

THE STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

APPEAL FROM OCONEE COUNTY  
COURT OF COMMON PLEAS

H. STEVEN DEBERRY, IV CIRCUIT COURT JUDGE

RECEIVED

MAY 14 2025

SC Court of Appeals

Dennis Maurice Temple

Appellant,

Vs.

State of South Carolina

Respondent,

Appellate Case No. 2024-001193

BRIEF OF APPELLANT

Dennis M. Temple, # 274802  
Pro Se Appellant Defender

Tyger River Correctional Institution  
200 Prison Road  
Enoree, South Carolina 29335

*Dennis M. Temple*

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STATEMENT OF ISSUES ON APPEAL

Did the clerk of court err by failing to Enter of Default in the appellant's case ?

Did the circuit court err by granting the respondent's motion to Dismiss appellant's state Habeas Corpus Action pursuant to Rule 12(b)(1) of the SCRCP. When respondent did not timely file a Return to appellant's state Habras Corpus Action pursuant to Rule 12(a) of the SCRCP. As a result, appellant filed a motion for Entry for Default and Default Judgment ?

STATEMENT OF THE CASE

On July 10, 2023, appellant filed a state habeas Corpus Action in the Oconee County Court of Common Pleas pursuant to Rule 65(f)(1) of the South Carolina Rules of Civil Procedures against the State of South Carolina; Director, Bryan Stirling; and warden Shane Jackson for placing and holding him incarcerated in prison in violation of appellant's 4th, 5th, 6th, 8th and 14th Amendment rights of the United States Constitution and South Carolina Constitution Article 1, sections 3, 12, 14 & 15 and South Carolina Statutory codes of laws.

Appellant sought to take advantage of the deprivation of Constitutional principles recognized after his trial, appeal and exhaustion of state post-Conviction Relief proceedings.

Appellant was bereaved of substantial and procedural constitutional rights and in the setting, constitute a denial of fundamental fairness shocking to the Universal sense of Justice.

Wherefore, the appellant moves the court for a writ of Habeas Corpus for an order directing the state of South Carolina; Director Bryan Stirling and Warden Shane Jackson to provide the appellant with a new trial; a new Preliminary hearing and/or release him from prison or/and such other and further relief in favor of the appellant as the court deems just and appropriate.

On July 24, 2023 appellant filed a Status Report with the Oconee County, clerk of court, stating that he was being prevented from serving his summonses, verified complaint, Notice of Motion and Petition for Writ of Habeas Corpus as an indigent inmate on the respondent's attorney, Alan Wilson by Ms. Eastridge mailroom

personal at Lee Correctional Institution. Tr.

On July 28, 2023 appellant was finally allowed to mail three (3) copies of the summonses, verified Complaint, Motion for Petition of Writ of Habeas Corpus and Notice of Motion to the respondent attorney, Alan Wilson. However, appellant did not receive a return green card back.

On August 9, 2023 the Richland County Sheriff's Department Officer P. Wilkes served the summonses, verified Complaint, Motion for Petition of Writ of Habeas Corpus and Notice of Motion on Janee Mccrea, of the attorney General Office.

Also On August 9, 2023 appellant filed a Notice and Motion for leave to Amend verified Complaint with the Oconee County, clerk of court, Melissa C. Burton and served a copy on the respondent's attorney, Alan Wilson; the state of South Carolina, attorney General.

On August 25, 2023 appellant filed the original certified mail receipt with the Oconee County, clerk of court showing the Notice, Petition, summonses and verified Complaint was served on the respondent's attorney, Alan Wilson.

On August 28, 2023 appellant went to the mailroom at Tyger River Correctional Institution and mailed out (3) more summonses, verified Complaint, Motion for petition of Writ of Habeas Corpus and a notice of motion by certified mail and return receipt requested. To the attorney General, Alan Wilson.

On September 12, 2023 appellant filed the original certified mail receipt and the return green card and a copy with the Oconee County, clerk of court, Melissa C. Burton.

On September 14, 2023 appellant filed the original Affidavit of service from the Richland County Sheriff's Department with the Oconee County, clerk of court, Melissa C. Burton.

On September 25, 2023 the Oconee County, clerk of court Melissa C. Burton mailed a letter to appellant stating, " quote"

" The Oconee County, clerk office has received your letter and filing dated 9/20/2023. We are unable to process the notice of motion, motion for leave to Amend verified Complaint and certificate of service filings. These filings are being returned to you for your signature. Both copies you have provided have photocopied signature, please sign and return for filing.

On October 6, 2023 appellant filed a (second) Notice and Motion for leave to Amend verified Complaint with the Oconee County, clerk of court, Melissa C. Burton.

On October 18, 2023 appellant filed a notice of motion, Motion for Entry of Default and Default Judgment; an affidavit of Default; verified Statement; Exhibits A,B,C,E,F & G and a order entering default Judgment, with the Oconee County, clerk of court, Melissa C. Burton.

