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**Feb 14 2025**

**S.C. SUPREME COURT**

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

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Certiorari to Florence County

Honorable Clifton Newman, Circuit Court Judge

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EDDIE BLASH,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2024-001374

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JOHNSON PETITION FOR WRIT OF CERTIORARI

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ATTORNEY FOR PETITIONER

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**ISSUE PRESENTED**

Did the PCR court err granting the state's motion to dismiss where (1) the application was not successive and (2) even if the application was successive the interest of justice requires the Court's review based on unique facts?

## STATEMENT

In June 2000, a Florence County Grand Jury indicted petitioner for trafficking cocaine over 400 grams. App. 741; 748-749. On August 13, 2001, petitioner and his co-defendant, Michael Monfries, proceeded to trial before the Honorable B. Hicks Harwell Jr., and a jury. App. 1-708. Petitioner was represented by Henry (Hank) Anderson. Patricia Singleton-Parr and Jack Lawson Jr. prosecuted for the state. App. 1. The jury found petitioner guilty App. 676, ll. 18-20. The judge sentenced petitioner to the maximum sentence of thirty years. App. 701, ll. 2-10.

Trial counsel did not file a notice of appeal. On August 16, 2002, petitioner filed an application for post-conviction relief (PCR). An evidentiary hearing was held on December 12, 2007, before the Honorable Thomas Russo. Judge Russo denied the application with prejudice but granted petitioner belated direct appeal. App. 742. On March 28, 2012, the Supreme Court remanded for resentencing. App. 742; Supp. App. 22-23.

On May 8, 2012, petitioner appeared before the Honorable Thomas Russo for a re-sentencing hearing. Supp. App. 24-36. Petitioner was represented by trial counsel, Hank Anderson. The state was represented by Patricia S. Parr. Supp. App. 24. Judge Russo sentenced petitioner to twenty-eight years. Supp. App. 35, ll. 3-6. Counsel did not file a notice of appeal.

On April 3, 2014, petitioner filed a second PCR application. Supp. App. 37-58. The state filed a return and partial motion to dismiss all claims as successive except the belated appeal issue. Supp. App. 37-65. On March 14, 2017, an evidentiary hearing was held before the Honorable Paul M. Burch. Supp. App. 67-92. Petitioner was represented by Johnathan D. Waller, and the state was represented by Lindsey A. McCallister. Supp. App. 67.

The PCR judge issued an order on August 17, 2017 denying petitioner's PCR application

and dismissing it with prejudice. However, the judge found petitioner was entitled to belated review of the resentencing hearing pursuant to *White v. State*, 263 S.C. 110, 208 S.E.2d 35 (1974) because petitioner did not knowingly and voluntarily waive his appellate rights. Supp. App. 95-102.

Counsel for petitioner filed an *Anders*<sup>1</sup> brief pursuant to *White* and petitioner filed a pro se brief. Supp. App. 117-150. In the brief, counsel for petitioner argued the resentencing judge erred by allowing petitioner's out of state criminal history into evidence. Supp. App. 118. On October 7, 2020, The Court of Appeals dismissed petitioner's appeal finding the issue raised was not preserved for appellate review. Supp. App. 152-53.

Subsequently, petitioner filed this application for PCR. App. 711-17. On October 19, 2022, an evidentiary hearing was held before the Honorable Clifton Newman. App. 727-740. Petitioner was represented by Michael Lifsey and the state was represented by assistant attorney general Danielle Dixon. App. 727.

On July 29, 2024, Judge Newman signed an order dismissing petitioner's application for PCR. App. 741-45. The PCR court found petitioner's application was barred by the statute of limitations and was successive. App. 743-744. The PCR court specifically found petitioner failed to establish any sufficient reason why he could not have raised this allegation in his 2014 PCR action. App. 745.

This petition follows.

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<sup>1</sup> *Anders v. California*, 386 U.S. 738 (1967).

## ARGUMENT

The PCR court erred granting the state's motion to dismiss where (1) the application was not successive and (2) even if the application was successive the interest of justice requires the Court's review based on unique facts.

