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S.C. SUPREME COURT

**THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT**

**CERTIORARI-PCR
APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas
Honorable J. Cordell Maddox, Jr., Circuit Court Judge**

**Case № 2025- 000871
Lower Case 2021CP3203337**

PETITION FOR WRIT OF CERTIORARI

James Curtis Cobbert, III Petitioner,

vs.

The State of South Carolina, Respondent.

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Statement of Issues on Appeal

Question I: Did the lower court err holding that the present Post Conviction Relief Petition was barred by the statute of limitations when the petition was filed within one year of the time James Cobbert learned that he had a viable double jeopardy claim under the decision of this court in *State v. Greene*, 423 S.C. 263, 814 S.E.2d 496 (2018)?

Question II: Did sentencing James Cobbert to consecutive sentences for failure to stop for a blue light resulting in death and reckless homicide when the two charges arose out of the same incident result in a violation of the double jeopardy provision of Article I, § 12 of the Constitution of the State of South Carolina or the double jeopardy provision of the Fifth Amendment of the Constitution of the United States of America?

Question III: Should the prohibition against double jeopardy established by this court in *State v. Greene*, 423 S.C. 263, 814 S.E.2d 496 (2018) be applied retroactively to the cases against James Cobbert?

Statement of the Case

James Cobbert entered a guilty plea on October 16, 2008 to a charge of failure to stop for a blue light resulting in death and reckless homicide. Judge William Keesley sentenced him to 10 years on the reckless homicide charge and 25 years on the failure to stop for a blue light resulting in death. App. at 53-89.

On January 9, 2009, Mr. Cobbert filed his initial Post Conviction Relief Petition. In the initial petition, Mr. Cobbert raised the issue of double jeopardy and other issues not involved in this appeal. App. at 90-97. By order dated January 18, 2012, Judge Edward W. Miller denied relief. Mr. Cobbert filed a Petition for Writ of Certiorari. App. at 147-160. A Petition for writ of certiorari was filed by Appellate Defense. The only issue raised was whether plea counsel was ineffective for failing to file an appeal. App. at 167. A *pro se* brief by Mr. Cobbert raising the issue of double jeopardy was filed on October 19, 2012. App. at 173. In the return, the State cited and relied upon *State v. Easler*, 327 S.C. 256, 468 S.E.2d 617 (1997). App. at 192. The Petition was denied on June 24, 2014. App. at 206.

On October 14, 2021, Mr. Cobbert filed his second Post Conviction Relief Petition. App. at 1-7. In this Petition, he alleged “unconstitutional statute” and “ex post facto.” On August 16, 2023, after retaining present counsel, Mr. Cobbert filed an amended Post Conviction Relief Petition alleging a violation of the double jeopardy provisions of the state and federal constitutions. App. at 8-14.

A hearing was held on the amended petition on March 22, 2024 before Judge J. Cordell Maddox. By order dated August 13, 2024, Judge Maddox denied relief on the grounds that the second Post Conviction Relief Petition was successive and that the double jeopardy provisions of

the state and federal constitutions were not violated by the successive punishments. App. at 214-232. A timely Rule 59e motion was filed on August 26, 2024. App. at 233. By order filed on April 18, 2025, the Rule 59e motion was denied. App. at 235.

Mr. Cobbert filed a notice of appeal on May 5, 2025. App. at 238. By letter dated May 7, 2025, the South Carolina Supreme Court requested a explanation for the appeal pursuant to Rule 243(c). The explanation was filed on May 23, 2025. By letter dated July 8, 2025, the South Carolina Supreme Court permitted the appeal to continue.

Standard of Review

As all the issues involved in this Petition for Writ of Certiorari are legal issues, the standard of review is *de novo*. “We review questions of law *de novo*, *181 with no deference to trial courts.” *Smalls v. State*, 422 S.C. 174, 180–81, 810 S.E.2d 836, 839 (2018).

Argument

Question I

Did the lower court err holding that the present Post Convict Relief Petition was barred by the statute of limitations when the petition was filed within one year of the time James Cobbert learned that he had a viable double jeopardy claim under the decision of this court in *State v. Greene*, 423 S.C. 263, 814 S.E.2d 496 (2018)?

This alleged successive Post Conviction Relief Petition as amended and filed on August 16, 2023 alleged 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.
App. at 10.