As a result, of some errors, on December 4, 2023 appellant filed a (second) Notice of Motion, Motion for entry of Default and Default Judgment, an Affidavit of Default, Verified Statement Exhibits A,B,C,E,F,G,H & I and a order entering default Judgment with the Oconee County, clerk of court, Melissa C. Burton.

On December 11, 2023 appellant received a clocked-in stamped copy of the (second) Notice of Motion, Motion for Entry of Default and Default Judgment, an Affidavit of Default, verified statement and Exhibits A,B,C,E,F,G,H, & I from the Oconee County, clerk of court, Melissa C. Burton. However, the order entering Default Judgment was not clocked-in and filed with the court. The clerk advised the appellant not to sign the order, which would be signed by the judge.

On March 8, 2024 respondent filed a return and Motion to Dismiss appellant's petition for Writ of Habeas Corpus. Respondent submits that a state habeas Corpus petition must be filed in the original jurisdiction of the South Carolina Supreme Court and requests this action be summarily dismissed pursuant to Rule 12(b) (1), SCRCF because this court lacks subject matter Jurisdiction, see. S.C. Const. art.v § 5 (" The supreme court shall have power to issue writ or orders of injunction, mandamus, quo warranto, prohibition, certiotari; habeas corpus, and other original and remedial writs.")(emphasis added); see also Simpson-v. State, 329 S.C.43 46n. 4. 495 S.E.2d 429, 431 n.4 (1998)(expressly reserving the ability to entertain writs of habeas corpus in the Supreme Court original Jurisdiction [ under article v. Section 5 of the South Carolina Constitution].)

On April 9, 2024 a hearing was held at the anderson County courthouse regarding appellant's petition for writ of Habeas Corpus and the state's attorney Talida Balaj motion to dismiss the petition before the presiding Judge H. Steven Deberry, Iv. Judge Deberry allowed the state to raise all of it's defense and claims, but denied appellant from raising claims and defense. Judge Deberry then granted the state's motion to Dismiss appellant's

Habeas Corpus petition pursuant to Rule 12(b)(1) of the SCRCP.

On May 17, 2024 Judge H. Steven Deberry, Iv. filed a Final Order of Dismissal in the Oconee County, Court of Common Pleas, the court granted respondent's motion to Dismiss and stated the petition is procedurally barred, leaving this court without jurisdiction.

On May 31, 2024 appellant filed a motion to Alter or Amend Judgment pursuant to Rule 59(e) of the South Carolina Rules of Civil Procedures requesting the court to alter or amend judgment in it's final order of dismissal, but failing to rule on all of the appellant's arguments, claims, defenses and raised issues.

On July 1, 2024 Judge Deberry filed a Order Denying appellant motion to Reconsider with the Oconee County, Court of Common pleas.

On July 22, 2024 the appellant filed a notice of Appeal in this case, and a Amended Notice of Appeal on August 9, 2024.

Appellant appealed. This brief follows.

STANDARD OF REVIEW

" The question of subject matter Jurisdiction is a question of law for the Court," Capital City Ins. Co. v. Bp staff. Inc., 382 S.C. 92, 99 674 S.E.2d 524, 528 (Ct. App. 2009). Thus, when reviewing the trial courts grant of a motion to Dismiss for lack of subject matter jurisdiction pursuant to Rule 12(b)(1), SCRPC this court is free to decide question of law with No deference to the trial court, Id (quoting Matthews ex rel. Estate of Matthews v. Matthews, (July 12, 2010) not Reported in S.E.2d 2010 WL 10080099

## ARGUMENT I

Did the clerk of court err by failing to Entry of Default in the appellant's case ?

On July 10, 2023 appellant a state prisoner at Lee Correctional Institution filed a Notice of Motion, a petition for Writ of Habeas Corpus, (3) summonses and verified Complaint in the Oconee County Court of Common Pleas pursuant to Rule 65(f)(1) of the South Carolina Rules of Civil Procedures against the State of South Carolina; Director Bryan Stirling and Warden, Shane Jackson for placing and holding him incarcerated in prison in violation of appellant 4th, 5th, 6th, 8th and 14th Amendment rights of the United States Constitution and South Carolina Constitution Article 1, sections 3, 12, 14, & 15, Common laws and S.C. Codes of laws. R.p. 1-38.

On July 24, 2023 appellant filed a **Status report** with the Oconee County, clerk of Court stating that he was being prevented from serving his summonses, verified Complaint, notice of Motion and petition for Writ of Habeas Corpus as a indigent inmate on the respondent's attorney, Alan Wilson by Ms. Eastridge mailroom personal at Lee Correctional Institution. R.p. 38-42.

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In addition, on August 9, 2023 appellant filed a notice and Motion for Leave to Amend verified Complaint with the Oconee Court clerk of court, Melissa C. Burton and served a copy on the respondent's attorney, Alan Wilson: the State of South Carolina attorney General. R.p. 43-49.

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The summons, included a statement informing the respondents that a default would be sought against them for the relief sought in the verified Complaint unless the respondents answered or respond within 30 days. R.p. 10-12.

