today via the AIS One Drive System.

If you will, please reply to confirm receipt of this email.

Thank you!

**CAROLINE COLLINS**, Administrative Coordinator  
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