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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
In The Supreme Court

On Petition for Writ of Certiorari to the Court of Common Pleas
Appeal from Richland County
Hon. J. Cordell Maddox, Jr., Post-Conviction Relief Judge

Appellate Case No. 2025-000871

James C. Cobbert, III, 293798,

Petitioner,

v.

State of South Carolina,

Respondent.

RETURN TO PETITION FOR WRIT OF CERTIORARI

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PETITIONER'S STATEMENT OF ISSUES ON PETITION FOR CERTIORARI

- 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)?
- 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?
- 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?

COUNTERSTATEMENT OF ISSUES ON PETITION FOR CERTIORARI

- I. Whether the post-conviction relief court properly determined Petitioner's post-conviction relief application was procedurally barred by the statute of limitations, where Petitioner's double jeopardy rights are not implicated, and Petitioner is not subject to relief provided by this Court in State v. Greene, nor should this Court consider Petitioner's claims under Butler?
- II. Whether the post-conviction relief court properly determined that Petitioner's double jeopardy rights are not implicated, and Petitioner is not subject to relief provided by this Court in State v. Greene, where Easler was the controlling law at the time of Petitioner's sentencing, and this Court should not apply Greene retroactively?

STATEMENT OF THE CASE

Petitioner James C. Cobbert, Jr., was indicted during the May 2006 term of the Lexington County Grand Jury for reckless homicide (2006-GS-32-1445) and failure to stop for law enforcement vehicle, blue light resulting in death (2006-GS-32-1447). On October 16, 2008, Petitioner appeared before the Honorable William P. Keesley and pleaded guilty to as indicted.¹ The State withdrew the Aiken County common law robbery warrant and allowed Petitioner to plead to shoplifting in exchange for Petitioner's Lexington County and Aiken plea. Elizabeth Fullwood and Wallis Alves, Esquires (collectively Counsel) represented Petitioner. Eleventh Circuit Assistant Solicitor Shawn Graham prosecuted the case.

Without negotiations or recommendations, Judge Keesley sentenced Petitioner to ten years' imprisonment for reckless homicide, a concurrent term of five years' imprisonment for shoplifting, and a consecutive term of twenty-five years' imprisonment for failure to stop for blue light resulting in death. No direct appeal was filed.²

Initial PCR Action and Subsequent Appeal: 2009-CP-32-00127

On January 9, 2009, Petitioner filed his first PCR action, raising the following grounds for relief (excerpted verbatim):

1. "Double Jeopardy"
 - a. "Sentenced twice for same offense (crime)!"
2. "Cruel and unusually [*sic*] punishment"
 - a. "Harsh lengthy sentence which is uncommon for crime!"
3. "Involuntary Guilty Plea"
 - a. "Plea was entered under false pretense!"

¹ Thereafter, Petitioner waived presentment to the grand jury on an Aiken County indictment for shoplifting (2008-GS-02-1678); waived jurisdiction and venue issues related to Aiken County; and pled guilty to shoplifting.

² Petitioner contended in an earlier proceeding that he sent a letter to his lawyer to file an appeal; however, the State has no record that a direct appeal was ever filed in this matter. It was the subject of the earlier post-conviction relief appeal in Cobbert v. State, 2009-CP-32-00127.

On November 29, 2011, an evidentiary hearing was held before the Honorable Edward W. Miller. Petitioner was present at the hearing and represented by Ronald R. Hall, Esquire. Assistant Attorney General Kaelon E. May appeared on behalf of the State. Petitioner testified on his own behalf. The State presented testimony from Petitioner's plea counsel, Elizabeth Fullwood. By order signed January 18, 2012, and filed January 23, 2012, Judge Miller denied the application on all grounds and dismissed the action with prejudice.

Petitioner filed a timely notice of appeal. Appellate Defender Robert M. Pachak perfected Petitioner's appeal by filing a petition for writ of certiorari with the Supreme Court, raising the following issue:

Whether plea counsel was ineffective for failing to file an appeal on the issue of whether Petitioner's guilty plea complied with the mandates set forth in *Boykin v. Alabama*?

