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**SC Court of Appeals**

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

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Appeal from Oconee County  
Honorable H. Steven DeBerry, IV, Circuit Court Judge  
Appellate Case No. 2024-001193

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DENNIS M. TEMPLE, #274802,

Appellant,

vs.

STATE OF SOUTH CAROLINA,

Respondent.

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**INITIAL BRIEF OF RESPONDENT**

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## **STATEMENT OF ISSUES ON APPEAL**

### **Appellant's Statement of Issues on Appeal**

- I. "Did the clerk of court err by failing to Enter of Default in the appellant's case?"
- II. "Did the circuit court err by granting the respondent motion to dismiss appellant State Habeas Corpus Action pursuant to Rule 12(b)(1) of the SCRCPP. When respondent did not timely file a Return to appellant's state Habeas Corpus Action pursuant to Rule 12(a) of the SCRCPP. As a result, appellant filed a motion for Entry for Default and Default Judgment?"

### **Respondent's Counterstatement of Issues on Appeal**

- I. Did the circuit court properly dismiss Appellant's petition for habeas corpus that he improperly filed in the Oconee County Court of Common Pleas to challenge the constitutionality of his criminal convictions?
  - A. Did the circuit court properly reject Appellant's attempts to hold the State in default for failing to file a return to his improper action within the thirty-day period set forth in Rule 12, SCRCPP?
  - B. Did the circuit court properly dismiss Appellant's petition for habeas corpus, where Appellant's successive attempt to challenge his criminal convictions by way of a petition for habeas corpus was improperly filed in the Oconee County Court of Common Pleas following prior unsuccessful post-conviction relief actions in a clear attempt to circumvent the procedural bars set forth in the Uniform Post-Conviction Procedures Act (S. C. Code Ann. § 17-27-10 et seq.)?

## STATEMENT OF THE CASE AND FACTS

On March 9, 2010, over the course of approximately nine hours, Appellant violently attacked and sexually assaulted a Clemson student, Catherine McGough, after dragging her across the gravel yard of a storage facility by a belt around her neck and holding her hostage in his storage unit. He was arrested two days later. During its September 2010 term, the Oconee County Grand Jury indicted Appellant for two counts of first-degree criminal sexual conduct (2010-GS-37-887, -889); kidnapping (2010-GS-37-888); and grand larceny, valued at five thousand dollars or more (2010-GS-37-886),

On December 13, 2010, the State called Appellant's case to trial before the Honorable Cordell Maddox, circuit court judge. Appellant proceeded *pro se* with Kurt Tavernier, Esquire, serving as advisory counsel. Following two days of testimony, the jury convicted Appellant as indicted. Judge Maddox sentenced Appellant to consecutive terms of thirty years' imprisonment for first-degree criminal sexual conduct and kidnapping and ten years for larceny—an aggregate term of one hundred years' imprisonment.<sup>1</sup>

Appellant filed a timely notice of appeal. Deputy Chief Appellate Defender Wanda H. Carter perfected Appellant's appeal by filing an Anders<sup>2</sup> brief with the Court of Appeals on the following issue:

The trial judge erred by what was in effect coercing [Appellant] to appear *pro se* at trial because although he waived his right to counsel prior to trial; ultimately, he rescinded that waiver after the jury was selected and re-asserted his right to counsel

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<sup>1</sup> Appellant had an extensive criminal record, which was provided to the court at sentencing. Appellant was convicted in 1993 of possession of cocaine and possession with intent to distribute. Appellant was convicted in 1995 of possession with intent to distribute or distribution of drugs within proximity of a school, simple assault, DUS 2<sup>nd</sup>, and malicious injury to personal property. Appellant was convicted in 2001 of strong-armed robbery and received a sentence of ten years. Appellant was convicted in 2007 of fraudulent check and in 2009 of petit larceny. And, Appellant was convicted in 1992 in Rome, Georgia, of providing false information to police. (App. 652-53).

<sup>2</sup> Anders v. California, 386 U.S. 738 (1967).

by requesting the representation of appointed counsel for his trial.

Appellant filed a *pro se* brief in response. On September 11, 2013, the Court issued an unpublished *per curiam* opinion affirming Appellant's convictions and granting appellate counsel's request to be relieved. State v. Temple, No. 2013-UP-350 (S.C. Ct. App. filed Sept. 11, 2013). The Remittitur was returned to the circuit court on September 27, 2013.