The lower court also erred in holding that Mr. Cobbert is barred by the one-year statute of limitations claiming Mr. Cobbert was required to file by May 23, 2019. Mr. Cobbert, as an incarcerated inmate, should not be penalized by his failure to have access to new developments in the law. Mr. Cobbert filed this PCR within one year of the time he learned of the *Greene* case. As an incarcerated inmate, Mr. Cobbert should not be held to a higher standard than the bench and bar in keeping current as to the developments in the law. This court and the court of appeals have been confronted with several cases where defense counsel and the trial judge were not aware of the decision in *Belcher*.

Mr. Cobbert contends this Post Conviction Relief application 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 South Carolina Code § 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 Mr. Cobbert will serve. This is not a change in the law that will simply give Mr. Cobbert a new trial. The State should have no interest in keeping Mr. Cobbert in prison longer that they are legally entitled to keep him there.

If this court finds that the action is time barred by the one-year statute of limitations, this court should then treat this Petition for Writ of Certiorari as a Petition under *Butler v. State*, 302 S.C. 466, 397 S.E.2d 87 (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 the consecutive 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. Thus, treating this case as a *Butler* petition would be consistent with the *Butler* opinion.

Question II

Did sentencing James Cobbert to consecutive sentences for failure to stop for a blue light resulting in death and reckless homicide when the two charges arose out of the same incident result in a violation of the double jeopardy provision of Article I, § 12 of the Constitution of the State of South Carolina or the double jeopardy provision of the Fifth Amendment of the Constitution of the United States of America?

This court has said, “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.” *State v. Greene*, 423 S.C. 263, 283, 814 S.E.2d 496, 507 (2018). Here there is also one homicide and therefore only one homicide punishment. The only difference from *Greene* is that Mr. Cobbert received a consecutive sentence rather than a concurrent. The legal principle established in *Greene* as to successive punishment still applies.

Under the facts of this case, the reckless driving was the fleeing at a high speed from the police. The violation of South Carolina Code § 56-5-750, failure to stop motor vehicle when signaled by law-enforcement vehicle. resulting in death, was the same act of speeding while fleeing from the police. As the Indiana court has said, “There was here but one homicide, and that was the gravamen of the offense. It matters no more that Carter was both intoxicated and driving recklessly in causing his passenger’s death than it would have had Carter poisoned him, stabbed him and thrown him from a high bridge. The means of committing an offense may not be utilized to multiply the number of offenses committed. Only one homicide was committed and only one sentence may be imposed.” *Carter v. State*, 424 N.E.2d 1047, 1048 (Ind. Ct. App.

1981). The consecutive sentences violated double jeopardy.

No language in either reckless homicide statute or the failure to stop for a blue light resulting in death indicates the legislature intended for there to be consecutive punishments. “Even though all of the elements of Section 66–8–101 do not necessarily coincide, then, we think the statutory language and structure lead to the conclusion that the New Mexico legislature did not intend multiple punishments for one death.” *State v. Landgraf*, 121 N.M. 445, 454, 913 P.2d 252, 261 (1996).

An important aspect of this appeal is what this case is not about. The case is not about a single act causing injuries to multiple individuals. This case is the single issue of does the double jeopardy provision of the state and federal constitutions prohibit a defendant from being punished twice for the same act that caused only one death.

In determining if the two different charges involve the same act, the Illinois court has listed six factors to be consider as to whether the two charges involved the same act. The factors are “(1) whether the defendant's actions were interposed by an intervening event; (2) the time interval between the successive parts of the defendant's conduct; (3) the identity of the victim; (4) the similarity of the acts performed; (5) whether the conduct occurred in the same location; and (6) the prosecutorial intent, as shown by the wording of the charging instruments.” *People v. Sienkiewicz*, 208 Ill. 2d 1, 7, 802 N.E.2d 767, 772 (2003). Applying these factors to this case, the two charges arise from the same act. The reckless homicide indictment alleges Mr. Cobbert did “drive a motor vehicle in reckless disregard of the safety of others” App. at 162. The failure to stop for the blue light resulting in death indictment, after alleging the failure to stop,

alleged “when driving he did perform an act forbidden by law or neglected a duty imposed by law in the driving of the vehicle that resulted to [sic] the death of Michael A. Wilson.” App. at _164. Thus, the failure to stop for a blue light resulting in death indictment alleges an act that would constitute reckless driving. The State has not contended nor established an intervening time between the two indictments.¹

