STATE OF SOUTH CAROLINA

IN THE COURT OF APPPEALS

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MAR 24 2025

SC Court of Appeals

APPELLATE CASE NO. 2022-000641

STATE OF SOUTH CAROLINA

V.

PATRICK LEE BOOKER

AMENDED

PETITION FOR REHEARING *EN BANC*

COMES NOW the *pro se* Appellant who hereby incorporates herein by reference all his "***properly preserved squarely presented adjudicated federal constitutional claims***"[1] and submits this amended petition for rehearing *en banc* of the Court's decision entered February 26, 2025. The basis for this rehearing petition for is set forth below:

[1] In April 2022 the *pro se* Appellant was permitted, without objection by the State, to claim and argue---before a circuit judge---that his guilty plea was taken in violation of due process because he was not informed by the trial court, at the time of his guilty plea, of the direct consequence of the Community Supervision Program ("CSP"). The circuit judge heard and ruled on the squarely presented Fourteenth Amendment due process claim, finding the CSP to be a collateral consequence and that the Appellant's guilty plea was not taken in violation of due process.

1. **This Court's decision is controlled by a clear error of law**: this Court deprived the parties of due process of law, in violation of the Fourteenth Amendment, by

   (A) considering and deciding—without giving any prior notice to the parties—questions which were not properly before this Court (i.e., a question of whether this criminal direct appeal is the "proper proceeding"[2] was waived by the State, was rendered moot by judge's decision and was never properly before this Court, nor was there ever a properly preserved question before this Court about "waiver"[3]as the State waived any such question), and

   (B) by refusing and failing to decide the merits of the *pro se* Appellant's Fourteenth Amendment issues (violation of separation of powers

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[2] The question of whether this appeal from the decision of a circuit court judge who ***heard and decided*** appellant squarely presented Fourteenth Amendment claims was not raised by the State. Thus, any such question was waived by the State by its failure to object and thus failure to preserve such a question, and by its decision to address the merits of the issues raised on appeal. ***See, S.C. Dep't of Transp. V. First Carolina Corp. of S.C.***, 372 S.C. 295, 301, 641 S.E.2d 907 (2007) ("[I]t it a litigant's duty to bring to the court's attention any perceived error, and the failure to do so amounts to a waiver of the alleged error.").

Furthermore, any such question was rendered moot by the fact that trial court decided to hear and decide the Fourteenth Amendment claims that were squarely presented to it, See Perry v. Green, 437 S.E.2d 150 (1993) ("We need not address Green's argument concerning the timeliness of the post-trial motions because *it is moot in light of the trial court's hearing of and ruling on these motions on their merits*.") and, whereas the State did not challenge the properness of the proceeding, the judge's **decision** to hear and decide the federal claim became the law of the case. Buckner v. Preferred Mut. Ins. Co., 255 S.C. 159, 161, 177 S.E.2d 544, 544 (1970) (holding an unchallenged ruling right or wrong is the law of the case and requires affirmance).

[3] The question of whether the *pro se* appellant waived certain issues was itself waived by the State by its failure to object, and by its decision to address the merits on appeal. ***See, S.C. Dep't of Transp. V. First Carolina Corp. of S.C.***, 372 S.C. 295, 301, 641 S.E.2d 907 (2007) ("[I]t it a litigant's duty to bring to the court's attention any perceived error, and the failure to do so amounts to a waiver of the alleged error.")

doctrine and violation of due process resulting in involuntary guilty plea) which were properly preserved for appellate review and squarely presented to this Court. Both the trial court and the State addressed the merits of the Appellant's claims and arguments, without objection. Why this Court seek to avoid addressing the merit?

(C) Additionally, this Court's unexplained action of conjuring up and deciding questions that were never presented was a departure from the ordinary rules of appellate practice. _See Rule_ 208(b)(1)(B), SCACR ("Ordinarily, no point will be considered which is not set forth in the statement of the issues on appeal.").

2. **<u>This Court's decision is controlled by a misapprehension of the facts</u>**: the Court found that the *pro se* Appellant did not seek a ruling on the claim of violation of the separation of powers doctrine following the issuance of the April 28, 2022, Order.