***Initial PCR Action and Subsequent Appeal: 2013-CP-37-729***

Appellant filed his first *pro se* post-conviction relief action on October 15, 2013, alleging ineffective assistance of appellate counsel and various allegations of prosecutorial misconduct and violation of due process. Respondent filed its responsive pleadings on July 8, 2014. An evidentiary hearing in the matter was convened on July 28, 2014 before the Honorable Edgar W. Dickson, circuit court judge, who ultimately denied the action by written order.

Appellant timely appealed, and his appeal was perfected by Appellate Defender Taylor D. Gilliam, who filed a Johnson<sup>3</sup> Petition for Writ of Certiorari on Appellant's behalf Pursuant to Rule 243(1), SCACR, the Supreme Court transferred Appellant's appeal to the South Carolina Court of Appeals, which subsequently denied certiorari. The Remittitur was returned on November 11, 2018.

***Initial Federal Habeas Corpus Action: 8:14-CV-3499-JFA-JDA***

Appellant also sought relief in federal court by filing a *pro se* Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2254 in the United States District Court for the District of South Carolina on September 9, 2014, while his initial post-conviction relief action was still pending in circuit court. On September 9, 2014, United States Magistrate Judge Jacquelyn D. Austin issued a Report and Recommendation that Appellant's action be dismissed without prejudice for failure

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<sup>3</sup> Johnson v. State, 294 S.C. 310, 364 S.E.2d 201 (1988).

to exhaust state remedies. Appellant did not file timely objections to the Report and Recommendations. On September 30, 2014, United States District Judge Joseph F. Anderson, Jr., issued an Order dismissing the petition without prejudice.

***Second Federal Habeas Corpus Action: 8:18-CV-3258-JFA-JDA***

On November 29, 2018, following the conclusion of the appeal of his initial post-conviction relief action, Appellant filed a Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2254 in the United States District Court for the District of South Carolina. See Temple v. Lewis, 8:18-03258-JFA-JDA. Appellant raised the following allegations in his *pro se* petition:

1. "The trial judge erred by what was in effect coercing [Applicant] to appear pro se at trial because although appellant waived his right to counsel prior to trial, ultimately, he rescinded that waiver after the jury was selected and re-asserted his right to counsel by requesting the representation of appointed counsel for his trial."
2. "The PCR Court erred in granting summary judgment to the state on the issue of ineffective assistance of appellate counsel, where there was a genuine issue of material fact as to whether probable cause was established at a pre-trial hearing and where the transcript from that hearing was not included in the Record on Appeal."
3. "Did the General Sessions Court have jurisdiction to hear appellant's criminal case when the magistrate never established it had probable cause to detain appellant on the arrest warrants."

Respondent filed a return and motion for summary judgment on April 1, 2019. On June 20, 2019, Judge Austin issued a Report and Recommendation that Respondent's motion for summary judgment be granted and the Petition dismissed with prejudice because (1) grounds one and two of the Petition fail to state a claim for relief; and (2) ground three is not a cognizable issue in a Federal Habeas action.

Appellant filed objections to the R&R on April 25, 2019, and later filed amended objections on August 26, 2019. Respondent replied to the original objections on July 24, 2019, and again to the amended objections on September 9, 2019. On October 31, 2019, Judge Anderson

issued an order adopting and incorporating the R&R by reference, granting Respondent's motion for summary judgment, and dismissing the Petition with prejudice.

***Second PCR Action and Subsequent Appeal: 2020-CP-37-0695***

Appellant filed his second *pro se* post-conviction relief action on January 18, 2020, and alleged he was being in custody unlawfully for the following reasons:

