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**Jul 25 2023**

S.C. SUPREME COURT

STATE OF SOUTH CAROLINA  
In the Supreme Court

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CERTIORARI TO SPARTANBURG COUNTY  
Court of Common Pleas  
Honorable G.D. Morgan, Jr., Circuit Judge  
Appellate Case No. 2022-001029

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JOHNNY CHAPMAN,

Petitioner,

vs.

STATE OF SOUTH CAROLINA,

Respondent.

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**RETURN TO PETITION FOR  
WRIT OF CERTIORARI**

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**TABLE OF CONTENTS**

RESPONDENT’S ISSUE PRESENTED .....1

STANDARD OF REVIEW .....2

STATEMENT OF THE CASE .....3

RELEVANT FACTS.....4

ARGUMENT .....5

    I.    A Rule 59(e) motion was not filed regarding the PCR court  
          failing to address Petitioner’s claims that he was not competent  
          at the time of the trial and that he was denied a direct appeal,  
          therefore the issues aren’t preserved for appellate review. ....5

CONCLUSION.....10

## **RESPONDENT'S ISSUE PRESENTED**

**A Rule 59(e) motion was not filed regarding the PCR court failing to address Petitioner's claims that he was not competent at the time of the trial and that he was denied a direct appeal, therefore the issues aren't preserved for appellate review.**

## STANDARD OF REVIEW

Issues must be raised to the PCR judge and ruled on by the PCR judge to be preserved for appellate review. See Marlar v. State, 375 S.C. 407, 410, 653 S.E.2d 266, 267 (2007); See also Pruitt v. State, 310 S.C. 254, 256, 423 S.E.2d 127, 128 (1992). The court shall make specific findings of fact, and state expressly its conclusions of law, relating to each issue presented. S.C. Code § 17-27-80. Only final judgments or decisions may be reviewed by this Court in PCR actions. S.C. Code § 17-27-100; Rule 71.1(f), SCRCP. In the event the PCR judge fails to make specific findings of fact and conclusions of law regarding an issue, it is incumbent upon a party to file a Rule 59(e), SCRCP motion to properly preserve an issue for appellate review. Burgess v. State, 402 S.C. 92, 95, 738 S.E.2d 264, 265 (Ct. App. 2013) (citing Marlar, 375 S.C. at 410, 653 S.E.2d at 267 (finding issues not preserved for appellate review because the PCR applicant did not make a Rule 59(e) motion asking the PCR judge to make specific findings of fact and conclusions of law on his allegations)).

## STATEMENT OF THE CASE

Petitioner is currently incarcerated in the South Carolina Department of Corrections. Petitioner was indicted for two counts of arson, second degree, by the Spartanburg County Grand Jury at its July 2019 term. (19-GS-42-4066; 19-GS-42-4067). Petitioner was represented by Brendan M. Delaney, Esquire, and the case was prosecuted by Assistant Solicitor Katherine M. Sieber, of the Seventh Circuit Solicitor's Office. On January 30, 2020, Petitioner proceeded to a jury trial and was convicted on both charges, as indicted. The Honorable R. Keith Kelly sentenced him to five years' imprisonment on each charge, to be served consecutively. Petitioner did not appeal his conviction or sentence.

Petitioner filed a *pro se* application for post-conviction relief on August 24, 2020. The State filed a return, partial motion to dismiss and motion for a more definite statement on December 2, 2020. No amended PCR application was filed. The State requested an evidentiary hearing that was held before the Honorable G.D. Morgan, Jr. on April 19, 2022. Petitioner was represented by Rodney Richey, Esquire and the State was represented by Assistant Attorney General, Chelsey Marto.

An order of dismissal was filed on July 19, 2022. Petitioner filed a Petition for Writ of Certiorari on March 7, 2023. This return follows.

## RELEVANT FACTS

At trial, Daniel Abbott testified that he is the owner of Abbot Farms, a retail business selling produce with a location in Cowpens, South Carolina. (App. 47, 20 – App. 48, 6). One morning, Mr. Abbot received a call that his business had been set on fire. (App. 49, 16-23). The flames damaged the front wall, the windows, the sidewalk, and the vinyl siding on the building, and nearly ignited a fireworks display. (App. 50, 7-13). Surveillance cameras at the business captured Petitioner setting the fire. (App. 50, 17-22). After speaking with Mr. Abbott, Detective Cash went to Petitioner's nearby residence to investigate. (Tr. 62, 16-23). It was determined from Petitioner's movements on the video that he would have likely been walking past the nearby Welchel's Fruit Stand at around the same time that fire was started. (Tr. 66, 15-20). Detective Cash noted that Petitioner was wearing the same clothing as seen in the surveillance video and placed him under arrest. (Tr. 63, 5 – Tr. 66, 4).

On March 19, 2019, Petitioner was evaluated by the South Carolina Department of Mental Health (SCDMH). During the evaluation, Petitioner "voiced delusional thoughts and had a disorganized thought process" and admitted to using crystal methamphetamine while in the detention center several months before the evaluation. (App. 137). He was found not competent to stand trial but likely to be restored. He was admitted to G. Werber Bryan Psychiatric Hospital Forensic Services on July 25, 2019, to undergo treatment. On August 19, 2019, he was reevaluated and found competent to stand trial. (App. 130-137). During the same evaluation, he was found to be criminally responsible and to have the capacity to conform his actions on November 4, 2018 (App. 140-150).