   Contrary to the Court's findings, the *pro se* Appellant did seek, and he obtained, a ruling on the claim of violation of the separation of powers doctrine: see the record on appeal where the trial court, after permitting the *pro se* Appellant to claim and argue a violation of the separation of powers doctrine, ruled on the claim from the bench and later memorialized its ruling

in the September 2022 Order which was appealed from that was consolidated and made a part of this appeal. The record on appeal clearly shows that the *pro se* Appellant was permitted by the trial court, without objection from the State, to claim a separation of powers violation and to argue the merits of his claim of which the trial court heard and ruled on. "There are four basic requirements to preserving issues at trial for appellate review. The issue must have been (1) raised to and ruled upon by the trial court, (2) raised by the appellant, (3) raised in a timely manner, and (4) raised to the trial court with sufficient specificity." *Jean Hoefer Toal et al., Appellate Practice in South Carolina* 57 (2d ed. 2002); *State v. Russell*, 345 S.C. 128, 134, 546 S.E.2d 202, 204 (Ct. App. 2001) (holding that a party need not use the exact name of a legal doctrine in order to preserve an argument, but it must be clear that the argument has been presented on that ground).

This Court has every opportunity to conduct a proper judicial review of the federal Fourteenth Amendment claims made by the *pro se* Appellant in this criminal appeal,

properly preserved claims that did not become ripe for judicial review[4] until the *pro se* Appellant participated in the CSP.

Contrary to this Court's holding, the Appellant's first appellate issue is not precluded or affected by the exclusivity of the remedy under Uniform Post-Conviction Procedure Relief Act because that "*remedy is not a substitute for, nor does it affect any remedy incident to the proceedings in the trial court* []". S.C. Code of Laws, Section 17-27-20 (B) ("This remedy is not a substitute for, nor does it affect any remedy incident to the proceedings in the trial court…").

This criminal appeal--from the decision of a trial court who heard and decided this squarely presented issue--is a remedy incident to the proceedings in the trial court and, therefore, this appeal is not affected by the PCR Act.

Because this appeal *is a remedy incident to the proceedings* in the trial court, the Uniform PCR Act does not preclude this Court from reviewing this properly preserved squarely presented issue on appeal.

Regardless, any question about the timeliness or regularity of the proceedings became moot once the trial court heard and decided the due process claims on the merit. See Perry v. Green, 437 S.E.2d 150 (1993) ("We need not address Green's

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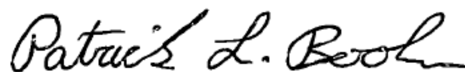
[4] The circuit court and the state supreme court both determined that the *pro se* Appellant's due process claim ***attacking the voluntariness of his guilty plea*** would not become ripe for judicial relief until the Appellant participated in the Community Supervision Program ("CSP").

argument concerning the timeliness of the post-trial motions because *it is moot in light of the trial court's hearing of and ruling on these motions on their merits.*"). Accordingly, this Court needs to conduct a proper judicial review of the properly preserved appellate issues before this Court.

WHEREFORE, having made the foregoing showing, the *pro se* Appellant hereby request that this Court reconsider its decision dated February 26th, 2025.



Patrick Lee Booker

Greenwood, South Carolina

March 20, 2025

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PATRICK LEE BOOKER

PROOF OF SERVICE

I, Patrick L. Booker, do hereby certify that I did serve the Amended Petition for Rehearing En Banc upon the State by depositing a copy of the same in the U.S. Mail, postage prepaid, addressed to:

Matthew C. Buchanan, General Counsel

South Carolina Department of Probation, Parole, and Pardon Services

March 20, 2025

Patrick L. Booker

Patrick Booker
103 Rock Knoll Drive
Greenwood, S.C. 29649

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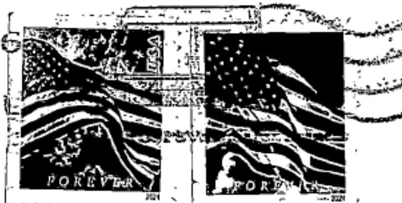

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