1. "Ineffective assistance of counsels"
  - a. "Appellant's counsel Sarah Drawdy and Keith Denny were ineffective for failing to object to the state's reasons establishing probable cause and failing to raise a fourth amendment claim in the July 16, 2010 preliminary hearing."
  - b. "These failure[sic] were in violation of the Appellant's 4th, 5th, 6th, & 14th Amendments of the United States Constitution."
  - c. "In addition, Appellant's PCR counsel was ineffective for failing to subpoena counsels to the PCR hearing and for failing to file a 59(e) motion when the court issued a[sic] order of dismissal in the case, which did not include specific findings of facts[sic] and conclusion[sic] of law and Appellant's ineffective assistance of counsel claim against Sarah Drawdy and Keith Denny."
2. "In violation of Schmerber v. California, 384 U.S. 757 (1966) and 14th, 5th, 6th, 4th Amendments of the U.S. Constitution and S.C. Constitution, Article 1, Section 3, 12, 14, & 10."
  - a. "Appellant's Schmerber v. California claim should have been grounded[sic] as a[sic] ineffective assistance of counsel against Kurt Tavernier for failing to object to the state's allegations regarding Appellant's identification and probable cause to arrest, and for failing to raise a fourth amendment claim in the September 22, 2010 Schmerber hearing."
  - b. "These failure[sic] violated Appellant's 4th, 5th, 6th, & 14th Amendments of the United States Constitution, Article 1, section 3, 10, 12, & 14."
  - c. "In addition, Appellant's PCR counsel was ineffective for failing to amend the PCR application as a[sic] ineffective assistance of counsel claim against Kurt Tavernier regarding the Schmerber hearing issues, and for failing to file a 59(e) motion when the court issued a[sic] order of dismissal in the case, which did not include specific findings of facts[sic] and conclusion[sic] of law on Appellant's Schmerber hearing claim."
3. "Appellant moves the court for a new trial because the state notified Appellant 1 year, 10 months after direct appeal that his preliminary hearing transcript does not exist, which prevented the appellate court from conducting a meaningful appellate review."
  - a. "As a result, Appellant's 5th, 6th, & 14th Amendments of the United States Constitution Rights have been violated."

Respondent filed its return and moved for summary dismissal on September 22, 2021. On September 23, 2021, the Honorable R. Lawton McIntosh, acting in his capacity as Chief Administrative Judge for the Tenth Judicial Circuit, issued a Conditional Order of Dismissal, provisionally dismissing the action and giving Appellant twenty days to respond with sufficient reasons why the dismissal should not become final. On October 27, 2021, Appellant filed a response to the State's Conditional Order of Dismissal. On November 22, 2021, following a review of Appellant's response, Judge McIntosh issued a Final Order of Dismissal dismissing Appellant's action.

Appellant filed a Notice of Appeal on December 17, 2021. On December 22, 2021, the Supreme Court of South Carolina dismissed Appellant's appeal for failure to show that there was an arguable basis for asserting the circuit court's determination was improper in his explanation. The Remittitur was returned on January 7, 2022.

***State Habeas Petition Filed in Common Pleas: 2023-CP-37-00517***

On July 10, 2023, Appellant filed the Petition for a Writ of Habeas Corpus that is subject to this instant appeal, alleging he is being held in custody unlawfully for the following reasons:

1. "Appellant was arrested and detained upon affiant, sergeant Scott Arnold arrest warrants affidavit that was not supported substantial probable cause, contained false information and was a reckless disregard for the truth there was no determination of the credibly and reliability of the person suppling the information and the information provided in affidavit were conclusionary statements."
2. "Appellant DNA seizure from him pursuant to S.C. Code of Laws section 16-3-740 and without probable cause."
3. "Appellant Bond Reduction attorney Robert Mills Ariail Jr.; misrepresented the facts and lied t (his client) Appellant in order to get him to go on record and decline the Bond Reduction consideration."
4. "Respondents held a preliminary hearing in this case on July 16 2010 regarding probable cause to arrest Appellant; however, they intentionally failed to record and provide the Appellant with a copy of the transcript for appellate review."
5. "Appellant as denied by the trial Judge to call witnesses in his dense during Jury

- trial."
6. "Appellant was sentenced to 30 years, 30 years, 30 years, and 10 years in prison to run consecutive by the trial Judge."
  7. "Appellant's decision to proceed *pro se* during jury trial was not knowing, intelligent and voluntary."
  8. "A summon and a verified complaint is attached as Exhibits A and B, in support of the Writ of Habeas Corpus."
  9. "The Appellant certifies that consultation with the opposing party about this matter would serve no useful purpose."

Respondent filed its Return and Motion to Dismiss Petition for Writ of Habeas Corpus on March 11, 2024, based on the circuit court's lack of subject matter jurisdiction. On April 9, 2024, a hearing was convened before the Honorable H. Steven DeBerry, IV, circuit court judge, on Respondent's motion to dismiss based on lack of subject matter jurisdiction. Appellant was present and proceeded *pro se*. At the hearing, Appellant argued his petition should not be dismissed based on Respondent's untimely response to his petition, and that he was entitled to a default judgment against the State. On April 11, 2024, Judge DeBerry issued an order granting Respondent's motion to dismiss based on lack of subject matter jurisdiction. This appeal follows.