On January 30, 2020, Petitioner proceeded to trial before the Honorable R. Keith Kelly. Petitioner was represented by Brendan M. Delaney.

## ARGUMENT

**A Rule 59(e) motion was not filed regarding the PCR court failing to address Petitioner's claims that he was not competent at the time of the trial and that he was denied a direct appeal, therefore the issues aren't preserved for appellate review.**

Petitioner contends that the PCR court failed to make the statutorily required findings of fact and conclusions of law in violation of section 17-28-80 of the South Carolina Code. Specifically, Petitioner argues that Petitioner's primary PCR claims that he was not competent at the time of trial and that he was denied a direct appeal were not addressed in the order of dismissal. This argument lacks merit because Petitioner did not file a motion pursuant to Rule 59(e), SCRPC, in response to the PCR judge's order of dismissal. Further Petitioner has failed to establish any valid reason why his failure to file a Rule 59(e) motion should be excused, and therefore this matter should not be remanded.

If issues are not adequately addressed in an order, a Rule 59(e) motion must be filed in order to preserve the issues for appellate review. Marlar v. State, 375 S.C. 407, 410, 653 S.E.2d 266, 267 (2007). This Court in Marlar held the Court of Appeals erred in remanding a PCR matter when the PCR judge's order of dismissal failed to make a sufficient ruling on the issues because the Petitioner did not make a Rule 59(e) motion asking the PCR judge to make specific findings of fact and conclusions of law, and therefore the issues were not preserved for appellate review. 375 S.C. at 410, 653 S.E.2d at 267. Notably, in Marlar, the order of dismissal was more problematic than the present case as the order in Marlar merely addressed the allegations with the following "boilerplate" language:

As to any allegations raised in the application or at the hearing not specifically addressed by this Order, this Court finds that the applicant failed to present any evidence regarding such allegations. Accordingly, this Court finds that the applicant failed to meet his burden of proof regarding them. Therefore, any and

all allegations not specifically addressed in this Order are hereby denied and dismissed. 375 S.C. at 409, 653 S.E.2d at 266.

This case is similar to Fishburne v. State,<sup>1</sup> in the sense that the PCR judge expressly found Petitioner failed to meet his burden of proof regarding his allegations of ineffective assistance of counsel as opposed to Marlar where the PCR judge imprecisely disposed of “any allegations raised...or not specifically addressed.” However, this case differs from Fishburne because while the allegations that were not addressed in the order of dismissal were clearly raised at the evidentiary hearing, here, Petitioner’s claims were briefly mentioned in the evidentiary hearing; they were not specifically raised as clear allegations, therefore this Court’s instruction in Marlar should control in this case

In Burgess v. State, the State petitioned for writ of certiorari after a grant of Burgess’s application for post-conviction relief and alleged the PCR judge erred in failing to make a finding as to whether Burgess was prejudiced by his counsel’s failure to request a jury charge. Burgess v. State, 402 S.C. 92, 93, 738 S.C. 264 (Ct. App. 2013). In that case, the PCR judge failed to make a finding regarding the second prong of Strickland<sup>2</sup>. The Court in Burgess noted the PCR judge’s findings lacked sufficient findings of fact and conclusions of law, but nevertheless held, “Because the State failed to file a Rule 59(e) motion asking the PCR court to make specific findings of fact and conclusions of law regarding the prejudice prong, we find the issue on appeal is not preserve for our review.” Id. at 95. Moreover, the court in Burgess also referenced Humbert v. State, 345 S.C. 332, 548 S.E.2d 862 (2001), in which this Court found the petitioner’s claim of ineffective assistance of counsel for allowing the trial to proceed while the petitioner was shackled and

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<sup>1</sup> Fishburne v. State, 427 S.C. 505, 832 S.E.2d 584 (2019).

<sup>2</sup> Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052 (1984).

wearing an identification bracelet was not preserved for appeal because the petitioner did not file a Rule 59(e) motion requesting a finding on the issue.

In this case Petitioner did not file a Rule 59(e) resulting in the issues not being preserved for appellate review. However, if this Court is inclined to rule on the issues addressed by Petitioner, the proper remedy would be to remand the matter back to the PCR judge to specifically rule on Petitioner's claim that he was not competent at the time of trial and that he was denied a direct appeal. Remanding this case for a new evidentiary hearing would not be proper because Petitioner was not denied in any way an opportunity to present his allegations or evidence supporting his allegations at the evidentiary hearing that was previously held.<sup>3</sup> Therefore, the judge can simply review the evidentiary transcript and make his specific findings of fact and conclusions of law based on the evidentiary hearing that was already held.

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<sup>3</sup> There is nothing in the transcript of the evidentiary hearing to support that he was not competent at trial. He recalls the steps he took to help in his defense and his testimony at the evidentiary hearing is that defense counsel wasn't listening to him. Further, he did not produce an expert to testify at the evidentiary hearing to show that he was in fact incompetent at trial.

**CONCLUSION**

For the foregoing reasons, this Court should deny the Petition for a Writ of Certiorari. Should this Court grant the petition, Respondent seeks permission to more fully brief the issues herein.

Respectfully submitted,

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