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Oct 29 2025
S.C. SUPREME COURT

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Cherokee County

Honorable Grace Gilchrist Knie, Circuit Court Judge

LEONARD LEE FOSTER,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2025-000900

APPENDIX

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Interim Chief Appellate Defender

South Carolina Commission on Indigent Defense
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ATTORNEYS FOR RESPONDENT

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FORM 5

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
County of Cherokee	)	
	)	
Leonard Lee Foster #179576	)	22CP-110247
Full name and prison number (if any) of Applicant	)	
	)	
v.	)	
	)	APPLICATION FOR
	)	
State of South Carolina	)	POST-CONVICTION RELIEF
	)	
	)	
	)	

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention Turbeville Dept. of Corr.

2. Name and location of Court which imposed sentence General Session Cherokee Co.

3. Name(s) of co-defendant(s) (if any) No co-defendant

4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:

(a) 02-GS-11-142 and 00-GS-11-1350

(b)

(c)

5. The date upon which sentence was imposed and the terms of the sentence:

(a) March 20, 2002. 40 years

(b)

(c)

6. Check whether a finding of guilty was made:

(a) after a plea of guilty habitual offende

(b) after a plea of not guilty felony dui and reckless homicide.

(c) after a plea of nolo contendere

7. Did you appeal from the judgment of conviction or the imposition of sentence?

yes

8. If you answered "yes" to (7), list:

(a) the name of each Court to which you appealed:

i. South Caroline The Court of Appeals

ii.

iii.

(b) the result in each such Court to which you appealed:

i. affirmed the conviction and dismissed the application

ii.

iii.

(c) the date of each such result:

i. January 15, 2004

ii.

iii.

(d) if known, citations of any written opinion or orders entered pursuant to such results:

i. Op. No. 2004-UP-024

ii.

iii.

9. If you answered "no" to (7), state your reasons for not so appealing:

(a)

(b)

(c)

10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

(a) Sentences exceeded statutory limits

(b)

(c)

11. State concisely and in the same order the facts which support each of the grounds set out in (10):

(a) Pursuant to 17 S.C. Jur. Post Conviction Relief section 5.

(b) illegal sentences

(c)

12. Prior to this application have you filed with respect to this conviction:

(a) any petition in a State Court under South Carolina Law? yes

(b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? yes

(c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? no

(d) any other petitions, motions or applications in this or any other Court?

13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:

(a) the specific nature thereof:

i. PCR; certiorari

ii. [illegible] writ of mandamus

iii. habeas corpus

iv. [illegible] habeas corpus

(b) the name and location of the Court in which each was filed:

i. The Common Pleas Court Cherokee Co.

ii. The South Carolina Supreme Court

iii. The United State District Court

iv. The Common Pleas Court Cherokee Co.

(c) the disposition thereof:

i. dismissed "with" prejudice.

ii. dismissed

iii. dismissed

iv. denied

(d) the date of each such disposition:

i. August 30, 2006

ii. January 22, 2009

iii. October 16, 2009

iv. ?

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

i. Johnson v State

ii. Key v Currie 305 S.C. 115, 406 SE 2d 356 Johnson v State

iii. Johnson v State 294 SC 310 364 SE 2d 1998

iv.

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

yes Cherokee Common Pleas Court

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

i. - void judgment

ii.

iii.

(b) the proceedings in which each ground was raised:

i. writ habeas corpus

ii.

iii.

Revised 3/2003

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

(a) –

(b) —

(c) —

17. Were you represented by an attorney at any time during the course of:

(a) your arraignment and plea? Arraignment "No" plea "Yes"

(b) your trial, if any? - Yes

(c) your sentencing? Yes

(d) your appeal, if any, from the judgment of conviction or the imposition of sentence? Yes

(e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed?
Yes

18. If you answered "yes" to one or more parts of (17), list:

(a) the name and address of each attorney who represented you:

i. Thomas A.M. Boggs plea and sentencing

ii. Eleanor Duffy Cleary

iii. David Collin Jr.
Elizabeth Franklin Best

(b) the proceedings at which each such attorney represented you:

i. Thomas A.M. Boggs plea and sentencing

ii. Direct Appeal Eleanor Duffy Cleary

iii. PCR David Collin Jr.
Appeal Elizabeth Franklin Best

Revised 3/2003

19. State clearly the relief you seek in filing this application:
immediate release.

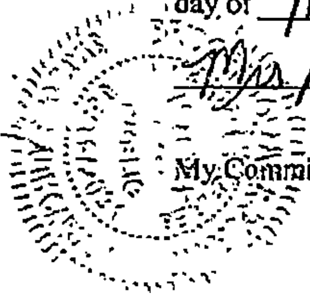
20. Are you now under sentence from any other court that you have not challenged?
no

STATE OF SOUTH CAROLINA)
) VERIFICATION
County of Cherokee)

I, Leonard Lee Foster, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

Leonard Foster

SWORN to and subscribed before me this 19 day of March, 2022.



[signature] (L.S.)
Notary Public

My Commission Expires: March 15, 2031

Revised 3/2003

APPLICATION TO PROCEED WITHOUT PAYMENT OF COSTS AND AFFIDAVIT IN SUPPORT THEREOF

I, Leonard Lee Foster, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

(1) I am the applicant in this action and I believe I am entitled to redress.

(2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.

Leonard Foster
Applicant

SWORN or affirmed to and subscribed before me this 15 day of March 2022.

Bridget Folliner-Brunt
Notary Public

My Commission Expires: March 15, 2031

Revised 3/2003

STATE OF SOUTH CAROLINA COUNTY OF CHEROKEE	)	IN THE COURT OF COMMON PLEAS FOR THE SEVENTH JUDICIAL CIRCUIT
Leonard Lee Foster, #179576,	)	CASE NO. 2022-CP-11-00247
Applicant,	)	
v.	)	**RETURN AND MOTION TO DISMISS** **(Appointment of Counsel Not Requested)**
State of South Carolina,	)	
Respondent.	)	

FILED IN OFFICE OF
CLERK OF COURT
CHEROKEE COUNTY S.C.
2025 MAR 12 A 8:48
BRANDY W MCBEE

In response to Leonard L. Foster's (Applicant) application for post-conviction relief (PCR) commenced on April 4, 2022, Respondent, the State of South Carolina, makes the following return and moves to summarily dismiss this application as untimely, barred by the statute of limitations, successive to Applicant's previous PCR action, and for failing to comply with the Uniform Post-Conviction Procedures Act, S.C. Code Ann. § 17-27-10 *et seq.* (2014). Respondent respectfully offers the following in support of its Return and Motion to Dismiss:[1]

PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Cherokee County Clerk of Court. During its December 2000 term,

[1] Respondent's return was due to be filed within ninety days of receipt of Applicant's instant post-conviction relief application. See Rule 12(a), SCRCP ("[T]he 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."). Now, having completed the return required in this matter, and in light of no demonstrable prejudice to Applicant as a consequence of the delay, Respondent respectfully asks this Court to accept this return as timely filed. See S.C. Code Ann. § 17-27-70(a) (establishing that the Court may fix the time in which the State must respond and that "respondent shall file with its answer the record or portions thereof that are material to the questions raised in the application."); Guinyard v. State, 260 S.C. 220, 195 S.E.2d 392 (1973) (holding the trial court may extend the time for filing and that the time limit prescribed by the statute is not mandatory, but discretionary with the trial court.).

the Cherokee County Grand Jury indicted Applicant for habitual traffic offender ("HTO") (2000-GS-11-1350). Applicant was subsequently indicted at the February 2002 term for felony driving under the influence ("DUI") resulting in death and reckless homicide (2002-GS-11-0142). Thomas A. M. Boggs, Esquire, represented Applicant. Applicant pled guilty to HTO on March 18, 2002. On March 18-20, 2002, Applicant proceeded to trial before the Honorable Gary E. Clary on both counts contained in 2002-GS-11-0142 and was found guilty as indicted. Judge Clary sentenced him to confinement for consecutive terms of 25 years for felony DUI resulting in death, 10 years for reckless homicide, and five years for HTO.

A timely Notice of Appeal was filed on Applicant's behalf. Following the submission of a brief pursuant to Anders[2] by Eleanor Cleary, Esquire, and a *pro se* brief by Applicant, the South Carolina Court of Appeals dismissed the appeal. State v. Foster, Op. No. 2004-UP-024 (Ct. App. filed January 15, 2004). On April 22, 2004, the Court of Appeals also denied Applicant's *pro se* petition for rehearing. The Remittitur was returned to the lower court on June 1, 2004.

FIRST PCR ACTION: 2004-CP-11-0599

Applicant thereafter filed an application for post-conviction relief on October 12, 2004. An evidentiary hearing was held before the Honorable J. Derham Cole on June 19, 2006. Applicant was present and represented by David A. Collins, Esquire. At the hearing, Applicant alleged that he was being held unconstitutionally because:

1. Ineffective assistance of counsel, in that:
   a. Counsel failed to enter the breathalyzer video into evidence at trial,
   b. Counsel failed to retain an expert regarding the urinalysis,
   c. Counsel failed to object to the Solicitor's opening remarks,
   d. Counsel failed to object to the chain of custody regarding the urine sample,
   e. Counsel failed to request a jury instruction of involuntary manslaughter, and
   f. Counsel failed to effectively argue mitigation at sentencing.