On September 12, 2023 appellant filed the original certified mail receipt and the return green Card and a copy with the Oconee County, clerk of court, Melissa C. Burton. R.p. 54-56.

On September 14, 2023 appellant filed the original Affidavit of service from the Richland County Sheriff's Department with the Oconee County, clerk of court Melissa C. Burton. R.p. 57-60.

On September 25, 2023 the Oconee county, clerk of court Melissa C. Burton mailed a letter to appellant stating " quote" the Oconee County, clerk office has received your letter and filing dated 9/20/2023. We are unable to process the notice of motion, Motion for leave to Amend verified Complaint and certificate of service filings. These filings are being returned to you for your signature Both copies you have provided have photocopied signature, please sign and return for filing. R.p. 61.

On October 6, 2023 appellant filed a (second) Notice and Motion for leave to Amend verified Complaint with the Oconee County, clerk of court, Melissa C. Burton. R.p. 62-69.

On October 18, 2023 appellant filed a notice of Motion, Motion for Entry of default and Default Judgment; an affidavit of Default verified statement; Exhibits A,B,C,E,F&G and a order entering default Judgment, with the Oconee County, clerk of court, Melissa C. Burton. R.p. 70-79.

As a result, of some error, on December 4, 2023 appellant filed a (second) Notice of Motion, Motion for Entry of Default and Default Judgment, an Affidavit of Default, Verified Statement Exhibits A,B,C,E,F,G,H & I and a order entering default Judgment with the Oconee County, clerk of court, Melissa C. Burton. R.p. 80-90.

As of now, more than 6 months have elapsed since the service of the notice of motion, Motion for Petition of Writ of Habeas Corpus, summons and verified Complaint and more than 15 days has passed as of serving the first and second motion for leave to Amend Verified Complaint.

The respondents has not answered, otherwise pled, or requested an extension of time in which to answer.

On December 11, 2023 appellant received a clocked-in stamped copy of the (second) Notice of Motion, Motion for Entry of Default and Default judgment, an Affidavit of Default, Verified Statement and Exhibits A,B,C,E,F,G,H,&I from the Oconee County, Clerk of Court, Melissa C. Burton. However, the order entering Default Judgment was not clocked-in and filed with the court. The clerk advised the appellant not to sign the order, which would be signed by the Judge.

On December 27, 2023 appellant filed a (new) order entering default Judgment with the Oconee County, clerk of Court, Melissa C. Burton. R.p. 91-92.

RESPONDENT'S MOTION TO DISMISS

On March 8, 2024 respondent filed a return and Motion to dismiss appellant's petition for Writ of Habeas Corpus. Respondent submits that a state habeas Corpus petition must be filed in the original jurisdiction of the South Carolina Supreme Court and requests this action be summarily dismissed pursuant to Rule 12(b)(1) SCRCP because this court lacks subject matter Jurisdiction. see. S.C. Const. art.v § 5 (" The supreme court shall have power to issue writ or orders of injunction, mandamus, quo warranto, prohibition, certiorari; habeas corpus, and other original and remedial writs.") (emphasis added); see also Simpson v. State, 329 S.C. 43 46 n. 4. 495 S.E.2d 429, 431n.4 (1998) (expressly reserving the ability to entertain writs of habeas corpus in the Supreme Court original Jurisdiction [under article v. Section 5 of the South Carolina Constitution].)

Moreover, " [a] person is procedurally barred from petitioning the circuit court for a writ of habeas corpus where the matter alleged is one which could have been raised in a Pcr application Keeler v. Mauney, 330 S.C. 568, 571,500 S.E.2d 123, 124 (ct.App. 1998); see. Al-shabazz v. State, 338 S.C. 354,365,527 S.E.2d 742 748 (2000) (explaining that any matter that is cognizable under the uniform Post Conviction Procedure Act, "must be raised in PCR application, and may not be raised by a petition for a writ of habeas corpus before the circuit or other lower courts.") The Uniform Post Conviction Procedure Act is " broadly inclusive and will rarely be inadequate or unavailable to test the legality of the detention." Gibson v. State, 329 S.C. 37,41,495 S.E.2d 426, 428 (1998). A petitioner may even allege constitutional violation in PCR proceedings unless the petitioner could have raised the

issue on direct appeal.Id.

" A habeas Corpus petition must support the requested relief Id. at 40, 495 S.E.2d at 427. Although the allegations in the petition are to be treated as true, the petitioner must make a prima facie case showing he is entitled to relief and present sufficient factual allegations to support the petition before he is entitled to a hearing. Id. at 40, 495 S.E.2d at 427-28. To warrant a hearing, the petition must include the two allegations described below. First, the petition must allege the petitioner has exhausted all available Post-Conviction Relief (PCR) remedies Simpson, 329 S.C. at 46, 495 S.E.2d at 431; Gibson, 329 S.C. at 42, 495 S.E.2d at 428." Exhaustion includes filing of an application, the rendering of an order adjudicating the issues, and petitioning for, or knowingly waiving, appellate review." Gibson 324 S.C. at 42, 495 S.E.2d at 428. Second, the petition must allege sufficient facts to show why other remedies. Such as PCR, are unavailable or inadequate. Id. PCR is not rendered " unavailable or inadequate " merely because the petitioner's application might be dismissed as procedurally barred. Furthermore, if a person is procedurally barred, his only means of obtaining state habeas corpus relief is to file a petition in the original Jurisdiction of the Supreme Court." Keeler, 330 S.C. at 571, 500 S.E. 2d at 124 (emphasis added).

