

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM CHEROKEE COUNTY
Court of Common Pleas

Grace Gilchrist Knie, Circuit Court Judge

Case No. 2025-0009000

Leonard Lee Foster

Appellant

v

State of South Carolina

Respondent

Initial brief of Appellant

Leonard L. Foster[#] 179576
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Rembert S.C. 29128

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S.C. SUPREME COURT

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Statement of Issue on Appeal

1. Did the court error by failing to make specific finding of facts and conclusion of law related to each issue?

Statement of Case

Appellant is presently confined within the South Carolina Department of Correction, Wateree Correctional Inst. He is serving a forty [40] years sentence pursuant an order of the Cherokee County.

The Cherokee County Grand Jury indicted Appellant for habitual traffic offense during a 2000 term
2000 - GS-11-1350

On February 28, 2002 Appellant was directly indicted for felony dui resulting in death and reckless homicide. March 18, 2002 Appellant plead guilty habitual traffic offense and proceeded to trial for felony dui, and reckless homicide.

On March 20, 2002 court imposed 5 years for habitual offender, 10 years reckless homicide and 25 years felony dui and to all sentences to be served consecutive.

On March of 2022 Turbeville classification told Appellant his sentence exceeded the statutory amount on April of 2022 Appellant filed second PCR application asserting excessive sentence is newly discovered evidence.

Respondent made its conditional order of dismissal on March 12, 2025 stating the application is successive, untimely and barred by the one year statute of limitation.

On April 1, 2025 Appellant argues, *State v Boyd* (1998) 288 S.C. 206 341 S.E.2d. 144 the General Assembly adopted in the case of habitual offenders Boyd's thesis that where a conviction on two or more counts arising out of acts committed in the course of a single incident has been entered the conviction should count as only one for the purpose of sentencing.

On April 17, 2025 final order of dismissal was signed; April 25, Appellant filed objection on final order of dismissal.

A timely notice of Appeal was filed on May 12, 2025 Appellant submitted explanation pursuant SCACR Rule 243(c)

Standard of Review

Coker v Cummings (2008) 381 S.C. 45, 671 S.E.2d. 383 when reviewing the grant of summary judgment motion Appellate Court applies the same standard that governs the trial court summary judgment is proper when there is no genuine issue as to any material judgment as a matter of law.

Argument

The lower court did error in granting summary judgment in favor of Respondent when there does exist a genuine issue of material dispute in this case.

S.C. Code 17-27-45 (c) provides, if a PCR applicant discover material fact not previously presented and heard that require vacation of his conviction or sentence he may file a PCR application within one year after the date when the facts could have been ascertained by the exercise of reasonable diligence.

McCoy v State 401 S.C. 363, 369, 737 SE. 2d. 623, 625 (2013), as the record reflect, page 5 of 6 Appellant discovered his sentence exceeded statutory limit from Turbeville classification on or about March 4, 2022 and submitted the application in accordance S.C. Code 17-27-45 (c) and for "sufficient reason", excessive sentence issue couldn't have been asserted in first PCR application because it was unknown to him.

Summary dismissal of a PCR application without a hearing is appropriate only when (1) it is apparent on the face of the application that there is no need for a hearing to develop any facts and (2) the applicant is not entitled to relief.

As threshold matter excessive sentence is apparently clear on the face of the application which requires the vacation of conviction or sentence wherefore the court shall make specific finding of fact and state expressly its conclusion of law related to each issue presented S.C. Code 17-27-80 McCoy Supra.

Since PCR judge applied incorrect law and summary dismissed application, Appellant ask this court to modify or reverse and remand this matter for a hearing.

Conclusion

Based on foregoing a genuine issue of material fact does exist and Appellant should prevail as a matter of law.

Date: July 24, 2025

Sincerely
Leonard Foster

Leonard Foster #179576

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