[2] Anders v. California, 386 U.S. 738 (1967).

Judge Cole denied the application on August 30, 2007, basing his ruling on the testimony presented at the hearing, the record before him, and the review of the Datamaster video (breathalyzer).

Applicant filed a timely Notice of Appeal. A Johnson[3] Petition for Writ of Certiorari was filed on Applicant's behalf. The South Carolina Supreme Court denied the Petition on January 22, 2009. The Remittitur was returned on February 10, 2009.

On June 12, 2012, Applicant filed a 60(b) Motion requesting the judgment to be set aside for case 2004-CP-11-0599 for the following reasons:

1. "Extrinsic fraud" upon the Court, in that:
   a. Applicant alleged that Thomas A.M. Boggs, his trial counsel, committed fraud upon the court when he failed to produce the videotape from Trooper Mueller's car for Judge Cole to review before ruling on the PCR application,
   b. Applicant alleged that Judge Cole either made a "mistake, inadvertence, excusable neglect, or just plain extrinsic frauded the court itself" when he ruled on the application without reviewing the videotape from Trooper Mueller's car,
   c. Applicant alleged his PCR attorney, David M. Collins, committed extrinsic fraud when he failed to provide a copy of the videotape from Trooper Mueller's car to Judge Cole for review, and
   d. Applicant alleged that he discovered new evidence of extrinsic fraud because he could establish that Trooper Mueller committed perjury during Applicant's trial and that various Spartanburg County offices, as well as Applicant's counsel, intentionally concealed this evidence.

The State filed its Return to the motion on July 17, 2012, and filed an amended return on November 30, 2012. In an Order filed on December 7, 2012, Judge Cole denied Applicant's 60(b) motion. Applicant then filed a 59(e) motion, which was denied in an Order filed on January 22, 2013. On February 4, 2013, Applicant filed a second Notice and Motion for Rule 59(e) Motion.

On August 26, 2013, Applicant filed a Petition for Writ of Mandamus for case 2004-CP-11-0599 presenting the following question (excerpt verbatim):

[3] Johnson v. State, 294 S.C. 310, 364 S.E.2d 201 (1988).

1. Do statutory law and constitutional require that this petitioner be given access to the material evidence in the videotapes?

In an Order filed on September 18, 2013, the Supreme Court of South Carolina denied Applicant's Petition for Writ of Mandamus.

On October 21, 2013, Applicant sent a *pro se* Petition for Writ of Certiorari for case 2004-CP-11-0599 to the Office of the South Carolina Attorney General presenting the following question (excerpt verbatim):

1. Did this Honorable Court err in ruling that no "extraordinary circumstances" existed sufficient to warrant issue of Writ of Mandamus in undated "Order"? (See appendix, Exhibit no. 1).

On December 8, 2016, Applicant filed a 60(b) Motion requesting the judgment to be set aside for case 2004-CP-11-0599 for the following reasons (excerpts verbatim):

1. "Extrinsic fraud" upon the Court, in that:
   a. Judge Cole entertain perjury testimony and suppression of audiotape.
   b. [Judge Cole] also showed prejudice by entertaining the suppression of audio tape and suborning perjury which deprive me of equal protection of the law and violated my due process.
   c. Newly Discovered Evidence

The State filed its Return to the motion on February 27, 2017. In an Order filed June 26, 2017, Judge Cole denied Applicant's motion. Subsequently, Applicant filed a Rule 59(e), SCRCP, motion, and a Rule 62(b),SCRCP., motion for stay of proceeding to enforce a judgment.

***FEDERAL HABEAS CORPUS PETITION:* 2:09-CV-00645-HMH-RSC**

Applicant filed a *pro se* petition for habeas corpus with the United States District Court for the District of South Carolina on March 19, 2009. In his petition for habeas corpus, Applicant alleged he was being held in custody unlawfully for the following reasons (excerpts verbatim):

Ground One: Lacked Subject Matter Jurisdiction

a. When the name Cody Keeler was Amended to the indictment after the jury was sworn and there is no written notices Granting or Denying my Post Trial motion, and the Grand Jury who Forthwith my Indictment was

selected in a Racially Discriminary manner and my indictment was not Filed with the clerk of court, and there is no written order to continue my case beyond 180 days from the date of my arrest and when the circuit court error by not suppressing the results from my urinalysis when there was No evidence adduced at trial to comport with statutory Law.

Ground Two: Brady Violation

a. Failure to surrender impanelment documents
b. Failure to surrender videotape's Breathalyzer tape and tape from Mueller's patrol car
c. Failure to surrender a written report indication the time of arrest the time of the test and the result of the test to comport with statutory Law
d. Perjury

Ground Three: Judicial Misconduct

a. Because the appellant was not informed of his right under the S.C. Code Ann. Sc-5-2950, it was an error of law for the trial court not to suppress the evidence of the results to the appellants urinalysis

Ground Four: Charge Enhancement

a. I plead guilty to HTO on March 18, 2002 and on March 18-20, 2002 I proceeded to trial on Felony DUI resulting in death and reckless homicide and was found guilty and receive 40 years subsequently my charge has been enhance to murder. See computer

Respondent made its Return and moved for summary judgment on July 10, 2009. On September 29, 2009, United States Magistrate Judge Robert S. Carr issued a report and recommendation that Respondent's motion for summary judgment be granted on grounds one, two, and three and that ground four be dismissed for failure to state a claim upon which relief may be granted. On October 16, 2009, the federal court adopted the report and recommendation over Applicant's objection and dismissed the petition in a written order signed by the Honorable Senior United States District Judge Henry M. Herlong, Jr.

Applicant filed a notice of appeal on November 4, 2009. On March 4, 2010, the United States Court of Appeals denied the Petitioner's certificate of appealability and dismissed the petition.

***STATE HABEAS CORPUS PETITION:* 2004-CP-11-0599**

On July 29, 2019, Applicant filed a Petition for Writ of Habeas Corpus pursuant to S.C.

Code Ann 17-17-10, presenting the following issues (excerpts verbatim):

1. Did officer have probable cause to arrest Petitioner for DUI?
   a. Petitioner contend November 10, 2000 arrest were unlawful wherefore, no probable cause existed to want his detention for DUI. The fundamental question in determing whether an arrest is lawful is whether there was probable cause to make the arrest, as the record reflect officer failed to administer field sobriety test. When a person is suspected of causing a motor vehicle accident resulting in death of another person by investigating law inforcement officer on the scene of the incident the driver must submit to field sobriety test if he is physically able to do so, as the record reflect Petitioner were able. (Citations omitted)

      Furthermore office failed to file an affidavit pursuant to SCRCrimP. Rule (1) which says, the sheriff or law inforcement officer shall file with the appropriate magistrate the affidavit and proof of service on which the arrest is made within five days after the arrest, as the record reflect magistrate violated Petitioner's due process whereas all judicial proceeding were abandon.

      Pursuant to SCRCrimP. Rule 2(c) magistrate should have discharged Petitioner but the dischargement shall not prevented the State from instituting another prosecution upon probable cause. Wherefore Petitioner's rights were violated under U.S. 4 Amendment as well as S.C. Const. Art. 1 section 10 whereas magistrate allowed Cherokee county to continue seize him.
2. Did the Court deprive Petitioner of procedural due process?
   a. Moreover, pursuant SCRCrimP. Rule 2(a) magistrate deprived Petitioner of procedural due process wherefore Petitioner requested for preliminary hearing on or about November 13, 2000 by completing S.C. 17-23-160 form. Once the accused properly requested a preliminary hearing the magistrate court retains jurisdiction until such hearing is held, as the record reflect Petitioner requested for hearing pursuant S.C. Code Ann 22-5-320. Where the demand for a preliminary hearing is timely made the court of General Session has no jurisdiction of the case until after the preliminary hearing and indictment return before the hearing is a nullity. (Citations omitted).

      March 21, 2001 bond hearing constitute a deniel of due process whereas no charges were filed prior of hearing.
3. Did General Session lack subject matter jurisdiction to impose March 20, 2002 judgment?
   a. Counsel failed to object to the Solicitor's opening remarks, Pursuant S.C. Code Ann. 17-19-10 General Session lacked subject matter jurisdiction wherefore Petitioner were directly indicted for felony dui and reckless homicide on February 28, 2002. It's promulgated by U.S. 5 Amendment as

well as S.C. Const. Art. 1 section 11 No person shall be held to answer for any crime the jurisdiction over which is not within the magistrate court unless on a presentment or indictment of a grand jury, As the record reflect Petitioner were before the court by way of a traffic citation.

Pursuant South Carolina's jurisprudence magistrate and municipalities vest all jurisdiction of uniform traffic ticket.

Furthermore Petitioner were deprived of procedural due process whereas he never received legitimate bond hearing before March 20, 2002 conviction it's well established S.C. Const. Art. 1 section 15 mandate all person shall be before conviction bailable by sufficient sureties but bail may be denied to a person charged with capital offenses or offense punishable by life imprisonment or with violent offense define by the General Assembly given due weight to the evidence and the nature and circumstances of the event.

Excessive bail shall not be required, nor shall excessive fines be imposed, nor shall cruel, nor corporal, nor unusual punishment be inflected.