### **Relevant facts**

Petitioner was arrested and charged with trafficking cocaine. The jury found petitioner guilty of trafficking cocaine more than 400 grams. App. 676, ll. 18-20.

During resentencing, the solicitor told the court petitioner had a prior conviction in Florida for trafficking cocaine on February 5, 2000. The date of conviction was February 26, 2002 for trafficking cocaine 28 to 150 grams. The solicitor also told the court there were "numerous drug arrests on his criminal history but without the dispositions." Supp. App. 28, ll. 15—29, ll. 10. Defense counsel did not object. Supp. App. 28, ll. 15—29, ll. 25.

Defense counsel told the court petitioner's co-defendant failed to appear for trial while petitioner appeared every day while the trial judge allowed him to stay out on bond. Counsel said everything belonged to the co-defendant which included the car, the room, the keys. Supp. App. 30, ll. 1—32, ll. 6.

Counsel also told the court the trial judge got "carried away" at sentencing and began yelling at petitioner and asked him about unrelated incidents. Counsel thought the trial court may have said that he was going to punish petitioner for going to trial. The trial court gave petitioner the maximum of thirty years. Counsel argued petitioner came to court although he was working during this time. Counsel said that petitioner was a good client to work with. Counsel asked the judge to give petitioner the minimum of twenty-five years. Judge Russo sentenced petitioner to twenty-eight years. Supp. App. 32, ll. 7—35, ll. 6.

At the most recent hearing before Judge Newman counsel for the state moved to dismiss petitioner's application for PCR arguing the action was barred by the statute of limitations, was successive, and was barred by res judicata. App. 732, l. 23—733, l. 5.

Counsel for petitioner argued the appellate court had not yet considered petitioner's claim and there was no ability to raise it before this time leaving petitioner without a remedy. App. 734, l. 10—735, l. 20.

No witnesses were called and no other evidence was entered. The court did not rule during the hearing.

### **Discussion**

“A defendant has the procedural right to one fair bite at the apple. That is, every defendant has a right to file a direct appeal and one PCR application.” *Wilson v. State*, 348 S.C. 215, 218, 559 S.E.2d 581, 582–83 (2002).

“The [PCR] court may grant a motion by either party for summary disposition of the [PCR] application when ... there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law.” S.C. Code Ann. § 17–27–70(c). “When considering the State's motion for summary dismissal of an application for PCR, a judge must assume facts presented by an applicant are true and view those facts in the light most favorable to the applicant.” *Wilson v. State*, 348 S.C. 215, 217, 559 S.E.2d 581, 582 (2002) (citing *Al-Shabazz v. State*, 338 S.C. 354, 363, 527 S.E.2d 742, 747 (2000)). Likewise, the appellate courts must view the facts in the same fashion when reviewing the appropriateness of a dismissal. *Leamon*, 363 S.C. at 434, 611 S.E.2d at 494. “Where an applicant alleges facts that would establish an exception to either the statute of limitations or the prohibition against successive PCR applications and those facts are not conclusively refuted by the record before the PCR court, a

*question of fact is raised which can only be resolved by a hearing.” McCoy v. State, 401 S.C. 363, 369, 737 S.E.2d 623, 626 (2013) (internal citations omitted) (emphasis added).*

In *McCoy, supra*, the South Carolina Supreme Court reviewed the summary dismissal of McCoy’s second PCR application which alleged a newly discovered material fact, specifically that a juror had withheld information about her relationship to the prosecuting solicitor’s office. *McCoy* at 366, 737 S.E.2d at 625. The state argued McCoy’s application was barred as untimely and successive because McCoy had failed to present sufficient reason why he could not have raised the juror allegation in his first PCR application. *Id.* at 367-68, 737 S.E.2d at 625-26. The PCR court granted the state’s motion for summary dismissal, finding that the application was untimely because it had not been filed within one year of McCoy’s trial. The PCR court also found the application successive stating McCoy had not demonstrated a sufficient reason why the juror allegation could not have been raised in his first PCR application. *Id.*

The Supreme Court reversed the PCR court holding that summary dismissal of McCoy’s second application had been improper because genuine issues of material fact existed as to whether the application was successive or barred by the statute of limitations. *Id.* at 368, 737 S.E.2d at 626. In reaching its decision the Court noted that the PCR court improperly calculated McCoy’s original PCR application deadline using the date of his conviction, instead of the date that the appellate court had issued the remittitur, and that the PCR Court had failed to consider section 17-27-45(C).