Therefore, this petition must be dismissed because it is procedurally barred, leaving this court without Jurisdiction. Relief must be sought in the original Jurisdiction of the South Carolina Supreme Court or in a successive PCR application. Here, the petition fails to meet the standards required for the issuance of this extraordinary writ. The petition contains no allegations

that PCR remedies have been exhausted nor any factual justification why other remedies, such as PCR, were unavailable or inadequate to address his allegations. Petitioner could have and has raised these allegations in his prior PCR applications. Since the petition is procedurally barred, the only remaining form of relief is left to the South Carolina Supreme Court under it's original Jurisdiction, leaving this court without jurisdiction. The failure to properly file this action in the proper venue requires dismissal of this action for lack of Jurisdiction. Thus, these claims cannot be raised in a petition for habeas Corpus in the circuit courts of South Carolina.

#### CONCLUSION

WHEREFORE, Respondent moves to summarily dismiss the petition for Writ of Habeas Corpus because state habeas petition must be filed in the original Jurisdiction of the Supreme Court of South Carolina. R.p. 95-106.

#### LAW/ ANALYSIS

A determination in this case requires an evaluation of Rule 65(f)(1); Rule 55(a)&(b) and Rule 12(a)&(b) of the SCRCR, South Carolina Rules of Civil Procedures regarding the requirements of a state Habeas Corpus petition; the entry of default and default judgment and when to serve the answer to a complaint " When interpreting a court rule, " We apply the same rules of construction used in interpreting statutes. Therefore, the words of [the rule] must be given their plain and ordinary meaning without resort to subtle or forced construction to limit or expand the rule." Green v. Lewis Truck Lines, Inc, 314 S.C. 303

304, 443 S.E.2d 906,907 (1994). When the language of a court rule is clear and unambiguous, the court is obligated to follow its plain and ordinary meaning.

SCRCP, Rule 65(f)(1)

Rule 65(f)(1) provides, Remedial Writs. No writ of mandamus habeas corpus, or other remedial writ shall be granted without notice of motion for the writ to the adverse party, which notice shall be served, together with the summons and complaint, in event no summons and complaint have previously been filed and served in the action, upon the adverse party in accordance with the provisions of Rules 4 and 5. Such notice and motion shall be supported by affidavit or verified complaint setting forth clearly the facts entitling the moving party to such writ. The motion shall be heard upon such notice as the court may prescribe, and the court shall proceed to hear and determine such motion as expeditiously as the ends of justice require. Unless a different time be prescribed by the court, the adverse party shall plead to the complaint and respond to such motion in the time prescribed by these rules for other civil actions.

SCRCP, Rule 55(a)&(b)(1)

Rule 55(a)(b)&(1) provides, (a) Entry. When a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend as provided by these rules and that fact is made to appear by affidavit or otherwise, the clerk shall enter his default upon the calendar (file book).

(b) Judgment. Judgment by default may be entered as follows:

(1) Cases involving Liquidated Damages or, Sum certain Amounts. When the claim of a party seeking judgment by default is for a liquidated amount, a sum certain or a sum which can by computation be made certain, the judge, upon motion or application of the party seeking default, and upon affidavit of the amount due, shall enter judgment for that amount and costs against the party against whom judgment by default is sought, if that party has been defaulted for failure to appear and if such party is not a minor or incompetent person. A verified pleading may be used in lieu of an affidavit

when the pleading contains information sufficient to determine or compute the sum certain.

SCRPC, Rule 12(a)&(b)

Rule 12. DEFENSES AND OBJECTIONS— WHEN AND HOW PRESENTED—  
BY PLEADING OR MOTION FOR JUDGMENT ON PLEADING

(a) When presented. A defendant shall serve his answer within 30 days after the service of the complaint upon him, unless the court directs otherwise when service of process is made pursuant to Rule 4(e), and provided further that the State of South Carolina shall answer or otherwise respond to an application for post-Conviction relief within 60 days after service of the application, if it arises out of a guilty plea, and 90 days if it arises out of a trial... etc.etc

Unless an extension is granted, a defendant must serve his answer within thirty days " after the service of the complaint upon him." Rule 12(a); SCRPC. If a party has failed to "plead or otherwise defend as provided by [the South Carolina Rules of Civil Procedure] and that fact is made to appear by affidavit or otherwise," the clerk of court will enter default, Rule 55(a), SCRPC. Entry of default is a ministerial act which a clerk is required to perform once default is made to appear by the affidavit of the moving party. See. Thynes v. Lloyd, 294 S.C. 152, 153-54, 363 S.E. 2d 122, 123 (Ct.App, 1987) (holding that " whether default was actually entered is of no consequence since the entry of default is a purely ministerial act which the clerk was required to perform once the default was made to appear by the affidavit" of the moving party).