On September 26, 2012, our Supreme Court, in response to a letter from Petitioner, relieved appellate counsel and allowed Petitioner to proceed *pro se*. Further, our Supreme Court informed Petitioner that the petition for writ of certiorari was being treated as withdrawn, and he had thirty days to submit a *pro se* petition for writ of certiorari. On October 16, 2012, Petitioner filed a *pro se* petition for writ of certiorari with our Supreme Court, raising the following issue:

Whether plea counsel was ineffective for failing to object to the failure to stop for blue lights result/death charge, after Petitioner had already plead to reckless homicide?

The State filed its return to the petition. On June 24, 2014, the Court of Appeals issued an order summarily denying Petitioner's petition. The Remittitur was returned to the circuit court on July 11, 2014.

Initial Federal Habeas Corpus Action: 8:14-3331-TMC-JDA

On August 13, 2014, Petitioner filed a *pro se* petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254 in the United States District Court for the District of South Carolina. See Cobbert

v. Stevenson, No. 8:14–3331–TMC–JDA. Petitioner raised the following allegations in his *pro se* petition (verbatim):

1. "Ineffective assistance of counsel/Double Jeopardy. Plea counsel was ineffective for allowing Petitioner to plea to a double Jeopardy violation. Which violates Petitioner's 5th Amendment and 6th Amendment of the United States Constitution"
 - a. "Under the Blockburger Test, state cannot prosecute for both offenses of reckless homicide and failure to stop for blue lights resulting in death; Double Jeopardy."

Subsequently, on February 27, 2015, Petitioner filed an amended petition clarifying his issue as follows:

1. "Ineffective assistance of counsel. Based on the double jeopardy clause, plea counsel was ineffective for allowing Petitioner to plea to a double jeopardy violation. Which violates Petitioner's 5th and 6th Amendment of the United States Constitution."
 - a. "Under the Blockburger Test, State cannot prosecute for both offenses of Reckless Homicide and Failure to stop for blue lights resulting in death, therefore resulting in double jeopardy."

The State filed a return and motion for summary judgment on December 3, 2014.³ In response to Petitioner's amended petition, the State filed an amended return and motion for summary judgment on March 6, 2015. On July 13, 2015, the Honorable Jacquelyn D. Austin, United States Magistrate Judge, issued a report and recommendation that the State's motion for summary judgment be granted. Petitioner filed objections to the R&R on July 30, 2015. On August 4, 2015, the Honorable Timothy M. Cain, United States District Judge, issued an order adopting and incorporating the R&R by reference; granting Respondent's motion for summary judgment; dismissing the petition with prejudice; and denying a certificate of appealability. Cobbert v. Stevenson, No. 8:14–3331–TMC (D.S.C. Aug. 4, 2015).

Petitioner filed a *pro se* petition to appeal to the Fourth Circuit. The Court dismissed the

³ In the Return to the District Court, the State made a similar argument to what was raised in the PCR Appeal Certiorari Return.

appeal. Cobbert v. Stevenson, 654 F. App'x 632, 633 (4th Cir. 2016). On October 18, 2016, Petitioner filed an untimely petition for rehearing *en banc*. The Court determined that Petitioner's failure to file a timely petition was a result of an extraordinary circumstance wholly beyond his control and granted his motion to extend the filing time. After review of the petition for rehearing, the Court denied the petition by order issued December 2, 2016. An attempt to seek certiorari in the United States Supreme Court was denied as untimely. Cobbert v. Stevenson, 582 U.S. 928, 137 S. Ct. 2319, 198 L. Ed. 2d 722 (2017).

Second Federal Habeas Corpus Action

Petitioner filed a motion for an order authorizing the district court to consider a second or successive application for relief pursuant to 28 U.S.C. § 2244 in the United States Court of Appeals on May 25, 2018. On March 23, 2018, the Fourth Circuit issued an order denying Petitioner's motion to file a successive application. In RE: James Curtis Cobbert, III, Movant, No. 18-152, Order, (4th Cir. March 23, 2018).

Second PCR Action: 2021-CP-32-03337

On October 14, 2021, Petitioner filed a successive post-conviction relief action wherein he alleged the following:

- 1) "Unconstitutional Statute"
 - a. "Sentencing and characterization is in conflict with federal law."
- 2) "Ex Post Facto"
 - a. "Applied law to case that wasn't law at the time of [*sic*] committed."