Therefore S.C. Const. Art. 1 section 15 command deprive the court of General Session of jurisdiction over the subject matter jurisdiction because the jurisdiction of the court over the subject matter of a proceeding is determinded by the Constitution and the laws of this State and is fundamental. Lack of subject matter jurisdiction can not be waived not even by consent of parties and should be taken notice of by this Court. The jurisdiction of a court over the subject matter of a proceeding is determined by the Constitution laws of this State and is fundamental lack of subject matter jurisdiction may not be waived even by consent of parties and should be taken notice of by this court.

As a threshold matter, sentence imposed on March 20, 2002 is void.

On October 12, 2020, Applicant filed a document titled "SCRcivP. Rule 55" requesting the court enter a judgment of default against the State for failure to respond to the petition within thirty days of its service. Applicant further requested that he be awarded $10,000 in attorney fees. In an order dated April 8, 2021, the Honorable J. Mark Hayes, II, circuit court judge denied the petition as well as Applicant's requests.

On May 5, 2021, Applicant filed a notice of appeal. The South Carolina Court of Appeals denied Applicant's appeal by order filed May 27, 2021, with the Remittitur retumed on February

9, 2022. Applicant subsequently filed a motion for rehearing, which was denied by the South Carolina Court of Appeals by order filed on September 30, 2021. Applicant then filed a *pro se* Petition for Writ of Certiorari, which was denied by the Supreme Court of South Carolina by order dated January 6, 2022.

FACTS ADDUCED FROM THE RECORD

Brandi Coleman testified at trial that on November 10, 2000, she borrowed her neighbor's 1995 Ford Thunderbird to run errands. (Tr. 83, 1 – Tr. 85, 21). She picked her six-year-old son, Cody, up from a neighbor's house and began traveling down South Green River Road in Spartanburg. (Tr. 85, 18 – Tr. 86, 4). At that point, a Cadillac driven by Petitioner failed to yield to oncoming traffic, pulled out into an intersection in front of Ms. Coleman's vehicle, and caused a collision. (Tr. 86, 13 – Tr. 87, 17). Ms. Coleman was able to pull Cody's body out of the vehicle, but he was unresponsive at the scene. (Tr. 87, 18 – Tr. 88, 14). He was rushed to the Upstate Carolina Medical Center, where he was pronounced dead due to multiple traumas consistent with a vehicle accident. (Tr. 88, 15 – Tr. 89, 13; Tr. 279, 1-25).

South Carolina Highway Patrolman A.R. Jordan testified that he arrived at the scene of the collision and, after tending to the victims, interacted with Applicant and his passengers. (Tr. 136, 1-14). Patrolman Jordan testified that he determined Applicant to be the driver of the Cadillac, smelled alcohol on his person, and noted that his eyes were glassy. (Tr. 136, 15 – Tr. 137, 2). Suspecting that Applicant was intoxicated, Patrolman Jordan read him his *Miranda* rights, checked his license, determined it to be suspended, placed him under arrest, and transported him to the Cherokee County Detention Center for a blood alcohol test. (Tr. 139, 7 – Tr. 140, 8). Applicant refused to submit to a blood test and instead gave a urine specimen. (Tr. 147, 18 – Tr. 149, 17; Tr. 207, 22 – Tr. 208, 4). SLED tested the specimen and determined that it contained .172% weight

per volume ethanol, indicating that Applicant had consumed a significant amount of alcohol on the night of the collision. (Tr. 304, 21 – Tr. 310, 17).

CURRENT APPLICATION

On April 4, 2022, Applicant *untimely* filed his *second* application for PCR in which he alleges the following (excerpts verbatim):

1. Sentences exceeded statutory limits:
   a. Pursuant to 17 S.C. Jur. Post Conviction Relief Section 5 Illegal Sentences.

Applicant seeks relief in the form of immediate release.

Attached to this Return and Motion to Dismiss are the Cherokee County Clerk of Court records regarding the subject's convictions; Applicant's records from the South Carolina Department of Corrections; Applicant's available records from his previous PCR actionss; and the records of the current PCR action. Respondent reserves the right to amend this Return upon receiving any relevant materials.

MOTION TO DISMISS

Respondent moves for summary dismissal pursuant to S.C. Code Ann. § 17-27-70 on the basis that there is no genuine issue of material fact, which would necessitate an evidentiary hearing. Because there is no question of law or fact to necessitate a hearing, Respondent requests that this Court issue a Conditional Order of Dismissal indicating the Court's intent to dismiss the application and its reasons for so doing.[4] See S.C. Code Ann. § 17-27-70(b) (establishing the procedure for summary disposition of PCR applications); Leamon v. State, 363 S.C. 432, 434, 611 S.E.2d 494, 495 (2005) (summary disposition appropriate when there is no need to develop facts and the applicant is not entitled to relief); Re: Appointment of Counsel in Post-Conviction Relief Cases

[4] A proposed Conditional Order of Dismissal consistent with this Return and Motion to dismiss is concurrently submitted for the Court's consideration.

before the Circuit Court, S.C. Sup. Ct. Order filed October 6, 2008; Rule 71.1(d), SCRCP (providing for the appointment of counsel only where there is a question of law or fact which necessitates a hearing). Respondent moves for summary dismissal for the following reasons:

SUMMARY DISMISSAL BASED ON STATUTE OF LIMITATIONS

Respondent submits this application should be summarily dismissed for failure to comply with the filing procedures of the Uniform Post-Conviction Procedure Act.[5] Specifically, the Act requires as follows:

> (A). An application for relief filed pursuant to this chapter must be filed within one year after the entry of a judgment of conviction or within one year after the sending of the Remittitur to the lower court from an appeal or the filing of the final decision upon an appeal, whichever is later.
> (B). When a court whose decisions are binding upon the Supreme Court of this State or the Supreme Court of this State holds that the Constitution of the United States or the Constitution of South Carolina, or both, impose upon state criminal proceedings a substantive standard not previously recognized or a right not in existence at the time of the state court trial, and if the standard or right is intended to be applied retroactively, an application under this chapter may be filed not later than one year after the date on which the standard or right was determined to exist.
> (C). If the applicant contends that there is evidence of material facts not previously presented and heard that requires vacation of the conviction or sentence, the application must be filed under this chapter within one year after the date of actual discovery of the facts by the applicant or after the date when the facts could have been ascertained by the exercise of reasonable diligence.

S.C. Code Ann. § 17-27-45.

The South Carolina Supreme Court has held that the statute of limitations shall apply to all applications filed after July 1, 1996. Peloquin v. State, 321 S.C. 468, 469 S.E.2d 606 (1996). A motion for summary judgment may properly be used to raise the defense of the statute of limitations. McDonnell v. Consolidated School District of Aiken, 315 S.C. 487, 445 S.E.2d 638 (1994). Additionally, S.C. Code Ann. § 17-27-70(c) authorizes the Court to "grant a motion by

[5] S.C. Code Ann. § 17-27-10 to -160.

either party for summary disposition of [an] application when it appears from the pleadings . . . that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law."

In the present case, Applicant is alleging he is entitled to post-conviction relief based on allegations that his sentences exceed statutory limits. However, Applicant failed to comply with the filing requirements under S.C. Code Ann. § 17-27-45. Applicant proceeded to a jury trial and was found guilty and sentenced on February 15, 2002. Applicant did pursue a direct appeal. Pursuant to S.C. Code Ann. § 17-27-45(A), Applicant needed to file his application for post-conviction relief on or before June 1, 2005. Applicant did not file this PCR application until April 4, 2022, ***sixteen years, ten months, and three days*** beyond the statute of limitations.

Accordingly, this application is ***untimely*** pursuant to S.C. Code Ann. § 17-27-45 and should be dismissed for failure to file within the time mandated by the Uniform Post-Conviction Procedure Act.

SUMMARY DISMISSAL BASED ON SUCCESSIVENESS

The Application should be summarily dismissed because it is successive to Applicant's previous PCR application. Courts disfavor successive applications and place the burden on applicants to establish that any new ground raised in a subsequent application could not have been earlier raised in a previous application. Foxworth v. State, 275 S.C. 615, 274 S.E.2d 415 (1981); Arnold v. State, 309 S.C. 157, 420 S.E.2d 834 (1992). Section 17-27-90 of the South Carolina Code states:

> All grounds for relief available to an applicant under this chapter must be raised in his original, supplemental, or amended application. Any ground finally adjudicated or not so raised, or knowingly, voluntarily, and intelligently waived in the proceeding that resulted in the conviction or sentence or in any other proceeding Applicant has taken to secure relief, may not be the basis for a subsequent application, unless the court finds a ground for relief asserted which for sufficient

> reason was not asserted or was inadequately raised in the original, supplemental, or amended application.

Under this statute, successive post-conviction relief applications are forbidden unless an applicant can indicate a "sufficient reason" why new grounds for relief were not raised or were not properly raised in previous applications. Aice v. State, 305 S.C. 448, 409 S.E.2d 392 (1991). Any new ground raised in a subsequent application is limited to those grounds that "could not have been raised ... in the previous application." Id. at 450, 409 S.E.2d at 394. If Applicant could have raised these allegations in a previous application, then Applicant may not raise those grounds in successive applications. Id. Applicant bears the burden of showing the allegations could not have been previously raised. Land v. State, 274 S.C. 243, 262 S.E.2d 735 (1980).