## DISCUSSION

Appellant argues that the clerk of court erred by failing to enter the default. After, appellant served the respondent with three (3) copies of the notice of motion, Motion for Petition of Writ of Habeas Corpus, Summones and Verified Complaint on July 28, 2023, August 9, 2023 and August 28, 2023 via certified mail with returned receipt requested and service by the Richland County Sheriff's Department. Although respondent filed a return and a Motion to Dismiss Appellant's Habeas Corpus action after appellant filed two (2) Notice of Motion and Motion for Entry of Default and Default Judgment, it did not comply with the time requirements of Rule 12(a), of the South Carolina Rules of Civil Procedures, (SCRCP). Respondent clearly failed to file an answer/return within thirty days of service of the notice, motion, summones and verified Complaint upon them. See. R.p.6-38: R.p. 51-60: R.p.70-79: and R.p.94-105. Respondent were technically in default. Thus, respondents return and motion to Dismiss was not a valid pleading or defense " as provided by the Rules of Civil procedure. A plain reading of Rule 55(a) allows entry of Default when a pleading or defense is asserted in a manner non-compliant with the Rules of Civil Procedure. To hold otherwise would render the requirements in Rule 12(a), SCRCP meaningless. (quoting Stark Truss Co. Inc. v. Superior Const Corp. 360 S.C. 503, 602 S.E.2d 99 (Ct.App.2004)

A criminal defendant has a due process right to have his case heard by a fair and impartial Judge. see. Schweiker v. McClure, 456 U.S. 188, 195, 102 S.Ct. 1665, 72 L.Ed.2d 1 (1982).

" Procedural due process imposes constraints on governmental decisions which deprive individuals of liberty or property interests within the meaning of the Due process clause of the Fifth or fourteenth Amendment of the United States Constitution. Kurschner v. City of Camden Planning Comm'n, 376 S.C.165,171,656 S.E.2d 346,350 (2008).Fundamentally, due process requires notice, a meaningful opportunity to be heard, and judicial review. Id. (quoting Thompson v. State, 415 S.C. 560 785 S.E.2d 189 (2016)).

" Due process demands impartiality on the part of those who function in judicial or quasi-Judicial capacities.") Similarly, he has the right to have a judge assigned to his case" in a manner free from bias or the desire to influence the outcome of the proceedings. Cruz v. Abbate, 812 f.2d 571, 574 (9th Cir.1987).

We find that the clerk of court failing to enter the default in this case was improper, prejudicial and deprived appellant of a meaningful opportunity to be heard on his motion for entry of default and default judgment and to judicial review in this case. Appellant was deprived of state and U.S. Constitutional rights to Due Process and Equal Protection.

ARGUMENT II

Did the circuit court err by granting the respondent's motion to Dismiss appellant's state Habeas Corpus action pursuant to Rule 12(b)(1) of the SCRPC. When respondent did not timely file a Return to appellant's State Habeas Corpus action pursuant to Rule 12(a) of the SCRPC. As a result, appellant filed a motion for Entry of Default and Default Judgment ?

On July 10, 2023 appellant a state prisoner at Lee Correctional Institution filed a Notice of Motion, a petition for Writ of Habeas Corpus, (3) summonses and verified Complaint in the Oconee County, court of Common Pleas pursuant to Rule 65(f)(1) of the South Carolina Rules of Civil Procedures against the State of South Carolina; Director, Bryan Stirling and warden, Shane Jackson for placing and holding him incarcerated in prison in violation of appellant's 4th, 5th, 6th, 8th and 14th Amendment rights of the United States Constitution and South Carolina Constitution Article 1, sections 3,12,14,& 15, Common laws and S.C. Codes of laws. R.p. 1-38.

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As of now, more than 6 months have elapsed since the service of the notice of motion, Motion for Petition of Writ of Habeas Corpus, summons and verified Complaint and more than 15 days has passed as of serving the first and second motion for leave to Amend Verified Complaint.

The respondents has not answered, otherwise pled, or requested an extension of time in which to answer.

On December 11, 2023 appellant received a clocked-in stamped copy of the (second) Notice of Motion, Motion for Entry of Default and Default judgment, an Affidavit of Default, Verified Statement and Exhibits A,B,C,E,F,G,H,&I from the Oconee County, Clerk of Court, Melissa C. Burton. However, the order entering Default Judgment was not clocked-in and filed with the court. The clerk advised the appellant not to sign the order, which would be signed by the Judge.

On December 27, 2023 appellant filed a (new) order entering default Judgment with the Oconee County, clerk of Court, Melissa C. Burton. R.p. 91-92.