On August 16, 2023, Petitioner amended his application to include the following allegations:

1. The consecutive sentences on the two charges violated the double jeopardy clause of Article I, §12 of the Constitution of the State of South Carolina and the Fifth Amendment of the Constitution of the United States of America.
 - a. At my sentencing, Judge William P. Keesley sentenced me to 10 years in prison for reckless homicide and 25 years in prison for failure to stop for a

blue light resulting in death. The 25 year sentence was consecutive to the 10 year sentence. Both charges arise out of a single act of failing to stop for a blue light. 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. I was not aware of this decision prior to February of 2023.

On March 5, 2024, the State filed its Return and Motion to dismiss as the application was untimely and successive to his initial post-conviction relief action (Cobbert v. State, 2009-CP-32-00127) and the earlier federal habeas corpus action (Cobbert v. Stevenson, No. 8:14-3331-TMC (D.S.C. Aug. 4, 2015)) which both addressed on the merits the underlying federal constitutional claim of double jeopardy related to the convictions and sentences for reckless homicide (2006-GS-32-1445) and failure to stop for law enforcement vehicle, blue light resulting in death (2006-GS-32-1447). A hearing on the motion to dismiss was heard on March 22, 2024, before the Honorable J. Cordell Maddox. Petitioner was present and represented by C. Rauch Wise, Esquire. Deputy Attorney General Donald J. Zelenka represented the State. Judge Maddox denied and dismissed the action with prejudice by filed order on August 16, 2024. Petitioner filed a Rule 59(e), SCRCR, on August 30, 2024. Judge Maddox denied that motion by filed order on April 18, 2025.

Petitioner filed his notice of appeal on May 5, 2025. Petitioner filed his Rule 243(c), SCACR, explanation letter on May 23, 2025. On July 8, 2025, the Court instructed parties to proceed with the appeal. Petitioner filed his Petition for Writ of Certiorari and Appendix on August 21, 2025.

This Return to Petition for Writ of Certiorari follows.

STATEMENT OF FACTS

On February 16, 2006, in Aiken County, Petitioner entered Johnson's Jewelers and asked to look at some rings. The store owner became suspicious and attempted to return the rings to the showcase. At that point, Petitioner grabbed two rings by force and ran out of the store. Mr. Johnson, the owner of Johnson's Jewelers, pursued Petitioner on foot. Mr. Johnson fell but was able to see Petitioner enter a light-blue vehicle. A citizen named James Bouknight observed the store owner chase Petitioner, followed Petitioner for a while, observed him enter a blue Ford Taurus with license plate 341 TYH, and provided that information to the Aiken County Sheriff's Department. The Aiken County Sheriff's Department checked that number, and the car was reported stolen from Richland County.

An Aiken County Deputy, Bruce Fox, heard a robbery call over his dispatch, which described the car and tag number, as well as the last known direction. Deputy Fox went to Interstate 20 ("I-20") and waited at an on-ramp. After a while, he observed the vehicle driven by Petitioner pass by. He pulled in behind him on I-20. He confirmed the tag number and requested backup. At that time, Petitioner noticed that he was being followed by police and accelerated, passing other vehicles in the passing lane. At some point, the deputy activated his blue lights and siren, and Petitioner reached speeds of approximately 100 miles per hour. As they entered Lexington County, Pelion Police Officer Crier assumed control of the pursuit of the vehicle Petitioner was driving. Deputy Fox followed in behind Officer Crier.

Members of the Sheriff's Office set up stop sticks in the road in front of the Petitioner. Petitioner avoided them, but the passenger side of the vehicle ran over the stop sticks. They did not deflate the tires, and the pursuit continued on into the Town of Pelion. Another Lexington County deputy had deployed stop sticks approximately 300 yards down the road in the Town of

Pelion. Petitioner ran off the right side of the roadway in an attempt to overtake other vehicles. He returned to the road; the vehicle jerked left, and he overcorrected right. At that point, the MAIT team from the highway patrol estimated Petitioner was going about 88 miles an hour.

When Petitioner overcorrected back to the right, he lost control of the car he was driving, and he slammed into the back of Michael Wilson, the victim, who was driving a Department of Transportation vehicle. As a result of the collision, both vehicles lost control and overturned. Mr. Wilson was wearing his seat belt, but his seat broke, and he was ejected from the vehicle, suffering injuries that resulted in his death on the scene.