Applicant argues, he is entitled to a new PCR proceeding. Applicant fails to recognize that he had a full bite at the apple on his first PCR action, which included an appeal. Applicant's current allegations *were or could have been* raised in the proceedings based on Applicant's prior application for post-conviction relief; thus, the current application is successive and barred under S.C. Code Ann. § 17-27-90. Applicant has failed to establish any sufficient reason why he could not have raised his current allegations in his previous application for post-conviction relief. Therefore, he has failed to meet the burden imposed upon him.

Therefore, the Application should be summarily dismissed as successive to Applicant's previous PCR applications).

FRUSTRATION OF FINALITY OF CONVICTIONS

As a final matter, both the United States Supreme Court and the South Carolina Supreme Court have emphasized the necessity for finality of litigation in criminal cases. The Court in Aice explained that:

> Finality must be realized at some point in order to achieve a semblance of effectiveness in dispensing justice. At some juncture judicial review must stop, with

> only the very rarest of exceptions, when the system has simply failed a defendant and where to continue the defendant's imprisonment without review would amount to a gross miscarriage of justice. . . . [Here], Aice seeks to have more than one procedural "bite" at the apple. Aice has filed an original PCR application, and has been allowed to seek review of the ruling against him. We refuse to grant his request for a second chance, and again we do so in order to effectuate the purposes of the Act and rules.

305 S.C. at 451–52, 409 S.E.2d at 394–95 (citations omitted).

The United States Supreme Court has explained that "the principle of finality . . . is essential to the operation of our criminal justice system. Without finality, the criminal law is deprived of much of its deterrent effect." Teague v. Lane, 489 U.S. 288, 309 (1989). "Relitigation of a conviction is a rear-view mirror, while a respect for finality encourages those in custody to contemplate the future prospect of 'becoming a constructive citizen.'" United States v. Fugit, 703 F.3d 248, 252 (4th Cir. 2012) (quoting Schneckloth v. Bustamonte, 412 U.S. 218, 262 (1973) (Powell, J., concurring)). In his concurring and dissenting opinion in Mackey v. United States, Justice Harlan wrote:

> Finality in the criminal law is an end which must always be kept in plain view. . . . At some point, the criminal process, if it is to function at all, must turn its attention from whether a man ought properly to be incarcerated to how he is to be treated once convicted. If law, criminal or otherwise, is worth having and enforcing, it must at some time provide a definitive answer to the question litigants present or else it never provides an answer at all. Surely it is an unpleasant task to strip a man of his freedom and subject him to institutional restraints. But this does not mean that in so doing, we should always be halting or tentative. No one, not criminal defendants, not the judicial system, not society as a whole is benefited by a judgment providing that a man shall tentatively go to jail today, but tomorrow and every day thereafter his continued incarceration shall be subject to fresh litigation.

401 U.S. 667, 691 (1971) (Harlan, J., concurring in part and dissenting in part). Seven years after Mackey, the South Carolina Supreme Court quoted Justice Harlan's opinion with approval in Anderson v. Leeke, 271 S.C. 435, 441–42, 248 S.E.2d 120, 123 (1978). Applicant's attempt to relitigate his convictions and sentences through this successive and time-barred application is

contrary to the recognized need for finality of litigation.

CONCLUSION

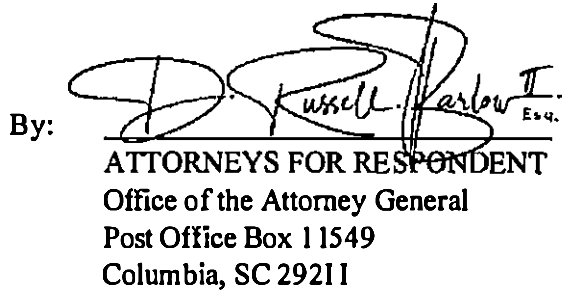
WHEREFORE, the State moves to summarily dismiss the application because it is untimely, barred by the statute of limitations, successive to Applicant's previous PCR action, and for failing to comply with the Uniform Post-Conviction Procedures Act, S.C. Code Ann. § 17-27-10 *et seq.* (2014).

Respectfully submitted,

ALAN WILSON
Attorney General

DONALD J. ZELENKA
Deputy Attorney General

D. RUSSELL BARLOW, II
Senior Assistant Deputy Attorney General

By:

ATTORNEYS FOR RESPONDENT
Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211

March 10, 2025

FILED IN OFFICE OF
CLERK OF COURT
CHEROKEE COUNTY, S.C.
2025 MAR 12 A 10:48
BRANDY W. MCBEE

STATE OF SOUTH CAROLINA COUNTY OF CHEROKEE	)	IN THE COURT OF COMMON PLEAS FOR THE SEVENTH JUDICIAL CIRCUIT
Leonard Lee Foster, #179576,	)	CASE NO. 2022–CP–11–00247
Applicant,	)	
v.	)	**CONDITIONAL ORDER OF DISMISSAL**
State of South Carolina,	)	
Respondent.	)	

This matter is before the Court based on a successive application for post-conviction relief (PCR) filed by Leonard L. Foster (Applicant) on April 4, 2022. In response, Respondent made its return[1] and moved to summarily dismiss the action as procedurally barred as untimely, barred by the statute of limitations, successive to Applicant's previous PCR applications, and for failing to comply with the Uniform Post-Conviction Procedures Act, S.C. Code Ann. § 17-27-10 *et seq.* (2014). After a review of the record and pleadings, this Court agrees this application should be summarily dismissed and provisionally dismisses the action based on the following:

PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Cherokee County Clerk of Court. During its December 2000 term,

[1] The State's return was originally due on July 4, 2022. See Rule 12(a), SCRCP ("[T]he 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.") However, having completed the return required in this matter, and in light of no demonstrable prejudice to Applicant as a consequence of the delay, this Court grants the State's request accept its return as timely filed. See S.C. Code Ann. § 17-27-70(a) (establishing that the Court may fix the time in which the State must respond and that "respondent shall file with its answer the record or portions thereof that are material to the questions raised in the application."); Guinyard v. State, 260 S.C. 220, 195 S.E.2d 392 (1973) (holding the trial court may extend the time for filing and that the time limit prescribed by the statute is not mandatory, but discretionary with the trial court.).

the Cherokee County Grand Jury indicted Applicant for habitual traffic offender ("HTO") (2000-GS-11-1350). Applicant was subsequently indicted at the February 2002 term for felony driving under the influence ("DUI") resulting in death and reckless homicide (2002-GS-11-0142). Thomas A. M. Boggs, Esquire, represented Applicant. Applicant pled guilty to HTO on March 18, 2002. On March 18-20, 2002, Applicant proceeded to trial before the Honorable Gary E. Clary on both counts contained in 2002-GS-11-0142 and was found guilty as indicted. Judge Clary sentenced him to confinement for consecutive terms of 25 years for felony DUI resulting in death, 10 years for reckless homicide, and five years for HTO.

A timely Notice of Appeal was filed on Applicant's behalf. Following the submission of a brief pursuant to Anders[2] by Eleanor Cleary, Esquire, and a *pro se* brief by Applicant, the South Carolina Court of Appeals dismissed the appeal. State v. Foster, Op. No. 2004-UP-024 (Ct. App. filed January 15, 2004). On April 22, 2004, the Court of Appeals also denied Applicant's *pro se* petition for rehearing. The Remittitur was returned to the lower court on June 1, 2004.

***FIRST PCR ACTION:* 2004-CP-11-0599**

Applicant thereafter filed an application for post-conviction relief on October 12, 2004. An evidentiary hearing was held before the Honorable J. Derham Cole on June 19, 2006. Applicant was present and represented by David A. Collins, Esquire. At the hearing, Applicant alleged that he was being held unconstitutionally because:

1. Ineffective assistance of counsel, in that:
   a. Counsel failed to enter the breathalyzer video into evidence at trial,
   b. Counsel failed to retain an expert regarding the urinalysis,
   c. Counsel failed to object to the Solicitor's opening remarks,
   d. Counsel failed to object to the chain of custody regarding the urine sample,
   e. Counsel failed to request a jury instruction of involuntary manslaughter, and
   f. Counsel failed to effectively argue mitigation at sentencing.

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[2] Anders v. California, 386 U.S. 738 (1967).

Judge Cole denied the application on August 30, 2007, basing his ruling on the testimony presented at the hearing, the record before him, and the review of the Datamaster video (breathalyzer).

Applicant filed a timely Notice of Appeal. A Johnson[3] Petition for Writ of Certiorari was filed on Applicant's behalf. The South Carolina Supreme Court denied the Petition on January 22, 2009. The Remittitur was returned on February 10, 2009.

On June 12, 2012, Applicant filed a 60(b) Motion requesting the judgment to be set aside for case 2004-CP-11-0599 for the following reasons:

1. "Extrinsic fraud" upon the Court, in that:
   a. Applicant alleged that Thomas A.M. Boggs, his trial counsel, committed fraud upon the court when he failed to produce the videotape from Trooper Mueller's car for Judge Cole to review before ruling on the PCR application,
   b. Applicant alleged that Judge Cole either made a "mistake, inadvertence, excusable neglect, or just plain extrinsic frauded the court itself" when he ruled on the application without reviewing the videotape from Trooper Mueller's car,
   c. Applicant alleged his PCR attorney, David M. Collins, committed extrinsic fraud when he failed to provide a copy of the videotape from Trooper Mueller's car to Judge Cole for review, and
   d. Applicant alleged that he discovered new evidence of extrinsic fraud because he could establish that Trooper Mueller committed perjury during Applicant's trial and that various Spartanburg County offices, as well as Applicant's counsel, intentionally concealed this evidence.