RESPONDENT'S MOTION TO DISMISS

On March 8, 2024 respondent filed a return and Motion to dismiss appellant's petition for Writ of Habeas Corpus. Respondent submits that a state habeas Corpus petition must be filed in the original jurisdiction of the South Carolina Supreme Court and requests this action be summarily dismissed pursuant to Rule 12(b)(1) SCRCP because this court lacks subject matter Jurisdiction. see. S.C. Const. art.v § 5 (" The supreme court shall have power to issue writ or orders of injunction, mandamus, quo warranto, prohibition, certiorari; habeas corpus, and other original and remedial writs.")(emphasis added); see also Simpson v. State, 329 S.C. 43 46 n. 4. 495 S.E.2d 429, 431n.4 (1998)(expressly reserving the ability to entertain writs of habeas corpus in the Supreme Court original Jurisdiction [under article v. Section 5 of the South Carolina Constitution].)

Moreover, " [a] person is procedurally barred from petitioning the circuit court for a writ of habeas corpus where the matter alleged is one which could have been raised in a Pcr application Keeler v. Mauney, 330 S.C. 568, 571,500 S.E.2d 123, 124 (ct.App. 1998); see. Al-shabazz v. State, 338 S.C. 354,365,527 S.E.2d 742 748 (2000)(explaining that any matter that is cognizable under the uniform Post Conviction Procedure Act, "must be raised in PCR application, and may not be raised by a petition for a writ of habeas corpus before the circuit or other lower courts.") The Uniform Post Conviction Procedure Act is " broadly inclusive and will rarely be inadequate or unavailable to test the legality of the detention." Gibson v. State, 329 S.C. 37,41,495 S.E.2d 426, 428 (1998). A petitioner may even allege constitutional violation in PCR proceedings unless the petitioner could have raised the

issue on direct appeal.Id.

" A habeas Corpus petition must support the requested relief Id. at 40, 495 S.E.2d at 427. Although the allegations in the petition are to be treated as true, the petitioner must make a prima facie case showing he is entitled to relief and present sufficient factual allegations to support the petition before he is entitled to a hearing. Id. at 40, 495 S.E.2d at 427-28. To warrant a hearing, the petition must include the two allegations described below. First, the petition must allege the petitioner has exhausted all available Post-Conviction Relief (PCR) remedies Simpson, 329 S.C. at 46, 495 S.E.2d at 431; Gibson, 329 S.C. at 42, 495 S.E.2d at 428." Exhaustion includes filing of an application, the rendering of an order adjudicating the issues, and petitioning for, or knowingly waiving, appellate review." Gibson 324 S.C. at 42, 495 S.E.2d at 428. Second, the petition must allege sufficient facts to show why other remedies. Such as PCR, are unavailable or inadequate. Id. PCR is not rendered " unavailable or inadequate " merely because the petitioner's application might be dismissed as procedurally barred. Furthermore, if a person is procedurally barred, his only means of obtaining state habeas corpus relief is to file a petition in the original Jurisdiction of the Supreme Court." Keeler, 330 S.C. at 571, 500 S.E. 2d at 124 (emphasis added).

Therefore, this petition must be dismissed because it is procedurally barred, leaving this court without Jurisdiction. Relief must be sought in the original Jurisdiction of the South Carolina Supreme Court or in a successive PCR application. Here, the petition fails to meet the standards required for the issuance of this extraordinary writ. The petition contains no allegations

that PCR remedies have been exhausted nor any factual justification why other remedies, such as PCR, were unavailable or inadequate to address his allegations. Petitioner could have and has raised these allegations in his prior PCR applications. Since the petition is procedurally barred, the only remaining form of relief is left to the South Carolina Supreme Court under its original Jurisdiction, leaving this court without Jurisdiction. The failure to properly file this action in the proper venue requires dismissal of this action for lack of Jurisdiction. Thus, these claims cannot be raised in a petition for habeas Corpus in the circuit courts of South Carolina.

#### CONCLUSION

WHEREFORE, Respondent moves to summarily dismiss the petition for Writ of Habeas Corpus because state habeas petition must be filed in the original Jurisdiction of the Supreme Court of South Carolina. R.p. 95-106.

#### STATE HABEAS CORPUS HEARING

On April 9, 2024 a hearing was held at the Anderson County courthouse regarding appellant's petition for Writ of Habeas Corpus and the state's attorney Talida Balaj motion to dismiss the petition before the presiding Judge H. Steven Deberry, IV. Judge Deberry allowed the state to raise all of its defense and claims, but denied appellant from raising all of his claims and defense. Judge Deberry then granted the state's motion to Dismiss appellant Habeas Corpus action pursuant to Rule 12(b)(1) of the SCRPC.

R. p. 107-126.

On May 17, 2024 Judge Deberry filed a final Order of Dismissal in the Oconee County, court of Common pleas, the court granted the respondent's motion to Dismiss and further stated the petition is procedurally barred, leaving this court without jurisdiction. R.p. 127-129.