South Carolina Code § 17-25-50 provides, “In determining the number of offenses for the purpose of imposition of sentence, the court shall treat as one offense any number of offenses which have been committed at times so closely connected in point of time that they may be considered as one offense, notwithstanding under the law they constitute separate and distinct offenses.” The language of this statute would suggest that the legislature did not intend successive punishments for the two statutes involved in this case. The law is clear that without a clear intent by the legislature to impose successive punishments for similar conduct that may violate two or more laws, successive punishments are prohibited.

The United States Supreme Court has held, “Accordingly, where two statutory provisions proscribe the ‘same offense,’ they are construed not to authorize cumulative punishments in the absence of a clear indication of contrary legislative intent.” *Whalen v. United States*, 445 U.S. 684, 692, (1980). In this case no clear legislative intent exists to support a claim for successive punishments

In affirming the lower appellate court, the Illinois Supreme Court said, “The appellate court agreed with defendant, reasoning, in part, that defendant’s reckless conduct could not be

¹ Even if one could argue that somehow a driver can fail to stop for a blue light and not drive recklessly, the indictment in this case alleges an act or acts that would constitute reckless driving.

separated into discrete physical acts because no intervening event divided the conduct into two acts.” *Sienkiewicz* at 7, 802 N.E.2d at 771. The United States Supreme Court is in agreement. As they held, “The Double Jeopardy Clause is not such a fragile guarantee that prosecutors can avoid its limitations by the simple expedient of dividing a single crime into a series of temporal or spatial units.” *Brown v. Ohio*, 432 U.S.161, 169 (1977). The same principle applies here. One continuous act caused the death in this case. James Cobbert is entitled to have this case remanded for a new sentencing.

Question III

Should the prohibition against double jeopardy established by this court in *State v. Greene*, 423 S.C. 263, 814 S.E.2d 496 (2018) be applied retroactively to the cases against James Cobbert?

In ruling against Mr. Cobbert, the court below incorrectly found that the *Greene* decision is not to be applied retroactively. App. at 231. 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 recognized that the opinion in *Benton v. Maryland*, 395 U.S. 784 (1969) is to be given full retroactive effect as to double jeopardy. This court is bound by that decision.

In *Robinson*, the court said, “The guarantee against double jeopardy is significantly different from procedural guarantees held in the *Linkletter* line of cases to have prospective effect only. While this guarantee, like the others, is a constitutional right of the criminal defendant, its practical result is to prevent a trial from taking place at all, rather than to prescribe procedural rules that govern the conduct of a trial.” *Id.* at 509. The same reasoning applies to this case. As

previously noted, the sentence imposed upon Mr. Cobbert is no longer possible in South Carolina. When a ruling impact the length of sentence a person can legally serve, the ruling should have retroactive application.

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*. This clearly implicates “the fundamental fairness of the trial.”

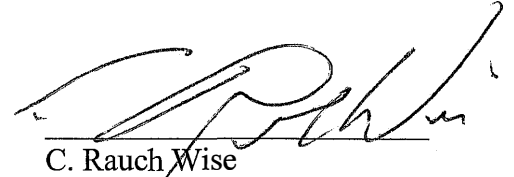
In *Talley v. State*, 371 S.C. 535, 541, 640 S.E.2d 878, 881 (2007) this court said, “In general, the question of whether a decision announcing a new rule should be given prospective or retroactive effect should be addressed at the time of the decision.” This court in *Greene* did not state that the overturning of *Easler* would only be applied prospectively. On other occasions this court has stated a decision would be prospective only. See, *State v. Belcher*, 385 S.C. 597, 685 S.E.2d 802 (2009); *State v. Burdette*, 427 S.C. 490, 832 S.E.2d 575 (2019).

As this court did not specifically state the overturning of *Easler* was to be prospective only, the overturning of *Easler* should be applied retroactively. This would also be in keeping with the *Robinson* decision of the United States Supreme Court.

CONCLUSION

For the foregoing reasons this matter should be remanded to the lower court for re-sentencing in keeping with the mandates of this court.

August 21, 2025



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