The State filed its Return to the motion on July 17, 2012, and filed an amended return on November 30, 2012. In an Order filed on December 7, 2012, Judge Cole denied Applicant's 60(b) motion. Applicant then filed a 59(e) motion, which was denied in an Order filed on January 22, 2013. On February 4, 2013, Applicant filed a second Notice and Motion for Rule 59(e) Motion.

On August 26, 2013, Applicant filed a Petition for Writ of Mandamus for case 2004-CP-11-0599 presenting the following question (excerpt verbatim):

[3] Johnson v. State, 294 S.C. 310, 364 S.E.2d 201 (1988).

1. Do statutory law and constitutional require that this petitioner be given access to the material evidence in the videotapes?

In an Order filed on September 18, 2013, the Supreme Court of South Carolina denied Applicant's Petition for Writ of Mandamus.

On October 21, 2013, Applicant sent a *pro se* Petition for Writ of Certiorari for case 2004-CP-11-0599 to the Office of the South Carolina Attorney General presenting the following question (excerpt verbatim):

1. Did this Honorable Court err in ruling that no "extraordinary circumstances" existed sufficient to warrant issue of Writ of Mandamus in undated "Order"? (See appendix, Exhibit no. 1).

On December 8, 2016, Applicant filed a 60(b) Motion requesting the judgment to be set aside for case 2004-CP-11-0599 for the following reasons (excerpts verbatim):

1. "Extrinsic fraud" upon the Court, in that:
   a. Judge Cole entertain perjury testimony and suppression of audiotape.
   b. [Judge Cole] also showed prejudice by entertaining the suppression of audio tape and suborning perjury which deprive me of equal protection of the law and violated my due process.
   c. Newly Discovered Evidence

The State filed its Return to the motion on February 27, 2017. In an Order filed June 26, 2017, Judge Cole denied Applicant's motion. Subsequently, Applicant filed a Rule 59(e), SCRCP, motion, and a Rule 62(b),SCRCP, motion for stay of proceeding to enforce a judgment.

FEDERAL HABEAS CORPUS PETITION: **2:09-CV-00645-HMH-RSC**

Applicant filed a *pro se* petition for habeas corpus with the United States District Court for the District of South Carolina on March 19, 2009. In his petition for habeas corpus, Applicant alleged he was being held in custody unlawfully for the following reasons (excerpts verbatim):

Ground One: Lacked Subject Matter Jurisdiction
   a. When the name Cody Keeler was Amended to the indictment after the jury was sworn and there is no written notices Granting or Denying my Post Trial motion, and the Grand Jury who Forthwith my Indictment was

selected in a Racially Discriminary manner and my indictment was not Filed with the clerk of court, and there is no written order to continue my case beyond 180 days from the date of my arrest and when the circuit court error by not suppressing the results from my urinalysis when there was No evidence adduced at trial to comport with statutory Law.

Ground Two: Brady Violation

a. Failure to surrender impanelment documents
b. Failure to surrender videotape's Breathalyzer tape and tape from Mueller's patrol car
c. Failure to surrender a written report indication the time of arrest the time of the test and the result of the test to comport with statutory Law
d. Perjury

Ground Three: Judicial Misconduct

a. Because the appellant was not informed of his right under the S.C. Code Ann. Sc-5-2950, it was an error of law for the trial court not to suppress the evidence of the results to the appellants urinalysis

Ground Four: Charge Enhancement

a. I plead guilty to HTO on March 18, 2002 and on March 18-20, 2002 I proceeded to trial on Felony DUI resulting in death and reckless homicide and was found guilty and receive 40 years subsequently my charge has been enhance to murder. See computer

Respondent made its Return and moved for summary judgment on July 10, 2009. On September 29, 2009, United States Magistrate Judge Robert S. Carr issued a report and recommendation that Respondent's motion for summary judgment be granted on grounds one, two, and three and that ground four be dismissed for failure to state a claim upon which relief may be granted. On October 16, 2009, the federal court adopted the report and recommendation over Applicant's objection and dismissed the petition in a written order signed by the Honorable Senior United States District Judge Henry M. Herlong, Jr.

Applicant filed a notice of appeal on November 4, 2009. On March 4, 2010, the United States Court of Appeals denied the Petitioner's certificate of appealability and dismissed the petition.

***STATE HABEAS CORPUS PETITION:* 2004-CP-11-0599**

On July 29, 2019, Applicant filed a Petition for Writ of Habeas Corpus pursuant to S.C.

Code Ann 17-17-10, presenting the following issues (excerpts verbatim):

1. Did officer have probable cause to arrest Petitioner for DUI?
   a. Petitioner contend November 10, 2000 arrest were unlawful wherefore, no probable cause existed to want his detention for DUI. The fundamental question in determing whether an arrest is lawful is whether there was probable cause to make the arrest, as the record reflect officer failed to administer field sobriety test. When a person is suspected of causing a motor vehicle accident resulting in death of another person by investigating law inforcement officer on the scene of the incident the driver must submit to field sobriety test if he is physically able to do so, as the record reflect Petitioner were able. (Citations omitted)

      Furthermore office failed to file an affidavit pursuant to SCRCrimP. Rule (1) which says, the sheriff or law inforcement officer shall file with the appropriate magistrate the affidavit and proof of service on which the arrest is made within five days after the arrest, as the record reflect magistrate violated Petitioner's due process whereas all judicial proceeding were abandon.

      Pursuant to SCRCrimP. Rule 2(c) magistrate should have discharged Petitioner but the dischargement shall not prevented the State from instituting another prosecution upon probable cause. Wherefore Petitioner's rights were violated under U.S. 4 Amendment as well as S.C. Const. Art. 1 section 10 whereas magistrate allowed Cherokee county to continue seize him.
2. Did the Court deprive Petitioner of procedural due process?
   a. Moreover, pursuant SCRCrimP. Rule 2(a) magistrate deprived Petitioner of procedural due process wherefore Petitioner requested for preliminary hearing on or about November 13, 2000 by completing S.C. 17-23-160 form. Once the accused properly requested a preliminary hearing the magistrate court retains jurisdiction until such hearing is held, as the record reflect Petitioner requested for hearing pursuant S.C. Code Ann 22-5-320. Where the demand for a preliminary hearing is timely made the court of General Session has no jurisdiction of the case until after the preliminary hearing and indictment return before the hearing is a nullity. (Citations omitted).

      March 21, 2001 bond hearing constitute a deniel of due process whereas no charges were filed prior of hearing.
3. Did General Session lack subject matter jurisdiction to impose March 20, 2002 judgment?
   a. Counsel failed to object to the Solicitor's opening remarks, Pursuant S.C. Code Ann. 17-19-10 General Session lacked subject matter jurisdiction wherefore Petitioner were directly indicted for felony dui and reckless homicide on February 28, 2002. It's promulgated by U.S. 5 Amendment as

well as S.C. Const. Art. 1 section 11 No person shall be held to answer for any crime the jurisdiction over which is not within the magistrate court unless on a presentment or indictment of a grand jury, As the record reflect Petitioner were before the court by way of a traffic citation.

Pursuant South Carolina's jurisprudence magistrate and municipalities vest all jurisdiction of uniform traffic ticket.

Furthermore Petitioner were deprived of procedural due process whereas he never received legitimate bond hearing before March 20, 2002 conviction it's well established S.C. Const. Art. 1 section 15 mandate all person shall be before conviction bailable by sufficient sureties but bail may be denied to a person charged with capital offenses or offense punishable by life imprisonment or with violent offense define by the General Assembly given due weight to the evidence and the nature and circumstances of the event.

Excessive bail shall not be required, nor shall excessive fines be imposed, nor shall cruel, nor corporal, nor unusual punishment be inflected.

Therefore S.C. Const. Art. 1 section 15 command deprive the court of General Session of jurisdiction over the subject matter jurisdiction because the jurisdiction of the court over the subject matter of a proceeding is determinded by the Constitution and the laws of this State and is fundamental. Lack of subject matter jurisdiction can not be waived not even by consent of parties and should be taken notice of by this Court. The jurisdiction of a court over the subject matter of a proceeding is determined by the Constitution laws of this State and is fundamental lack of subject matter jurisdiction may not be waived even by consent of parties and should be taken notice of by this court.

As a threshold matter, sentence imposed on March 20, 2002 is void.

On October 12, 2020, Applicant filed a document titled "SCRcivP. Rule 55" requesting the court enter a judgment of default against the State for failure to respond to the petition within thirty days of its service. Applicant further requested that he be awarded $10,000 in attorney fees. In an order dated April 8, 2021, the Honorable J. Mark Hayes, II, circuit court judge denied the petition as well as Applicant's requests.

On May 5, 2021, Applicant filed a notice of appeal. The South Carolina Court of Appeals denied Applicant's appeal by order filed May 27, 2021, with the Remittitur returned on February

9, 2022. Applicant subsequently filed a motion for rehearing, which was denied by the South Carolina Court of Appeals by order filed on September 30, 2021. Applicant then filed a *pro se* Petition for Writ of Certiorari, which was denied by the Supreme Court of South Carolina by order dated January 6, 2022.

CURRENT APPLICATION

On April 4, 2022, Applicant *untimely* filed his *second* application for PCR in which he alleges the following (excerpts verbatim):

1. Sentences exceeded statutory limits:
   a. Pursuant to 17 S.C. Jur. Post Conviction Relief Section 5 Illegal Sentences.