Petitioner was also ejected from his vehicle. Officers placed him in custody. At that point, in handcuffs, Petitioner tried to escape from the EMS workers. Petitioner was re-apprehended.

STANDARD OF REVIEW

The standard of review for post-conviction relief depends on the specific issue before the appellate court. Smalls v. State, 422 S.C. 174, 810 S.E.2d 836, 839 (2018). When reviewing factual findings, the appellate courts defer to the post-conviction relief court's factual findings and will uphold them if any probative evidence in the record supports them. Buckson v. State, 423 S.C. 313, 320, 815 S.E.2d 436, 440 (2018); Smalls, 422 S.C. at 180-81, 810 S.E.2d at 839-40. However, pure questions of law will be reviewed *de novo* without deference to the post-conviction relief court. Id. Appellate courts will reverse the decision of the post-conviction relief court when it is controlled by an error of law. Goins v. State, 397 S.C. 568, 573, 726 S.E.2d 1, 3 (2012).

ARGUMENT

- I. The post-conviction relief court properly determined Petitioner's post-conviction relief application was procedurally barred by the statute of limitations, where Petitioner's double jeopardy rights are not implicated, and Petitioner is not subject to relief provided by this Court in State v. Greene, nor should this Court consider Petitioner's claims under Butler.**

On appeal, Petitioner asserts the post-conviction relief court erred in finding his post-conviction relief application was procedurally barred by the statute of limitations. Specifically, Petitioner contends that he filed within the one-year period after learning of the holding in State v. Greene,⁴ which provided him with a viable avenue for relief because his sentence violates his double jeopardy rights. Additionally, Petitioner asserts that should this Court find he was procedurally barred by the statute of limitations, then this Court should consider this matter as a petition under Butler v. State, 302 S.C. 466, 397 S.E.2d 87 (1990). However, as the post-conviction relief court properly found, Petitioner was subject to the one-year statute of limitations, as he did not allege any ground entitling him to equitable tolling, because he failed to show that his double jeopardy rights were implicated by Greene, even if Greene was meant to be applied retroactively. Furthermore, this Court should not consider this petition pursuant to Butler, where Petitioner has not set forth a constitutional violation that "constitutes a denial of fundamental fairness shocking to the universal sense of justice." Butler, 302 S.C. at 468, 397 S.E.2d at 88. This Court should deny certiorari.

As an initial matter, Petitioner requests that if this Court finds his post-conviction relief application was barred by the statute of limitations, that this Court then consider the petition pursuant to Butler. In doing so, this Court must find Petitioner has set forth a constitutional

⁴ State v. Greene, 423 S.C. 263, 814 S.E.2d 496 (2018) (partially overruling State v. Easler, 327 S.C. 121, 489 S.E.2d 617 (1997)).

violation that "constitutes a denial of fundamental fairness shocking to the universal sense of justice." Butler, 302 S.C. at 468, 397 S.E.2d at 88. Petitioner has not met that burden. Petitioner's pleaded allegations center around a misunderstanding of the law on double jeopardy and their repeated attempts to relitigate their claims of a double jeopardy violation. The record before this Court shows that Petitioner has presented versions similar to those he now presents, beginning with his first post-conviction relief action in 2009. Also, the Greene decision was not a fundamental constitutional shift but rather a clarification of existing double jeopardy principles and the legislative intent of the statutes before the Greene Court. Notably, those statutes are not present in this case. Respondent maintains Petitioner has failed to present any viable claim that violates due process or a constitutional violation that "constitutes a denial of fundamental fairness shocking to the universal sense of justice." Butler, 302 S.C. at 468, 397 S.E.2d at 88.

Accordingly, because this case does not present a constitutional violation that "constitutes a denial of fundamental fairness shocking to the universal sense of justice compelling circumstance," this Court should not entertain Petitioner's request.