On May 31, 2024 appellant filed a motion to Alter or Amend Judgment pursuant to Rule 59(e) of the South Carolina Rules of Civil Procedures requesting the court to alter or amend judgment in it's final order of dismissal, but failing to rule on all of the appellant's arguments, claims, defense and raised issues. R.p. 130-154.

On July 1, 2024 Judge Deberry filed a Order Denying appellant motion to Reconsider with the Oconee County, Court of Common Pleas R.p. 155.

#### LAW / ANALYSIS

A determination in this case requires an evaluation of Rule 65(f)(1); Rule 55(a)&(b) and Rule 12(a)&(b) of the SCRPC, South Carolina Rules of Civil Procedures regarding the requirements of a state Habeas Corpus action; the entry of default and default judgment and when to serve the answer to accomplaint." When interpreting a court rule," We apply the same rules of construction used in interpreting statutes. Therefore, the words of [the rule] must be given their plain and ordinary meaning without resort to subtle or forced construction to limit or expand the rule."

Green v. Lewis Truck Lines, Inc, 314 S.C. 303

304, 443 S.E.2d 906,907 (1994). When the language of a court rule is clear and unambiguous, the court is obligated to follow its plain and ordinary meaning.

SCRCP, Rule 65(f)(1)

Rule 65(f)(1) provides, Remedial Writs. No writ of mandamus habeas corpus, or other remedial writ shall be granted without notice of motion for the writ to the adverse party, which notice shall be served, together with the summons and complaint, in event no summons and complaint have previously been filed and served in the action, upon the adverse party in accordance with the provisions of Rules 4 and 5. Such notice and motion shall be supported by affidavit or verified complaint setting forth clearly the facts entitling the moving party to such writ. The motion shall be heard upon such notice as the court may prescribe, and the court shall proceed to hear and determine such motion as expeditiously as the ends of justice require. Unless a different time be prescribed by the court, the adverse party shall plead to the complaint and respond to such motion in the time prescribed by these rules for other civil actions.

SCRCP, Rule 55(a)&(b)(1)

Rule 55(a)(b)&(1) provides, (a) Entry. When a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend as provided by these rules and that fact is made to appear by affidavit or otherwise, the clerk shall enter his default upon the calendar (file book).

(b) Judgment. Judgment by default may be entered as follows:

(1) Cases involving Liquidated Damages or, Sum certain Amounts. When the claim of a party seeking judgment by default is for a liquidated amount, a sum certain or a sum which can by computation be made certain, the judge, upon motion or application of the party seeking default, and upon affidavit of the amount due, shall enter judgment for that amount and costs against the party against whom judgment by default is sought, if that party has been defaulted for failure to appear and if such party is not a minor or incompetent person. A verified pleading may be used in lieu of an affidavit

when the pleading contains information sufficient to determine or compute the sum certain.

SCRPC, Rule 12(a)&(b)

Rule 12. DEFENSES AND OBJECTIONS— WHEN AND HOW PRESENTED—  
BY PLEADING OR MOTION FOR JUDGMENT ON PLEADING

(a) When presented. A defendant shall serve his answer within 30 days after the service of the complaint upon him, unless the court directs otherwise when service of process is made pursuant to Rule 4(e), and provided further that the State of South Carolina shall answer or otherwise respond to an application for post-Conviction relief within 60 days after service of the application, if it arises out of a guilty plea, and 90 days if it arises out of a trial... etc.etc

Unless an extension is granted, a defendant must serve his answer within thirty days " after the service of the complaint upon him." Rule 12(a); SCRPC. If a party has failed to "plead or otherwise defend as provided by [the South Carolina Rules of Civil Procedure] and that fact is made to appear by affidavit or otherwise," the clerk of court will enter default, Rule 55(a), SCRPC. Entry of default is a ministerial act which a clerk is required to perform once default is made to appear by the affidavit of the moving party. See. Thynes v. Lloyd, 294 S.C. 152,153-54, 363 S.E. 2d 122,123 (Ct.App,1987)(holding that" whether default was actually entered is of no consequence since the entry of default is a purely ministerial act which the clerk was required to perform once the default was made to appear by the affidavit" of the moving party).

## DISCUSSION

Appellant argues that the circuit court erred by granting the respondent's motion to dismiss appellant's state habeas Corpus action pursuant to Rule 12(b) of the SCRPC. After, appellant served the respondent with three (3) copies of the notice of motion, Motion for petition of writ of Habeas Corpus, summones and verified Complaint on July 28, 2023, August 9, 2023 and on August 28, 2023 via certified mail with returned receipt requested and service by the Richland County Sheriff's Department. Although respondent filed a Return and Motion to Dismiss appellant's Habeas Corpus action (on March 8, 2024) after appellant filed two (2) Notices of Motion and Motion for Entry of Default and Default Judgment (on October 18, 2023 and December 4, 2023), it did not comply with the time requirements of Rule 12(a), of the South Carolina Rules of Civil Procedures, (SCRPC). Respondent clearly failed to file an answer/return within thirty days of service of the notice, Motion, Summones and verified Complaint upon them. see. R. pp. 6-38; R. p. 51-60; R. pp. 70-79; and R. p. 94-105. Respondent were technically in default. Thus, respondents return and motion to dismiss was not a valid pleading or defense" as provided by the Rules of Civil procedure. a plain reading of Rule (b)(1) allows the Default judgment when a pleading or defense is asserted in a manner non-compliant with the Rules Civil Procedure. To hold otherwise would render the requirements in Rule 12(a), SCRPC meaningless. (quoting Stark Truss Co. Inc. v. Superior Const Corp. 360 S.C. 503, 602 S.E.2d 99 (Ct.App.2004)