Applicant seeks relief in the form of immediate release.

Attached to this Return and Motion to Dismiss are the Cherokee County Clerk of Court records regarding the subject's convictions; Applicant's records from the South Carolina Department of Corrections; Applicant's available records from his previous PCR actionss; and the records of the current PCR action.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has reviewed the pleadings, the records submitted to it by the parties, and the applicable law. Pursuant to South Carolina Code Annotated §§ 17-27-70 and -80, this Court informs the parties of its intent to dismiss the application as there is no genuine issue of material fact which would necessitate an evidentiary hearing. See S.C. Code Ann. § 17-27-70(b) (establishing procedure for summary disposition of PCR applications); Leamon v. State, 363 S.C. 432, 434, 611 S.E.2d 494, 495 (2005) (summary disposition appropriate when there is no need to develop facts and the applicant is not entitled to relief); Welch v. MacDougall, 246 S.C. 258, 260, 143 S.E.2d 455, 456 (1965) (requiring a PCR applicant to make a *prima facie* showing he is entitled to relief before the court will hold an evidentiary hearing). Respondent moved for summary

dismissal, and this Court finds summary dismissal is appropriate for the following reasons:

SUMMARY DISMISSAL BASED ON STATUTE OF LIMITATIONS

Respondent moved to summarily dismiss this application for failure to comply with the filing procedures of the Uniform Post-Conviction Procedure Act.[4] Specifically, the Act requires as follows:

> (A). An application for relief filed pursuant to this chapter must be filed within one year after the entry of a judgment of conviction or within one year after the sending of the Remittitur to the lower court from an appeal or the filing of the final decision upon an appeal, whichever is later.
>
> (B). When a court whose decisions are binding upon the Supreme Court of this State or the Supreme Court of this State holds that the Constitution of the United States or the Constitution of South Carolina, or both, impose upon state criminal proceedings a substantive standard not previously recognized or a right not in existence at the time of the state court trial, and if the standard or right is intended to be applied retroactively, an application under this chapter may be filed not later than one year after the date on which the standard or right was determined to exist.
>
> (C). If the applicant contends that there is evidence of material facts not previously presented and heard that requires vacation of the conviction or sentence, the application must be filed under this chapter within one year after the date of actual discovery of the facts by the applicant or after the date when the facts could have been ascertained by the exercise of reasonable diligence.

S.C. Code Ann. § 17-27-45.

The South Carolina Supreme Court has held that the statute of limitations shall apply to all applications filed after July 1, 1996. Peloquin v. State, 321 S.C. 468, 469 S.E.2d 606 (1996). A motion for summary judgment may properly be used to raise the defense of the statute of limitations. McDonnell v. Consolidated School District of Aiken, 315 S.C. 487, 445 S.E.2d 638 (1994). Additionally, S.C. Code Ann. § 17-27-70(c) authorizes the Court to "grant a motion by either party for summary disposition of [an] application when it appears from the pleadings . . . that there is no genuine issue of material fact and the moving party is entitled to judgment as a

[4] S.C. Code Ann. § 17-27-10 to -160.

matter of law."

In the present case, Applicant is alleging he is entitled to post-conviction relief based on allegations that his sentences exceed statutory limits. However, Applicant failed to comply with the filing requirements under S.C. Code Ann. § 17-27-45. Applicant proceeded to a jury trial and was found guilty and sentenced on February 15, 2002. Applicant did pursue a direct appeal. Pursuant to S.C. Code Ann. § 17-27-45(A), Applicant needed to file his application for post-conviction relief on or before June 1, 2005. Applicant did not file this PCR application until April 4, 2022, ***sixteen years, ten months, and three days*** beyond the statute of limitations.

Accordingly, this Court finds this application is ***untimely*** pursuant to S.C. Code Ann. § 17-27-45 and shall be dismissed for failure to file within the time mandated by the Uniform Post-Conviction Procedure Act.

SUMMARY DISMISSAL BASED ON SUCCESSIVENESS

Respondent moved to summarily dismiss the application because it is successive to the previous application(s) for post-conviction relief. Courts disfavor successive applications and place the burden on applicants to establish that any new ground raised in a subsequent application could not have been earlier raised in a previous application. Foxworth v. State, 275 S.C. 615, 274 S.E.2d 415 (1981); Arnold v. State, 309 S.C. 157, 420 S.E.2d 834 (1992). Section 17-27-90 of the South Carolina Code states:

> All grounds for relief available to an applicant under this chapter must be raised in his original, supplemental, or amended application. Any ground finally adjudicated or not so raised, or knowingly, voluntarily, and intelligently waived in the proceeding that resulted in the conviction or sentence or in any other proceeding Applicant has taken to secure relief, may not be the basis for a subsequent application, unless the court finds a ground for relief asserted which for sufficient reason was not asserted or was inadequately raised in the original, supplemental, or amended application.

Under this statute, successive post-conviction relief applications are forbidden unless an

applicant can indicate a "sufficient reason" why new grounds for relief were not raised or were not properly raised in previous applications. Aice v. State, 305 S.C. 448, 409 S.E.2d 392 (1991). Any new ground raised in a subsequent application is limited to those grounds that "could not have been raised ... in the previous application." Id. at 450, 409 S.E.2d at 394. If Applicant could have raised these allegations in a previous application, then Applicant may not raise those grounds in successive applications. Id. Applicant bears the burden of showing the allegations could not have been previously raised. Land v. State, 274 S.C. 243, 262 S.E.2d 735 (1980).

Applicant argues, he is entitled to a new PCR proceeding. Applicant fails to recognize that he had a full bite at the apple on his first PCR action, which included an appeal. Applicant's current allegations *were or could have been* raised in the proceedings based on Applicant's prior application for post-conviction relief; thus, the current application is successive and barred under S.C. Code Ann. § 17-27-90. Applicant has failed to establish any sufficient reason why he could not have raised his current allegations in his previous application for post-conviction relief. Therefore, he has failed to meet the burden imposed upon him.

Accordingly, this Court finds the application shall be dismissed as successive to Applicant's prior post-conviction relief actions.

FRUSTRATION OF FINALITY OF CONVICTIONS

As a final matter, both the United States Supreme Court and the South Carolina Supreme Court have emphasized the necessity for finality of litigation in criminal cases. The Court in Aice explained that:

> Finality must be realized at some point in order to achieve a semblance of effectiveness in dispensing justice. At some juncture judicial review must stop, with only the very rarest of exceptions, when the system has simply failed a defendant and where to continue the defendant's imprisonment without review would amount to a gross miscarriage of justice. . . . [Here], Aice seeks to have more than one procedural "bite" at the apple. Aice has filed an original PCR application, and has

> been allowed to seek review of the ruling against him. We refuse to grant his request for a second chance, and again we do so in order to effectuate the purposes of the Act and rules.

305 S.C. at 451–52, 409 S.E.2d at 394–95 (citations omitted).

The United States Supreme Court has explained that "the principle of finality . . . is essential to the operation of our criminal justice system. Without finality, the criminal law is deprived of much of its deterrent effect." Teague v. Lane, 489 U.S. 288, 309 (1989). "Relitigation of a conviction is a rear-view mirror, while a respect for finality encourages those in custody to contemplate the future prospect of 'becoming a constructive citizen.'" United States v. Fugit, 703 F.3d 248, 252 (4th Cir. 2012) (quoting Schneckloth v. Bustamonte, 412 U.S. 218, 262 (1973) (Powell, J., concurring)). In his concurring and dissenting opinion in Mackey v. United States, Justice Harlan wrote:

> Finality in the criminal law is an end which must always be kept in plain view. . . . At some point, the criminal process, if it is to function at all, must turn its attention from whether a man ought properly to be incarcerated to how he is to be treated once convicted. If law, criminal or otherwise, is worth having and enforcing, it must at some time provide a definitive answer to the question litigants present or else it never provides an answer at all. Surely it is an unpleasant task to strip a man of his freedom and subject him to institutional restraints. But this does not mean that in so doing, we should always be halting or tentative. No one, not criminal defendants, not the judicial system, not society as a whole is benefited by a judgment providing that a man shall tentatively go to jail today, but tomorrow and every day thereafter his continued incarceration shall be subject to fresh litigation.

401 U.S. 667, 691 (1971) (Harlan, J., concurring in part and dissenting in part). Seven years after Mackey, the South Carolina Supreme Court quoted Justice Harlan's opinion with approval in Anderson v. Leeke, 271 S.C. 435, 441–42, 248 S.E.2d 120, 123 (1978). Applicant's attempt to relitigate his convictions and sentences through this successive and time-barred application is contrary to the recognized need for finality of litigation.

CONCLUSION

Pursuant to S.C. Code Ann. § 17-27-70(b), the Court intends to dismiss this application with prejudice unless Applicant provides specific reasons, factual or legal, why the application should not be dismissed in its entirety. Applicant is granted twenty days from the date of service of this Order upon him to show why this Order should not become final. Applicant shall file any reasons he may have with the Cherokee County Clerk of Court and shall serve opposing counsel at the following address:

Office of the Attorney General
PCR Division – 7th Circuit
P.O. Box 11549
Columbia, South Carolina 29211

Applicant is cautioned that his response to this order must be actually received by the Cherokee County Clerk of Court and opposing counsel within twenty days, and the Court will not consider any issues raised in his response if not so timely filed and served.

