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S.C. SUPREME COURT STATE OF SOUTH CAROLINA

In The Supreme Court

Cherokee County Court of Common Pleas  
The Honorable Grace Gilchrist Knie  
Chief Administrative Judge 7th Cir

2022-CP-11-00247

Leonard Lee Foster #179576..... Appellant,

V.

State of South Carolina..... Respondent.

Explanation / Request to file Notice of Appeal

S/ Leonard Foster  
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Rembert SC 29128

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Questions Presented . . . . . (i)

Celotex Corp. v. Catrett (Set 1986) 106 Set 2548 . . . . . (4)

Jackson v. State (SC. 2003) 586 SEad 562 . . . . . (3)

Lounds v. State (SC. 2008) 670 SEad 646 . . . . . (3)

Martin v. State (SC. 2019) 832 SEad 277 . . . . . (4)

McCoy v. State (SC 2013) 737 SEad 623 . . . . . (2)

Pauling v. State (SC. 2002) 565 SEad 769 . . . . . (3)

## Statutes

§ 17-27-90

§ 17-27-45(c)

## I.

Leonard Lee Foster, #179576, Appellant Pro Se Comes now before this Honorable Court of Appeals Pursuant SCACR, Rule 243(c), which require an explanation / reason [be given] for appeal. Said explanation require Appellant demonstrate how the lower Court's ruling was improper. Wherefore, Appellant Submit the following:

## II.

Appellant argues the lower Courts determination was improper when the Court granted Summary judgment in favor of the Respondent, even though the issue Appellant raised in his application establishes there does exist a genuine issue of material fact in dispute in his case. Appellant argues because the issue he raised accrued on March 2022 or at the time he was informed his sentence exceeded the statutory limits, and because his application was submitted (April 4, 2022) thirty days after discovery of this issue, there does exist a genuine issue of material fact [in dispute] as to whether his application is successive under the provisions of S.C. Code Ann. §17-27-90, 17-27-45(c), and or whether in fact he satisfied the provisions of the statute and his application is timely.

Note: Appellant did file a (3) page objection to Respondents propose order of dismissal enclosed please find a copy attached.

Moreover, Appellant argues it was improper to grant Summary judgment in favor of the Respondent because Summary judgment is inappropriate when ground raised in subsequent application could not have been raised in previous application.

Where post conviction applicant alleges facts that would establish an exception to either the statute of limitation or the prohibition against successive application and these facts are not conclusively refuted by the record before the trial court a question of fact is raised which can only be resolved by a hearing. See, McCoy v. State (2013) 737 SE2d 623.

When considering the state's motion for Summary dismissal of an application for post conviction relief, where no evidentiary hearing has been held, the judge must assume facts presented by the Applicant are true and view those facts in the light most favorable to the Applicant. Quoting McCoy, Supra.

Wherefore, viewing the facts in the light most favorable to the Appellant it was improper for the lower court to grant Summary judgment in favor of Respondent without an evidentiary hearing for the purpose of determining the validity and merits of his claim.

### III.

Finally, Appellant argues the lower Court's ruling is improper and amounts to an abuse of discretion because the decision of the lower Court is controlled by an error of law.

Appellant argues in the light that under South Carolina law the allegations Appellant put forth in his application are deemed as true, and are deemed as facts and because the Respondent has put forth no evidence to conclusively refute the facts set forth within Appellant's application. Therefore, it constitutes an abuse of discretion for the lower Court to rule in favor of Respondent when the facts and allegations premised within the application are not conclusively refuted.

Findings of a Post Conviction relief (PCR) judge will be upheld by the Supreme Court when they are supported by any competent evidence in the record; however, the Supreme Court will not uphold the findings of the PCR Court if no probative evidence supports those findings.

Quoting, Jackson v. State (2003) 586 SE2d 562. See Also, Lounds v. State. 670 SE2d 646. (SC 2008).

Appellate Court will not uphold the findings of Post-Conviction relief (PCR) Court if there is no probative evidence to support those findings. Citing, Pauling v. State (SC 2002) 565 SE2d 769.

Non-Moving Party need not produce evidence in a form that would be admissible at trial in order to avoid Summary judgment. Citing, Celotex Corp. V. Catrett, 106 S.Ct 2548 (S.Ct. 1986)

Question of law are reviewed de novo, and the appellate Court will reverse the postconviction Court if its decision is controlled by an error of law. Citing Martin V. State (S.C. 2019) 832 S.E.2d 277. IV.

### Conclusion / Relief

Wherefore, based on all the foregoing. Appellant request that he be permitted to file the Notice of Appeal and or in the alternative that the case be remand for a hearing, for the purpose that the lower Court Conclusively make a determination regarding the Substance of his Claim.

Executed on this 6 day of May 2025. Respectfully Submitted,

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