Additionally, this Court decided Greene in 2018, and Petitioner did not file his post-conviction relief application until 2023. Petitioner now argues that S.C. Code Ann. § 17-27-45(C) should be relaxed and that an inmate should not be held to the one-year statute of limitations, likening the statute's requirement to a punishment on inmates. Even more curiously, Petitioner asserts that he "should not be held to a higher standard than the bench and bar in keeping current as to the developments in the law[,]" and provides State v. Belcher, 385 S.C. 597, 385 S.E.2d 802 (2009) as support for this assertion. However, the statute of limitations for post-conviction relief applications is not tolled merely because Petitioner becomes aware of a new legal decision. Knowledge of a legal decision does not constitute a newly discovered fact under S.C. Code Ann.

§ 17-27-45(C), which refers to factual discoveries, not changes in legal interpretation. Furthermore, Petitioner's most recent post-conviction relief action is clearly successive, as he raised the double jeopardy issue in his first post-conviction relief action, which was denied in 2012.

Nevertheless, as will be further discussed *infra*, the post-conviction relief court correctly found Petitioner's application was procedurally barred by the statute of limitations, and even if it was not, Petitioner's double jeopardy rights were not implicated by the Greene decision, and Petitioner failed to show that Greene was intended to be applied retroactively.

II. The post-conviction relief court properly determined that Petitioner's double jeopardy rights are not implicated, and Petitioner is not subject to relief provided by this Court in State v. Greene, where Easler was the controlling law at the time of Petitioner's sentencing, and this Court should not apply Greene retroactively.

Petitioner asserts that his right against multiple punishments arising from the same offense under the double jeopardy clause of the Fifth Amendment was violated because "the reckless driving was the fleeing at a high speed from the police" and "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." Petitioner also asserts that the decision in Greene supports his assertion that his double jeopardy rights were violated, and that Greene should be applied retroactively. However, Petitioner's contention misconstrues S.C. Code Ann. §§ 56-5-750 and 56-5-1790 and fails as a matter of law where State v. Easler, 327 S.C. 121, 489 S.E.2d 617 (1997) was controlling law at the time of Petitioner's sentencing and not Greene. Furthermore, Petitioner presented nothing to the post-conviction relief court indicating that this Court intended Greene to be applied retroactively. Accordingly, this Court should deny certiorari.

The "Double Jeopardy Clause protects against a second prosecution for the same offense after acquittal or conviction, and protects against multiple punishments for the same offense."

State v. Brandt, 393 S.C. 526, 538, 713 S.E.2d 591, 597 (2011) (quoting Stevenson v. State, 335 S.C. 193, 198, 516 S.E.2d 434, 436 (1999)). In Blockburger v. United States, the United States Supreme Court clarified "[t]he applicable rule is that, where the same act or transaction constitutes a violation of two distinct statutory provisions, the test to be applied to determine whether there are two offenses or only one, is whether each provision requires proof of a fact which the other does not." 284 U.S. 299, 304 (1932). In other words, "*a single act may be an offense against two statutes*; and if each statute requires proof of an additional fact which the other does not, an acquittal or conviction under either statute does not exempt the defendant from prosecution and punishment under the other." Id. (emphasis added); accord State v. Moyd, 321 S.C. 256, 258, 468 S.E.2d 7, 9 (Ct. App. 1996) ("A defendant may be severally indicted and punished for separate offenses without being placed in double jeopardy *where a single act consists of two 'distinct' offenses.*") (emphasis added).

As an initial matter, Petitioner's constitutional claim that his convictions and sentences violated the double jeopardy clause of the federal constitution was already decided in his first post-conviction relief action in the order of the Honorable Edward W. Miller. In that order, Judge Miller found the following:

[Petitioner] asserts that plea counsel was ineffective for failing to object to [Petitioner's] sentence because [Petitioner's] plea to Reckless Homicide and Failure to Stop for a Blue Light resulted in Double Jeopardy. This Court finds that this allegation is without merit. Counsel testified that in her review of [Petitioner's] indictments and the elements of offenses [Petitioner] was charged with that counsel did not find any double jeopardy issues. Counsel testified that a double jeopardy argument in [Petitioner's] case may have been viable in the 1980's but that under the current test, which is the Blockburger test, the offenses were clearly separate. Counsel testified that [Petitioner] was not sentenced for the same offense twice. This Court agrees with plea counsel. The Double Jeopardy Clauses of the United States and South Carolina Constitutions protect against multiple punishments for the same offense. State v. Nelson, 336 S.C. 186, 519 S.E.2d 786 (1999). In both multiple punishment and successive prosecution cases, double jeopardy claims are evaluated under the "same elements" test set forth in Blockburger v. United States,