AND IT IS SO ORDERED this 12 day of March, 2025.

THE HONORABLE GRACE G. KNIE
Chief Administrative Judge
Seventh Judicial Circuit

Spartanburg, South Carolina

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CLERK OF COURT
CHEROKEE COUNTY, S.C.
2025 MAR 17 A 8:49
BRANDY W. McBEE

State of South Carolina
County of Cherokee

Leonard Lee Foster # 179576
Applicant,

VS.

State of South Carolina
Respondent.

In the Court of Common Pleas
Seventh Judicial Circuit

Case No. 2022-CP-11-00247

Response To Court Order
(Dated March 10, 2025)

I.

Leonard L. Foster. #179576. (hereinafter Applicant). hereby respond to this Court's order dated March 10. 2025 and received by the Applicant on March 13. 2025. Applicant was given twenty (20) days to demonstrate reasons his action should not be dismissed. Applicant urges there does exist a genuine issue of a material fact in dispute that he has been pursuing his rights diligently and that he is entitled relief as a matter of law and in the interest of justice.

II.

Facts / Procedural history / Argument

Applicant is presently Confined within the South Carolina Department of Corrections, Wateree River Correctional Institution. Currently he is serving a forty (40yrs) Sentence pursuant an order of the Cherokee County Clerk of Court. The Cherokee County Grand Jury indicted Applicant for habitual traffic offense during a

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2000 term (2000-GS-11-1350). His indictment also included the Charge of driving under Suspension.

Subsequently, Applicant was indicted during a February 2002, term for felony driving under the influence ("DUI"), resulting in death and reckless homicide (2002-GS-11-0142).

On March 18, 2002, Applicant pled guilty to habitual traffic offense ("HTO"), and to driving under Suspension. On March 18-20, Applicant proceeded to trial on both Counts Contain in indictment No. 2002-GS-11-0142, and was found guilty as indicted. On March 20th, 2002, the Honorable Gary E. Clary, Sentenced Applicant to Consecutive terms of 25 years for felony DUI resulting in death, 10 years for reckless homicide, and five years for "HTO", and 90 days for driving under Suspension. Four offenses totaling a agregated Sentence of 40 years.

Wherefore Applicant urges because his Sentence is a Consecutive Sentence and because he was prosecuted for Mutiple offenses though technically he was an habitual offender, the Consecutive Status of his Sentence pushes his Sentence back so that it exceeds the amount he Should have Statutorily received.

Furthermore, Applicant urges that the Consecutive Construction of his Sentence not only violates the legislative intent of of the Statute [§56-1-1020], it further violates his 14th

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Amendment rights to equal protection of the law and due process of law and further violates his 8th Amendment right to protection against cruel and unusual punishments embodied in the South Carolina [State] and the united States Constitution. 8th, 14th Amend. U.S.C.A.

Applicant submits that under plain language of the habitual offender statute (§ 56-1-1020), the legislatures intended that all his offenses that occurred on the same day and at the same time, be considered as one offense. Statute 56-1-1020 of S.C. Code of laws (1976) Mandates:

["An habitual offender shall mean any person whose record as maintained by the department of Motor Vehicles shows the he has accumulated the conviction for separate and distinct offenses described in subsection (a), (b) and (c) committed during a three year period: Provided, that where more than one included offense shall be treated for the purpose of this article as one offense"] (Quoting SC Code Ann. § 56-1-1020).

Applicant urges the Court of Appeals of South Carolina, has ruled on how the statute is to be interpreted and applied. In State v. Boyd, 341 Se2d 144. (1986), the Court relying on the interpretation and reason of the General

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Assembly held: The General Assembly adopted in the case of habitual offender's Boyd's thesis that Where a Conviction on two or more Counts arising out of acts Commited in the Course of a Single incident has been entered, the Conviction Should Count as only one for the Purpose of Sentencing in a Subsequent and Seperate Conviction.

Applicant avers the legislatures intended that Statutes § 17-25-50 and § 56-1-1020 operate in Conjunction for the Purpose of accomplishing one legislative schem.

"In construing statutory language, Statute Must be read as a Whole, and Sections which are part of the same general Statutory law Must be Construed together and each one given effect, if it Can be done by any reasonable Construction." Citing, Higgins v. State 415 Se2d 799 (1992)

"In Construing a statute, a Court Cannot read into the statute Something not Within the manifest intention of the legislature as gathered from the Statute itself." Citing, State v. Zulfer (SC App 2001) 547 SE2d 885

In Boyd Supra, the Court of Appeals further reasoned [that] Section 17-25-50, of South Carolina Code of laws (1976), 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

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of time that they may be considered as one offense; notwithstand- under the law they constitute separate and distinct offenses.. The General Assembly adopted the same line of reasoning for traffic offenses. S.C. Code Ann. § 56-1-1020... Citing; Boyd Supra at p. 147

Wherefore Applicant urges had the habitual offender Statute been correctly intepreted and applied to his sentence he would not be serving time in excess of the statute for Mutiple offenses, nor would he be sentenced to Mutiple punishments for the same offenses.

III.

Deligence

Applicant would submit that he has been pursuing his rights deligently. Applicant urges he filed this action after he was informed by department of Corrections classification Staff during March of 2022, that he would have to Serve out his sentence in excess of the amount authorized under the habitual offender statute because his sentences was ran consecutively. Contray to the intent of the legislature.

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Relief / Conclusion

Wherefore base on all the foregoing, there does exist a genuine issue of a material fact in dispute as to whether Applicant is entitled relief as a result of his Sentence being structured contrary to the legislative intent of the habitual offender Statute and there does exist a genuine issue of a material fact in dispute whether Applicant has been pursuing his rights deligently when he filed this action well within one year of being put on notice. Applicant request evidentiary hearing for the purpose of all the facts asserted herein his Motion. Applicant Seeks that his Sentence be modified in accordance with the legislative intent of the statute. Applicant is entitled relief in the interest of justice and as a matter of law. Therefore. Summary judgment for respondent should be denied.

Respectfully Submitted,

S/Leonard Foster

Leonard L. Foster #179576
DI-46
WRCI
P.O. Box 189
Rembert SC 29128

Executed on:
March 27, 2025.

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State of South Carolina
County of Cherokee

In the Court of Common Pleas
Seventh Judicial Circuit

Leonard Lee Foster #179576
Applicant.

VS.

State of South Carolina
Respondent.

Case No. 2022-CP-11-00247

Proof of Service

I Leonard Lee Foster. Pro Se. hereby Certify that I have Served a Copy of the Response to Court order. on the Respondent at the office of the (Attorney General. PCR Division - 7th Circuit. P.O. Box 11549, Columbia, South Carolina 29211) Addressed to Same. and deposited in the United States Mail, Postage Prepaid on:

This-27-. dau of March. 2025.

S/ Leonard Foster
Leonard L. Foster #179576

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STATE OF SOUTH CAROLINA COUNTY OF CHEROKEE	)	IN THE COURT OF COMMON PLEAS FOR THE SEVENTH JUDICIAL CIRCUIT
Leonard Lee Foster, #179576,	)	CASE NO. 2022–CP–11–00247
Applicant,	)	
v.	)	**FINAL ORDER OF DISMISSAL**
State of South Carolina,	)	
Respondent.	)	

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This matter comes before this Court by way of a post-conviction relief (PCR) action commenced by Leonard L. Foster (Applicant) on April 4, 2022. Respondent, the State of South Carolina, made its return and moved this Court to summarily dismiss the application as untimely, barred by the statute of limitations, successive to Applicant's previous PCR action, and for failing to comply with the Uniform Post-Conviction Procedures Act, S.C. Code Ann. § 17-27-10 *et seq.* (2014).

Pursuant to this request, and after reviewing the pleadings in this matter and all of the records attached thereto, this Court issued a Conditional Order of Dismissal filed on March 17, 2025, provisionally denying and dismissing this action while giving Applicant twenty days from the date of service of said order in which to show why the Conditional Order of Dismissal should not become final. Attached to this Final Order and incorporated herein by reference is an affidavit of service dated March 25, 2025, indicating the State served the above-mentioned Conditional Order of Dismissal on Applicant.

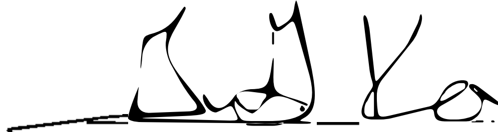
On April 1, 2025, Applicant filed his "Response to Court Order (Dated March 10, 2025." In this filing Applicant reasserts the same or similar argument presented in his original PCR application.

After a thorough review of the record and Applicant's filing, this Court reasserts its finding in the Conditional Order of Dismissal that the current PCR application must be dismissed because it is untimely, barred by the statute of limitations, successive to Applicant's previous PCR action, and for failing to comply with the Uniform Post-Conviction Procedures Act, S.C. Code Ann. § 17-27-10 *et seq.* (2014). Before the Court will hold an evidentiary hearing, Applicant must make a *prima facie* showing that he is entitled to relief. Welch v. MacDougall, 246 S.C. 258, 143 S.E.2d 455 (1965); Blandshaw v. State, 245 S.C. 385, 140 S.E.2d 784 (1965). Applicant has failed to make such a showing based on the information before this Court, and, therefore, he is not entitled to an evidentiary hearing in this matter. Accordingly, this Court finds no reason why the Conditional Order of Dismissal should not become final.

