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May 23 2025

S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

Appellate Case № 2025-000871

James Curtis Cobbert, III SCDC № 293798 Appellant,

vs.

The State, Respondent.

Rule 243(c) Explanation

Pursuant to the provisions of Rule 243(c) of the South Carolina Appellate Practice Rules, James Curtis Cobbert, III gives the following reasons as to why the determination by the lower court that this case is time barred is not proper.

This alleged successive Post Conviction Relief Petition was amended and filed on August 16, 2023 to allege in paragraph 11(a):

My original Post Conviction Relief Petition was denied based upon *State v. Easler*, 327 S.C. 121, 489 S.E.2d 617 (1997). On or about February 20, 2023, I learned that *Easler* had been overturned in *State v. Greene*, 423 S.C. 263, 814 S.E.2d 496 (2018). This case represented a change in the law as to the issue of double jeopardy.

Mr. Cobbert entered a guilty plea on October 16, 2008 to reckless homicide and failure to stop for a blue light resulting in death. He received a 10 year sentence on the reckless homicide and a 25 year consecutive sentence on the failure to stop for a blue light resulting in death.

On January 9, 2009 Mr. Cobbert filed his first Post Conviction Relief Petition. The

allegation in the PCR relevant to this appeal was his sentences violated double jeopardy. APP at 41¹. In a ruling from the bench, Judge Edward Miller, on November 29, 2011, said, "I think, the State of the law is that this is not a violation of the double jeopardy clause." APP at 94, ll 18-20. The formal written order dismissed the double jeopardy issue. APP at 120-121. In the Return to the Petition for Writ of Certiorari the State relied upon the *Easler* decision. Ret. at 7. The Court of Appeals denied the Petition on June 24, 2014.

In ruling against Mr. Cobbert, the court below incorrectly found that the *Greene* decision is not to be applied retroactively. The lower court incorrectly ruled that the *Greene* decision was a new decision. The lower Court failed to recognize that in *Robinson v. Neil*, 409 U.S. 505 (1973) the United States Supreme Court issued a new opinion in *Benton v. Maryland*, 395 U.S. 784 (1969). The Supreme Court granted full retroactive effect to the double jeopardy claim.

Under the decision of the United States Supreme Court in *Robinson*, the *Greene* decision by this Court should be given full retroactive effect. In *Robinson* the United States Supreme Court gave full retroactive application to *Benton* which first held the Double Jeopardy applies to the States. This Court is obligated to give full retroactive effect to *Greene*.

The United States Supreme Court has said in making a retroactivity determination, "We believe it desirable to combine the accuracy element of the *Desist* version of the second exception with the *Mackey* requirement that the procedure at issue must implicate the fundamental fairness of the trial." *Teague v. Lane*, 489 U.S. 288, 312 (1989). In this case, Mr. Cobbert has received a sentence that is no longer legally possible after the decision in *Greene*.

¹ The appendix references are to the Appendix filed in Appellate Case № 2012-207554. This was the appeal from the denial of the original PCR hearing.

He could have been prosecuted for failure to stop for a blue light resulting in death or reckless homicide, but not both. The same act resulted in two charges and one death. This violated the principles stated in *Greene*.

Several other states when confronted with the retroactive application of a double jeopardy decision have reached the same conclusion. See, *State v. Whitehorn*, 309 Mont. 63, 50 P.3d 121(2002); *State v. Robertson*, 839 Utah Adv. Rep. 42, 438 P.3d 491(2017); *Adkins v. Leverette*, 161 W.Va. 14, 239 S.E.2d 496 (1977).

This Court has noted, “In determining whether Respondent was deprived of his federal constitutional right to counsel, we are required to follow the United States Supreme Court’s decisions on retroactivity.” *Talley v. State*, 371 S.C. 535, 541, 640 S.E.2d 878, 880 (2007). As the double jeopardy violation in this case would also be a violation of the Fifth Amendment, this Court is required to follow the retroactively rule established by the United States Supreme Court.

A new rule was not established in *Greene*. In ruling Ms. Greene could not be convicted of both homicide by child abuse and involuntary manslaughter, this Court stated, “It is because of this rule—one homicide, one homicide punishment—that even were we to accept the State’s argument that the involuntary manslaughter guilty verdict should stand, an additional sentence for Alexis's death could not stand.” *Id.* at 283, 814 S.E.2d at 507. The cases cited by this Court in overturning *Easler* both predate the guilty plea in this case.

The lower court also erred in holding that Mr. Cobbert is barred by the one years statute of limitations as Mr. Cobbert was required to file by May 23, 2019. Mr. Cobbert is in incarcerated inmate should not be penalized by his failure to have access to the law. Mr. Cobbert filed this PCR within one year of the time he learned of the *Greene* case. Mr, Cobbert contends this PCR

should come under South Carolina Code § 17-27-45(C) as the learning of a decision that as a matter of law impacts his sentencing should be considered a fact he learned. Also, under 17-27-90 this court and the lower court has the right to find not filing within one year of the *Greene* decision should be recognized as not reasonable for an inmate. This is especially true as the double jeopardy issue will impact the actual amount of time served. The State should have no interest in keeping Mr. Cobbert in prison longer that they are legally entitled to keep him there.


As this case presents a serious double jeopardy issue and its retroactive application, this Court should permit the Applicant to file his Petition for Writ of Certiorari which would call into question the validity of his being given consecutive sentences for two crimes causing death when there was only one death.

In the alternative, Mr. Cobbert would request that this Court consider this Petition as a Petition under *Butler v. State*, 302 S.C. 466, 468, 397 S.E.2d 87, 88 (1990). In *Butler*, this Court said, “Here, petitioner seeks to take advantage of constitutional principles recognized after his trial, appeal, and exhaustion of state post-conviction relief proceedings. We caution that not every intervening decision, nor every constitutional error at trial will justify issuance of the writ. Rather, the writ will issue only under circumstances where there has been a ‘violation, which, in the setting, constitutes a denial of fundamental fairness shocking to the universal sense of justice.’” *Id.* at 468, 397 S.E.2d at 88. (Internal citations omitted)/

As in *Butler*, a change in the law has resulted in sentences of Mr. Cobbert being unconstitutional. Mr. Cobbert, being an incarcerated inmate would have not had the ability to know of the change in the law. When the state is seeking to keep an inmate incarcerated for longer than the law now allows, it is a “denial of fundamental fairness shocking to the universal

sense of justice.” The State of South Carolina should have no interest in keeping an individual incarcerated for longer than the law allows. Therefore, if the Court does not permit the appeal to continue as an ordinary Petition for Writ of Certiorari, then due to the fact that the sentence of Mr. Cobbert is not authorized under the law as it now exists, the Court should accept the case under the *Butler* decision as an alternative means of correcting the unconstitutional sentence.

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