284 U.S. 299, 52 S.Ct. 180, 76 L.Ed. 306 (1932). Stevenson v. State, 335 S.C. 193, 516 S.E.2d 434 (1999). A defendant may be severally indicted and punished for separate offenses without being placed in double jeopardy where a single act consists of two "distinct" offenses. State v. Moyd, 321 S.C. 256, 468 S.E.2d 7 (Ct. App. 1996). This Court has reviewed the entire record and does not find that [Petitioner's] plea to the charges placed [Petitioner] in double jeopardy. This Court finds [Petitioner] has failed to show plea counsel's performance was deficient or any resulting prejudice; therefore counsel was not ineffective for failing to object to [Petitioner's] sentence based on double jeopardy. This Court finds that this allegation is denied and dismissed.

(App'x pp. 156–157).

In further support of the first post-conviction relief court's order, in Petitioner's 2014 federal habeas action, United States District Judge Timothy M. McCain found the following on Petitioner's claim that his convictions and sentences violated the double jeopardy clause of the federal constitution:

Here, Petitioner pled guilty to reckless homicide and failure to stop for a blue light resulting in death. In South Carolina, "[w]hen the death of a person ensues within three years as a proximate result of injury received by the driving of a vehicle in reckless disregard of the safety of others, the person operating the vehicle is guilty of reckless homicide . . ." S.C. Code Ann. § 56-5-2910(A). Reckless homicide requires -proof that the defendant (1) operated an automobile; (2) in reckless disregard for the safety of others; (3) the defendant's conduct proximately caused injury to the victim; and (4) within three years, the victim died as a result of these injuries. State v. Horton, 598 S.E.2d 279 (S.C. 2004) (citing State v. Watson, 563 S.E.2d 336 (S.C. 2002)).

The offense of failure to stop a motor vehicle when signaled by law enforcement vehicle is codified in S.C. Code Ann. § 56-5-750. This section provides

(A) In the absence of mitigating circumstances, it is unlawful for a motor vehicle driver, while driving on a road, street, or highway of the State, to fail to stop when signaled by a law enforcement vehicle by means of a siren or flashing light. An attempt to increase the speed of a vehicle or in other manner avoid the pursuing law enforcement vehicle when signaled by a siren or flashing light is prima facie evidence of a violation of this section. Failure to see the flashing light or hear the siren does not excuse a failure to stop when the distance between the vehicles and other road conditions are such that it would be reasonable for a driver to hear or see the signals from the law enforcement vehicle.

...

(C) A person who violates the provisions of subsection (A) and when driving performs an act forbidden by law or neglects a duty imposed by law in the driving of the vehicle:

(1) where great bodily injury resulted, is guilty of a felony and, upon conviction, must be imprisoned for not more than ten years; or

(2) where death resulted, is guilty of a felony and, upon conviction, must be imprisoned for not more than twenty-five years.

S.C. Code Ann. § 56-5-750.

Failure to stop for a blue light resulting in death requires proof of the following elements: (1) that the defendant was driving a motor vehicle; (2) that he was driving it on a road, street, or highway of the State; (3) that he was signaled to stop by a law enforcement vehicle by means of a siren or flashing light; and (4) that he did not stop. See United States v. James, 337 F.3d 387 (4th Cir. 2003) (citing State v. Hoffman, 186 S.E.2d 421 (S.C. 1972)). Petitioner argues that a person cannot commit the offense of failure to stop for a blue light without operating his vehicle in a reckless manner. (Objections at 20). Further, he argues that to act recklessly, one must be aware of his conduct and consciously disregard a risk. Id. However, the failure to stop for a blue light statute is a strict liability statute and *it* "explicitly criminalizes a broad swath of unintentional conduct." United States v. Rivers, 595 F.3d 558, 565 (4th Cir. 2010). And as Petitioner recognizes, reckless homicide requires a conscious disregard of a risk. As the magistrate judge found, these two offenses are distinct and clearly require the establishment of different elements.