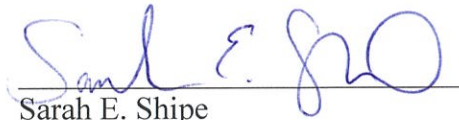
In *Tilley v. State, 334 S.C. 24, 511 S.E.2d 689 (1999)*, Tilley entered a guilty plea to kidnapping, first degree criminal sexual conduct, and possession of a firearm during the commission of a violent crime. *Tilley*, at 26, 511 S.E.2d at 690. At the time of his plea Tilley believed he was parole eligible. Tilley received a letter from SCDPPPS on October 26, 1995,

informing him that he was not eligible for parole. *Id.* Within a month of receiving the letter Tilley filed a fourth PCR application alleging his plea was involuntarily entered because he was not fully aware of the no-parole consequences of his guilty plea. *Id.* The state argued that Tilley's application should be dismissed as successive. The Supreme Court held that Tilley's application concerning parole eligibility was not successive because he could not have raised the claim prior to being informed of his parole ineligibility on October 26, 1995. *Id.* at 28, 511 S.E.2d at 691.

The PCR court erred in summarily dismissing petitioner's PCR application. Petitioner's application was not successive because he could not have raised this claim prior to the resentencing hearing. Additionally, he tried to raise this issue during his 2017 hearing when he testified he did not feel counsel was prepared for resentencing. Supp. App. 74-75; 98. The PCR court would not allow petitioner to get into allegations of ineffective assistance of counsel during the hearing and failed to rule on that allegation. Instead the PCR court summarily ruled petitioner waived all allegations and failed to meet his burden of proof thereby abandoning any allegations of ineffective assistance of counsel at the resentencing hearing. Supp. App. 72, ll. 2-17; 101. Petitioner is entitled to a remand for an evidentiary hearing on this matter.

**CONCLUSION**

By reason of the foregoing arguments petitioner respectfully requests that this Court grant certiorari to allow for full briefing on this issue.



Sarah E. Shipe  
Appellate Defender

ATTORNEY FOR PETITIONER

This 14th day of February, 2025.

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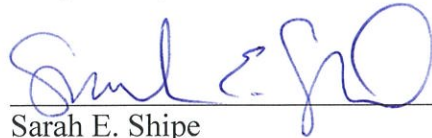
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PETITION TO BE RELIEVED AS COUNSEL  
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Counsel for Eddie Blash states:

1. She is Appellate Defender for the South Carolina Office of Appellate Defense, and was appointed to represent petitioner.
2. She has reviewed the record of petitioner's post-conviction relief hearing before Judge Clifton Newman, which was held on Oct. 19, 2022, and, in her opinion, the appeal is without legal merit sufficient to warrant a new trial.
3. She has, pursuant to Johnson v. State, 294 S.C. 310, 364 S.E.2d 201 (1988), briefed an arguable legal issue which arose during the post-conviction relief process.

Therefore, counsel requests that the Court relieve her as counsel for Eddie Blash.

Respectfully Submitted,



Sarah E. Shipe  
Appellate Defender

ATTORNEY FOR PETITIONER

This 14th day of February, 2025.

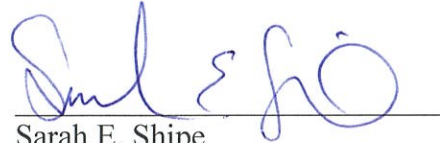
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CERTIFICATE OF COUNSEL

S.C. SUPREME COURT

The undersigned certifies that to the best of her ability this Johnson Petition for Writ of Certiorari complies with Rule 211(b), SCACR, and the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."



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This 14th day of February, 2025.