IT IS THEREFORE ORDERED that for the reasons set forth in the Court's conditional order of dismissal, the Application for post-conviction relief is hereby **DENIED AND DISMISSED WITH PREJUDICE.**

This Court hereby advises Applicant he must file and serve a notice of appeal within thirty days of the service of this Order to secure appellate review. See Rule 203, SCACR. Applicant's attention is directed to Rule 243, SCACR, for the procedures following the filing and service of the notice of appeal.

AND IT IS SO ORDERED this 17th day of April, 2025.



GRACE GILCHRIST KNIE
Chief Administrative Judge
Seventh Judicial Circuit

Spartanburg, South Carolina.

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State of South Carolina
County of Cherokee

In the Court of Common Please
Seventh Judicial Circuit

Case No. 2022-CP-11-00247

Leonard L. Foster #179576
Applicant,

VS

State of South Carolina,
Respondent.

Objection to Proposed Final order of Dismissal

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I.

Applicant above named hereby oppose Respondent's Proposed order of dismissal for the following reasons:

II.

Applicant would first object to Respondent's assertion that there does not exist a genuine issue of material fact in dispute in the above Caption Case. Applicant avers [that] because the Claim that he Submits accrued on March, 2022, and because his application was submitted (April 4, 2022) approximately thirty (30) days after discovery of his claim, there does exist a genuine issue of material fact [in dispute] as to whether his application is Successive under the provision of S.C. Code Ann. § 17-27-90, and § 17-27-45 (c). Therefore, Applicant avers [that] the ground that he raises in his current application could not have been raised in any Previous or Subsequent application.

Moreover, Applicant urges a reasonable jury Could [Not only] return a verdict that there does exist a genuine issue of material fact that from the discovery time of his Claim until the time he Submitted his Current application, this period of time. does not exceed the Statutory [filing] time allotted to Submit his claim. Furthermore. regarding the Substance of his Claim, Applicant avers that a reason-able jury Could determine that the General Assembly intended [under the Plain language of the habitual offender Statute S.C. Code Ann. § 56-1-1020], all his offenses that derived as a result of one transaction of Conduct. be Considered as one offense for the purpose of Sentencing and that he Should have rightly received one Sentence [Punishment] for all his offenses.

Successive Post-Conviction relief (PCR) applications are disfavored and the applicant has the burden to establish that any new ground raised in a Subsequent applicanition Could not have been raised by him in a previous application. See, Tilly v. State (S.C. 1999) 511 Se2d 689. See also, Foxworth v. State, 274 Se2d 415

Summaru judgment Will not lie if the dispute about a fact is "genuine", ie., if the evidence is Such that a reasonable jury Could return a verdict for the nonmoving Party Citing, Anderson v. Liberty Lobbu Inc., 106 S.Ct 2505.

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If the Applicant meets [his] burden, a hearing must be afforded despite the Successiveness of the application. Citing,, Case v. State, 289 SE2d 413 (1982) see also, Robertson v. State 795 SE2d 29 (2016).

III.

Conclusion

Wherefore, based on all the foregoing, Applicant's application is timely. Applicant is entitled relief. Thus, Summary judgment Should not be granted in favor of Respondent and this matter Warrants an evidentiary hearing for the purpose of demonstrating the Same.

Executed on this 22 day of April 2025.

Respectfully Submitted

S/ Leonard Foster

Leonard L. Foster #179576
DI-47
WRCI
P.O. Bx 189
Rembert SC 29128

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BRANDY W. MCBEE

State of South Carolina
County of Cherokee

In the Court of Common Pleas
Seventh Judicial Circuit

Leonard Lee Foster #179576
Applicant,

VS.

State of South Carolina,
Respondent.

Case No. 2022-CP-11-00247

Proof of Service

I, Leonard L. Foster, Pro Se, hereby Certify that I have Served a copy of the Objection to Proposed order of dismissal on the Respondent at the office of Attorney General. PCR Division-7th circuit, P.O. Box 11549, Columbia, South Carolina 29211) Addressed to Same, and deposited in the united States Mail. Postage Prepaid on:

This 22 . day of April, 2025.

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S/ Leonard Foster
Leonard Lee. Foster #179576

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THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM CHEROKE 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
WRCI Dorm 1
8200 State Farm Road
Rembert S.C. 29128

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JUL 28 2025
S.C. SUPREME COURT

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Statement of isson 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 durning 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 [illegible] 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 SC 206 341 SE 2d. 144 the General Assembly adoped 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 SC 45, 671 SE 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 S.E. 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 it's 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 & material fact does exist and Appellant should prevail as a matter of law.

Date: July 24, 2025

Sincerely
Leonard Foster

WITNESSES

C 3-20-02

A. R. Jordan, SCHP

ARREST WARRANT NO. Y437728

ACTION OF GRAND JURY

TRUE BILL

Foreman of Grand Jury

VERDICT

Foreman of Petit Jury *Date:*

DOCKET NO. 00-GS-11-1020

The State of South Carolina,

County of Cherokee

COURT OF GENERAL SESSIONS

DEC 14 2000 **TERM**

THE STATE

vs.

Leonard Lee Foster

Indictment for ~~Driving Vehicle While Under the Influence of Alcohol and/or Drugs and Driving Under Suspension and~~ Habitual Traffic Offender

STATE OF SOUTH CAROLINA)
)
COUNTY OF Cherokee)

INDICTMENT FOR ~~DRIVING VEHICLE WHILE UNDER THE INFLUENCE OF ALCOHOL AND/OR DRUGS AND DRIVING UNDER SUSPENSION AND~~ HABITUAL TRAFFIC OFFENDER

At a Court of General Sessions, convened on DEC 1 4 __________,

the Grand Jurors of Cherokee County present upon their oath:

COUNT ONE — DRIVING UNDER INFLUENCE

That ____________________ did

in __________ County on or about __________, drive

a vehicle while under the influence of intoxicating liquors, and/or narcotic drugs, barbiturates, paraldehydes drugs and herbs; such not being the first offense within a period of five years including and immediately preceding the foregoing date.

COUNT TWO — DRIVING UNDER SUSPENSION

That ____________________ did

in __________ County on or about __________, drive

a motor vehicle on a public highway of this State when his license to drive was suspended, such not being the first offense within a period of five years including and immediately preceding the foregoing date.

COUNT THREE — HABITUAL TRAFFIC OFFENDER

That Leonard Lee Foster did

in Cherokee County on or about November 11, 2000, drive

a motor vehicle on a public highway of this state after having been declared an Habitual Offender ~~by Order of a Circuit Court~~ in violation of §56-1-1100, *Code of Laws of South Carolina,* (1976), as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

SOLICITOR

WITNESSES

A.R. Jordan, SCHP

ARREST WARRANT NO. Direct Indictment

ACTION OF GRAND JURY

TRUE BILL

[signature]

Foreman of Grand Jury

VERDICT

COUNT ONE: guilty

COUNT TWO: guilty

[signature] 20 Mar 2002

Foreman of Petit Jury Date:

DOCKET NO. 02-GS-11-0176

The State of South Carolina,

County of Cherokee

COURT OF GENERAL SESSIONS

FEB 28 2002 TERM

THE STATE

vs.

Leonard Lee Foster

Indictment for

COUNT ONE-FELONY DUI (DEATH)

COUNT TWO-RECKLESS HOMICIDE

Trey Gowdy, Solicitor

FORM 32 (12/87)

STATE OF SOUTH CAROLINA)
)
COUNTY OF Cherokee)

INDICTMENT FOR

COUNT ONE-FELONY DUI (DEATH)
COUNT TWO-RECKLESS HOMICIDE

At a Court of General Sessions, convened on [illegible] 2002,

the Grand Jurors of Cherokee County present upon their oath:

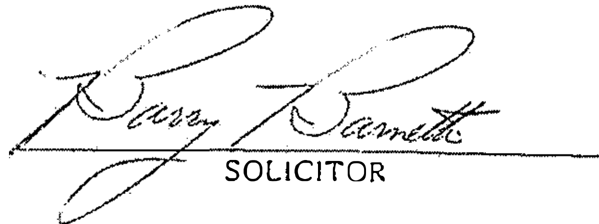
COUNT ONE-FELONY DUI (DEATH)

That Leonard Lee Foster did in Cherokee County on or about the 10th day of November 2000, drive a motor vehicle while under the influence of alcohol, drugs, or a combination of both, and did an act forbidden by law or neglected a duty imposed by law, to wit: by failing to yield the right of way (ARTICLE 17, SECTION 56 of the South Carolina Code of Laws) and/or disregarding a stop sign (SECTION 56-5-2330); and/or failure to maintain a proper lookout for other vehicles on the roadway; and/or failure to maintain proper control of his vehicle; and/or the Defendant should not have been driving a vehicle since he was under suspension and declared an Habitual Traffic Offender in this state, which act or neglect proximately caused the death of Cody Keeler, in violation of Section 56-5-2945, Code of Laws of South Carolina, 1976, as amended.

COUNT TWO-RECKLESS HOMICIDE

That Leonard Lee Foster did in Cherokee County on or about the 10th day of November 2000, drive a motor vehicle in reckless disregard of the safety of others which proximately caused the death of Cody Keeler, in violation of Section 56-5-2910, Code of Laws of South Carolina, 1976, as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



SOLICITOR