(App'x pp. 211–212).

However, Petitioner now contends that because "the reckless driving was the fleeing at a high speed from the police" and "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" that his double jeopardy rights were violated. As both the first and second post-conviction relief courts and the federal court found, reckless homicide and failure to stop for a blue light – death results are two distinct charges, and Petitioner's convictions and sentences do not violate the double jeopardy clause. Petitioner's contention fails as a matter of law because each crime to which Petitioner pled guilty has a unique element of proof required to secure a conviction. Simply put, the South Carolina Legislature clearly intended to authorize multiple punishments for reckless

homicide and failure to stop for a blue light resulting in death, as evidenced by the distinct statutory schemes, disparate penalty structures, and separate legislative purposes served by each offense.

Turning to Petitioner's assertion that he should be afforded relief based on this Court's decision in State v. Greene. Greene was a 2018 decision by this Court, establishing the "one homicide, one homicide punishment" rule in our State. The defendant in Greene appealed her convictions for both homicide by child abuse and involuntary manslaughter, arguing that she could not stand convicted of both charges. 423 S.C. at 279, 814 SE.2d at 505. This Court agreed, holding:

While the South Carolina legislature has manifestly authorized multiple homicide charges for a single homicide, we find no expression of legislative intent authorizing multiple homicide punishments for a single homicide committed by a single defendant. As a result, absent legislative intent to the contrary, we follow the prevailing rule—one homicide is limited to one homicide punishment per defendant.

423 S.C. at 280, 814 SE.2d at 505.

Moreover, the Court in Greene held that it was not enough simply to sentence a defendant on only one redundant homicide conviction while allowing the remaining convictions to stand without any additional sentence because "the conviction itself is considered a punishment and that, too, must be vacated." 423 S.C. at 284, 814 S.E.2d at 507 (citing Ball v. United States, 470 U.S. 856, 864–65 (1985) (discussed *infra*)). As a component of its holding, the Court in Greene also provided:

The situation here should be contrasted with a homicide that would properly fall within multiple homicide statutes. In that situation, a jury may properly return a guilty verdict on more than one homicide charge. In State v. Easler, 327 S.C. 121, 489 S.E.2d 617 (1997), this Court affirmed convictions and sentences for two homicide charges—felony driving under the influence causing death and reckless homicide—arising out of a motor vehicle accident that killed one person and seriously injured another. The evidence and theory of criminal liability satisfied the elements of both homicide statutes. Easler, however, went further and affirmed multiple punishments for the single homicide committed by one defendant, and this

was error. We overrule Easler to the extent it authorizes multiple homicide punishments involving only one homicide. . . .

423 S.C. at 283, 814 S.E.2d at 507. This guidance is useful not only for the rule of "one homicide, one homicide punishment," but also for the remedy: vacating a redundant homicide conviction as part of imposing that punishment. See id.; cf. State v. Franklin, 267 S.C. 240, 246, 226 S.E.2d 896, 898 (1976) ("A trial judge generally has wide discretion in determining what sentence to impose.").

In deciding State v. Greene, the Court relied on and quoted from the United States Supreme Court's decision in Ball, *supra*. The essential question for the United States Supreme Court in Ball was whether, when a felon received and possessed a single firearm, they could be convicted and punished for two separate federal crimes for that one action: "under 18 U.S.C. § 922(h)(1), for receiving that firearm, and under 18 U.S.C.App. § 1202(a)(1) for possessing the same weapon." 470 U.S. at 857. The Court in Ball held that while a person could be charged, tried, and found guilty by the jury of both statutes, only one conviction could stand. 470 U.S. at 864-65. Accordingly, the Supreme Court in Ball remanded the case not for a new trial but for the District Court to "exercise its discretion to vacate one of the convictions." 470 U.S. at 865; cf. Greene, 423 S.C. at 284, 814 S.E.2d at 507 (2018) (holding that a redundant homicide "conviction . . . is considered a punishment and . . . must be vacated.").