## ARGUMENT

**I. The circuit court properly dismissed Appellant's petition for habeas corpus that he improperly filed in the Oconee County Court of Common Pleas to challenge the constitutionality of his criminal convictions.**

On appeal, Appellant argues that the circuit court erred in granting the State's motion to dismiss his action, as the State failed to timely respond to his petition pursuant to Rule 12 of the South Carolina Rules of Civil Procedure. Specifically, he asserts that the Oconee County Clerk of Court failed to issue an entry of default against the State, and the circuit court should not have granted the State's motion to dismiss because of their failure to timely respond. However, Appellant's argument is based on an erroneous understanding of the Clerk's duty under Rule 55, SCRCF, and disregards the discretion of the circuit court to deny his motion to hold the State in default. Moreover, Appellant was required to file his petition in a successive post-conviction relief application or in the original jurisdiction of the South Carolina Supreme Court. As Appellant improperly filed his petition in the Oconee County Court of Common Pleas, the circuit court correctly determined it did not have jurisdiction to hear his petition and, therefore, the circuit court properly dismissed Appellant's petition.

Accordingly, the circuit court properly granted the State's motion to dismiss for lack of subject matter jurisdiction, and Respondent respectfully requests this Court to affirm the circuit court's decision and dismiss this appeal.

**A. The circuit court properly rejected Appellant's attempts to hold the State in default for failing to file a return to his improper action within the thirty-day period set forth in Rule 12, SCRCF.**

Appellant avers that he was entitled to a default judgment against the State based on its failure to timely respond to his improperly filed petition for habeas corpus and argues that the clerk of court erroneously refused to issue a default judgment against the State. However, contrary to

Appellant's assertions, a clerk of court cannot hold the State in default, but rather, the clerk's ability to enter a default judgment against a party is a ministerial duty and not a substantive judgment on the merits. See Rule 55(a), SCRCP; Barnes v. State, 433 S.C. 399, 402, 859 S.E.2d 260, 261 (2021) (reminding clerks of court of ministerial duty, and prohibition on performing any action contingent on deciding question of law); 21 C.J.S. Courts § 335 ("Inasmuch as a clerk of court is essentially a ministerial officer, the clerk cannot, without express constitutional or statutory authority, exercise any discretionary judicial functions... It follows that a clerk of court cannot ordinarily determine questions of law, [or] render judgments..."). Therefore, the clerk of court committed no error in failing to enter judgment against the State, as it had no bearing on the merits of Appellant's case, and a hearing was convened where Appellant was present and he was able to present his arguments to the circuit court, which were swiftly and correctly rejected by the court.

Appellant also argues that the circuit court erred in denying his motion to hold the State in default for failing to timely respond. In Appellant's case, he argued before the circuit court that the State had failed to respond in a timely manner, and therefore, he was entitled to a default judgment against the State. (ROA pp. 115-19). Ultimately, the circuit court rejected Appellant's argument and granted the State's motion to dismiss the action for lack of subject matter jurisdiction without adjudicating Appellant's underlying claim on the merits. (ROA pp. 122-23). The circuit court properly rejected Appellant's arguments regarding default. Anderson v. Anderson, 299 S.C. 110, 115, 382 S.E.2d 897, 900 (1989) (dismissing without prejudice claims which the trial court lacked subject matter jurisdiction over, as the subject matter was in the exclusive original jurisdiction of the probate court); Fielden vs. Fielden, 274 S.C. 219, 262 S.E.2d 43, 44 (1980) ("Lack of subject matter jurisdiction cannot be waived and should be taken notice of by this Court on its own motion."); State v. Funderburk, 259 S.C. 256, 261, 191 S.E.2d 520, 522 (1972) ("We

think it elementary, with no need for citation of authority, that the acts of a court with respect to a matter as to which it has no jurisdiction are void.").

If the circuit court had granted Appellant's motion, the State would have been able to successfully argue that a default judgment cannot be entered against the State solely because the State failed to timely respond, as Appellant must also show that he would have prevailed on the underlying claims against the State. See Rule 55(e), SCRCP (Providing default judgment cannot be entered against the State, unless claimant establishes claim to relief by evidence satisfactory to the court). In Appellant's case, his sole argument that he was entitled to default against the State was that the State did not timely respond.