A criminal defendant has a due process right to have his case heard by a fair and impartial judge. see. Schweiker v. McClure, 456 U.S. 188, 195, 102 S.Ct. 1665, 72 L.Ed.2d 1 (1982).

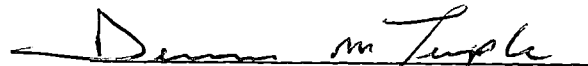
" Procedural due process imposes constraints on governmental decisions which deprive individuals of liberty or property interests within the meaning of the Due process clause of the fifth or fourteenth Amendment of the United States Constitution. Kurschner v. City of Camden Planning Comm'n, 376 S.C. 165, 171, 656 S.E.2d 346, 350 (2008). Fundamentally, due process requires notice, a meaningful opportunity to be heard, and judicial review. Id. (quoting Thompson v. State, 415 S.C. 560 785 S.E.2d 189 (2016)).

" Due process demands impartiality on the part of those who function in judicial or quasi-Judicial capacities.") Similarly, he has the right to have a judge assigned to his case" in a manner free from bias or the desire to influence the outcome of the proceedings. Cruz v. Abbate, 812 f.2d 571, 574 (9th Cir. 1987).

We find that the circuit court granting the respondent motion to dismiss appellant's state habeas Corpus action pursuant to Rule 12(b)(1) of the SCRCR in this case was improper, prejudicial and deprived appellant of a meaningful opportunity to be heard on his motion for Entry of default and Default Judgment, to due process and to judicial review in this case.

#### CONCLUSION

Based on the following arguments, appellant requests that his conviction and sentences be vacated and his case remanded for a new preliminary hearing, trial complete with the appointment of out of state counsel or release the appellant from prison.



Dennis M. Temple, # 274802  
Tyger River Corr. Inst. Unit 10  
200 Prison Road  
Enoree, South Carolina 29335

May 5, 2025

THE STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

APPEAL FROM OCONEE COUNTY  
COURT OF COMMON PLEAS

H. STEVEN DEBERRY, IV CIRCUIT COURT JUDGE

**RECEIVED**

MAY 14 2025

SC Court of Appeals

Dennis Maurice Temple,

Appellant.

v.

State of South Carolina,

Respondent,

Appellate Case No. 2024-001193

PROOF OF SERVICE

I, Dennis M. Temple certify that i have served a copy of Appellant's Initial Brief; Designation of matters to be included in the Record on Appeal and the Record on Appeal on respondent, State of South Carolina by depositing a copy of it in the United States mail, postage prepaid addressed to it's attorney of recor Talida Balaj and D. Russell Barlow, II Assistant Attorney General of the state of South Carolina Attoreey General Office, Post Office Box 11549, Columbia, South Carolina on <sup>29211</sup> May 5, 2025.

Dennis M. Temple

Dennis M. Temple, SCDC# 274802  
Tyger River Corr. Inst. Unit 10  
200 Prison Road  
Enoree, South Carolina 29335

May 5, 2025

S.C. Court of Appeals  
Jenny Abbott Kitchings  
post office Box 11629  
Columbia, South Carolina 29211

Re: Dennis M. Temple v. State  
Appellate Case No. 2024-001193

**RECEIVED**

MAY 14 2025


SC Court of Appeals

Dear Ms. Kitchings:

Enclosed please find appellant's Initial Brief, and the Designation of matter to be included in the Record on Appeal, and the Record on Appeal, including our proof of service upon the respondent in this case.

Please clock-in these documents and return the copy to the appellant in the enclosed self-addressed envelope that has been provided herein.

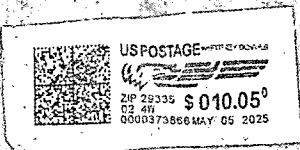
The Record on Appeal will be served on all parties now!



Dennis M. Temple, SCDC# 274802  
Tyger River Corr. Inst. Unit 10  
200 Prison Road  
Enoree, South Carolina 29335

May 5, 2025

m. Temple, SDC # 274802  
River Correctional Institution Unit 10-219  
Prison Road  
South Carolina 29335



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MAY 14 2025  
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TYGER RIVER MAILROOM

South Carolina Court of Appeals  
Jenny Abbott Kitchings  
Post office Box 11629  
Columbia, South Carolina 29211