Here, at the time Petitioner was convicted and sentenced, the trial court's sentencing was precisely in accordance with South Carolina law, as controlled by State v. Easler, *supra*. In Easler, this Court declined to extend broader protections under the South Carolina Constitution than those afforded under the federal Constitution. This Court concluded in Easler that the Blockburger test was the only test and analysis to be applied to double jeopardy questions. 327 S.C. at 132, 489 S.E.2d at 623. The controlling law under Easler held that where a defendant was convicted and

sentenced for both felony DUI-death results and reckless homicide, there was no double jeopardy since the elements of the crimes were different. Easler, 327 S.C. at 133, 489 S.E.2d at 624.

As noted *supra*, Petitioner's contention fails as a matter of law because each crime to which Petitioner pled guilty has a unique element of proof required to secure a conviction. Under Blockburger, Petitioner's convictions and sentences were in accordance with state and federal law. See Blockburger, 284 U.S. 299 (successive prosecutions do not violate the Double Jeopardy Clause if each offense contains an element not contained in the other).

Lastly, turning to whether Greene should be applied retroactively to Petitioner's case. Justice O'Connor's plurality opinion in Teague v. Lane, 489 U.S. 288 (1989), "set forth a framework for retroactivity in cases" on collateral review. Montgomery v. Louisiana, 577 U.S. 190, 198 (2016); accord Aiken v. Byars, 410 S.C. 534, 539–40, 765 S.E.2d 572, 575 (2014) ("Under our current jurisprudence, the United States Supreme Court's decision in Teague . . . governs whether a new rule of criminal procedure is retroactive."). "Under Teague, a *new* constitutional rule of criminal procedure does not apply, as a general matter, to convictions that were final when the new rule was announced." Montgomery, 577 U.S. at 198; see also Chaidez v. U.S., 568 U.S. 342, 347 (2013) ("When we announce a 'new rule,' a person whose conviction is already final may not benefit from the decision in a habeas or similar proceeding."). The Teague Court found that new constitutional rules of criminal procedure should generally not be applied retroactively, with only two limited exceptions: 1) if the new law places certain kinds of primary, private individual conduct beyond the power of the criminal law-making authority to proscribe," and 2) if it requires observance that "those procedures that . . . are 'implicit in the concept of ordered liberty.'" Teague v. Lane, 489 U.S. 288, 307 (1989) (citing Mackey v. United States, 401 U.S. 667, 692 (1971)). Petitioner's matter satisfies neither exception here.

This Court has ruled similarly that retroactive application of new precedent is only extended to cases still pending on direct appeal or not yet final, but does not extend to matters challenged on post-conviction relief. See State v. Belcher, 385 S.C. 597, 613, 685 S.E.2d 802, 811 (2009) (retroactive application of new precedent does not extend to matters challenged on post-conviction relief) overruled on other grounds by State v. Burdette, 427 S.C. 490, 832 S.E.2d 575 (2019); see generally Teague, *supra*; see also McDougall v. Dixon, 921 F.3d 518, 539 (4th Cir. 1990) (Not applying new rule retroactively on habeas review where new rule involved in validating sentencing regarding mitigating circumstances).

Notably, this Court did not explicitly hold that Greene was to apply retroactively, and Petitioner provided nothing to the post-conviction relief court to indicate this Court intended Greene to apply retroactively. However, the post-conviction relief court found that the decision in Greene "was purely a substantive state law decision and had no federal constitution double jeopardy consequences[,] and "until Greene, Easler was good law for interpreting state statutes on sentencing." Thus, even if Greene were applicable to Petitioner's case, it was not intended to be applied retroactively.

Accordingly, Respondent respectfully maintains that Greene does not apply retroactively, the principles in Greene do not apply to Petitioner's case, and Petitioner is not obliged to any relief therefrom. Furthermore, because Greene is not retroactive and does not apply to Petitioner's case, the post-conviction relief court correctly dismissed it as barred by the statute of limitations. This Court should deny certiorari.

CONCLUSION

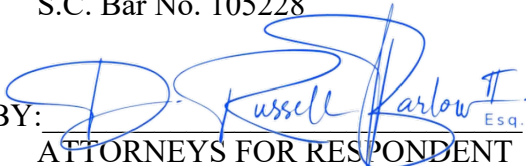
For the reasons stated above, this Court should deny the Petition for Writ of Certiorari and affirm the post-conviction relief court's denial of relief. Should this Court grant certiorari, Respondent requests permission under the rules to brief the issues discussed above fully.

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