Therefore, Respondent respectfully requests this Court affirm the circuit court's decision, as there was no error committed by the Oconee Clerk of Court in failing to make an entry of default on the calendar. Further, even if the circuit court had granted Appellant's motion, the ultimate result would have been the same: dismissal of Appellant's action.

**B. The circuit court properly dismissed Appellant's petition for habeas corpus, where Appellant's successive attempt to challenge his criminal convictions by way of a petition for habeas corpus was improperly filed in the Oconee County Court of Common Pleas following prior unsuccessful post-conviction relief actions in a clear attempt to circumvent the procedural bars set forth in the Uniform Post-Conviction Procedures Act (S. C. Code Ann. § 17-27-10 et seq.).**

Moreover, the circuit court properly dismissed Appellant's petition for habeas corpus, as the circuit court did not have jurisdiction over Appellant's action pursuant to Article V of the South Carolina Constitution and the Uniform Post-Conviction Procedure Act, S. C. Code Ann. § 17-27-10 et seq.

"The Supreme Court shall have power to issue writs or orders of injunction, mandamus, quo warranto, prohibition, certiorari, habeas corpus, and other original and remedial writs." See

S.C. Const. art. V, § 5; see also Simpson v. State, 329 S.C. 43, 46 n.4, 495 S.E.2d 429, 431 n.4 (1998) (expressly reserving the ability to entertain writs of habeas corpus in the Supreme Court's 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,<sup>4</sup> "must be raised in a 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 violations in post-conviction relief 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 that the petitioner has exhausted all available post-conviction relief 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, 329 S.C. at 42, 495 S.E.2d at 428. Second, the petition must

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<sup>4</sup> S.C. Code Ann. §§ 17-27-10 to -120 (2014).

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).

In Appellant's case, Appellant filed a Motion for Petition of Writ of Habeas Corpus in Oconee County "pursuant to Rule 65(f)(1) against the State of South Carolina Director, Bryan Stirling, and Warden Shane Jackson for placing and holding him incarcerated..." (ROA p. 7). Pursuant to the South Carolina Constitution and the Uniform Post-Conviction Procedure Act, Appellant was required to seek relief in the original jurisdiction of the South Carolina Supreme Court or by successive post-conviction relief application. In his petition, Appellant failed to allege sufficient facts to show why other remedies, such as post-conviction relief, were unavailable or inadequate—as required by Gibson. 329 S.C. at 42, 495 S.E.2d at 428. Further, the allegations Appellant raised in his Petition could have and have been raised in his prior post-conviction relief applications. As Appellant failed to show that he has exhausted all remedies for the circuit court to hear his petition, his petition is procedurally barred, and the only means of Appellant obtaining relief would have been to file his petition in the original jurisdiction of the Supreme Court.

Appellant does not directly challenge the circuit court's order that it lacked jurisdiction but instead contends that the circuit court erred in granting the State's motion based on the State's untimely response to his Petition pursuant to Rule 12(a), SCRCF. Appellant's petition was improperly filed, and rather than comply with the rules and file his petition appropriately, Appellant believes he can obtain his desired relief—i.e., have his conviction and sentence overturned—by voluminous filings repeatedly, and erroneously asserting he is entitled to a default

judgment against the State. Appellant is not entitled to circumvent the procedural bars placed by the Constitution and by statute, especially where Appellant relies on time requirements that are within the circuit court's discretion to affix.

Therefore, the circuit court properly determined that it did not have jurisdiction to hear Appellant's action. Therefore, Respondent respectfully requests this Court to affirm the lower court's ruling.

**CONCLUSION**

For all the foregoing reasons, it is respectfully submitted the judgment and conviction of the lower court be affirmed.

Respectfully submitted,

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August 6, 2025

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

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Appeal from Oconee County  
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Dennis M. Temple, #274802,

Appellant,

vs.

The State,

Respondent.

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**DESIGNATION OF MATTER  
TO BE INCLUDED IN THE RECORD ON APPEAL**

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Respondent proposes the following to be included in the Record on Appeal:

**(1) Court Packet Present Before the Circuit Court.**

The undersigned hereby certifies that this Designation contains no matter that is irrelevant to this appeal.

ALAN WILSON  
Attorney General

D. RUSSELL BARLOW, II  
Senior Assistant Deputy Attorney General

TALIDA BALAJ  
Assistant Attorney General

BY:   
**ATTORNEYS FOR RESPONDENT**  
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August 6, 2025