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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas
J. Cordell Maddox, Circuit Court Judge

Appellate Case № 2025-000871
Lower Case No. 2021CP3203337

James Curtis Cobbert, III SCDC #293798,..... Petitioner

vs.

The State..... Respondent.

REPLY TO RETURN

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Argument

Question I

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

The State appears to argue that if an inmate within the Department of Corrections is unable to keep up with the weekly decisions by this court of the decisions by the United States Supreme Court, they can have no relief from a constitutional decision that impacted their sentence. Mr. Cobbert agrees the standard for relief should be high. The new decision should be one that changes a constitutional rule to the benefit of a defendant and is to be applied restoratively. The United States Supreme Court in granting relief to an inmate in Arizona required the inmate "to establish not just a "significant change in the law, but also that the law in question applies retroactively under this Court's analysis in *Teague v. Lane*, 489 U.S. 288 (1989)." *Cruz v. Arizona*, 598 U.S. 17, 28 (2023). Both apply in this case.

The question is not whether this court intended *State v. Greene*, 423 S.C.263, 814 S.E.2d 496 (2018) to apply retroactively, but whether as a matter of law, the decision is required to be applied retroactively. The United States Supreme Court in *Robinson v. Neil*, 409 U.S. 505 (1973) holds the double jeopardy decision is to be applied retroactively. This court, being bound by the ruling of the United States Supreme Court is required to apply it retroactively. To hold that a sentence is constitutionally void, but afford no remedy, is a violation of the due process clause of Article I, § 3 of the Constitution of the State of South Carolina and the 14th Amendment

of the Constitution of the United States of America. The state should have no interest in keeping any inmate incarcerated when the constitution says his sentence is invalid.

Question II

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

James Cobbert concedes the Post Conviction Relief judge in his first Post Conviction Relief hearing denied him relief by finding the consecutive sentences did not violate double jeopardy. He further concedes the United States District Court judge ruled the consecutive sentences did not violate the double jeopardy provisions of the state or federal constitution. These rulings were all prior to the holding of this court in *Greene*. This court must review this matter in light of the *Greene* decision. These prior rulings simply have no relevancy to this matter.

Respondent is correct when it claims, "Petitioner presented nothing to the post-conviction relief court indicating that this Court intended *Greene* to be applied retroactively." Ret. at 12. Nothing in the *Greene* addressed the question as to whether the opinion is to be applied retroactively.[1] Counsel for Mr. Cobbert did provide the Post Conviction Relief with the decision

[1] In *State v. Belcher*, 385 S.C. 597, 612–13, 685 S.E.2d 802, 810 (2009) this court said, "Because our decision represents a clear break from our modern precedent, today's ruling is effective in this case and for all cases which are pending on direct review or not yet final where the issue is preserved. . . . Our ruling, however, will not apply to convictions challenged on post-conviction relief." The absence of such language in *Greene* could be used as an

of the United States Supreme Court in *Robinson* which held that a double jeopardy violation is to be applied retroactively. App. at 46, ll 15-19. The issue of the retroactive application was squarely before the lower court. The order of the lower court specifically mentioned the *Robinson* decision. He attempted to distinguish the case by saying, "In Greene, [sic] however, it was purely a substantive state law decision and had no federal constitution double jeopardy consequences." App. at 231. The lower court seems to be saying *Greene* held the state double jeopardy provision was violated but not the federal. Such a finding does not impact the relevance of the *Robinson* decision on whether *Greene* is retroactive.

In an attempt to avoid the retroactive application of *Greene*, the state has argued, "Petitioner's constitutional claim that his conviction 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." App. at 13. As Judge Miller is a lower court judge he was required to rule in keeping with the decisions of this court. The State, of course, cited *State v. Easler*, 327 S.C. 121, 489 S.E.2d 617 (1997) in its return to the original petition for writ of certiorari. App. at 7. The fact that Mr. Cobbert raised the double jeopardy issue and the law at the time required the lower courts to rule in keeping with established law is not and legally cannot be dispositive of this issue. Mr. Cobbert has the right to bing this action and seek relief as a violation of double jeopardy.

The State further argues, "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." Ret. at 15. Contrary to the position of the State, *Blockerburger v. United States*,

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acknowledgment that *Greene* is retroactive.

284 U.S. 299 (1932) is not a same elements test but a same facts test. As the court said, "The 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." *Id.* at 304. In fact, the word "element" only appears one time in the entire opinion. Additionally, the protections of the double jeopardy clause cannot be so fragile that the intent of the legislature to violate double jeopardy gives them permission to violate double jeopardy. And this has to be true regardless of how many times the courts have said it. As the Texas court said, "Under this so-called cognate-pleadings approach, double-jeopardy challenges can be made even against offenses that have different statutory elements, if the same facts required to convict are alleged in the indictment." *Garfias v. State*, 424 S.W.3d 54, 58–59 (Tex. Crim. App. 2014). *See also, Commonwealth v. Huckleberry*, 429 Pa. Super. 146, 154, 631 A.2d 1329, 1333 (1993) (Comparison of the elements of the offenses persuades us that, under the circumstances presented here, the crimes of involuntary manslaughter and driving while under the influence of alcohol to a degree which rendered appellant incapable of driving safely merge for sentencing purposes.) As noted in the opening brief, the indictment for failure to stop for a blue light resulting in death alleges Mr. Cobbert violated the traffic laws of South Carolina. Pet. at 7-8. The out of state cases cited here and in the opening brief are simply another way of saying, " "It is because of this rule—one homicide, one homicide punishment—that even were we to accept the State's argument that the involuntary manslaughter guilty verdict should stand, an additional sentence for Alexis's death could not stand." *Greene*, at 283, 814 S.E.2d at 507. In keeping with the *Greene* decision and the holding of numerous cases across our country this court should hold the

consecutive sentences in this case violate double jeopardy.

Nor is *State v. Moyd*, 321 S.C. 256, 468 S.E.2d 7 (Ct. App. 1996) of benefit to the State. In *Moyd* the State was required to prove two very different facts in each case. Mr. Moyd was charged with driving under suspension and driving while being an habitual offender. Proving a driver is under suspension is a different from proving is driving after having been declared an habitual offender. Under no theory can driving while the license is suspended be a lesser included of driving after being declared an habitual offender. While there may have been one driving act, the act violate two very distinct offense.[2]

Question III

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

Petitioner notes with interest that the State never addressed the impact of *Robinson v. Neil*, 409 U.S. 505 (1973) on the issue of the *Greene* decision being retroactive. Perhaps this is because *Robinson* clearly says it should be applied retroactively. As the United States Supreme Court more recently said, "[W]here the conviction or sentence in fact is not authorized by substantive law, then finality interests are at their weakest. As Justice Harlan wrote, '[t]here is little societal interest in permitting the criminal process to rest at a point where it ought properly never to repose.'" *Welch v. United States*, 578 U.S. 120 (2016)(internal citations omitted). The

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[2] If a driver were first tried with either charge, a finding of not guilty based on the issue who was driving would act as a means of preventing the second trial of the other driving charge. This is under the collateral estoppel aspect of double jeopardy. *See, Ashe v. Swenson*, 397 U.S. 436 (1970)

double jeopardy violation against Mr. Cobbert in this case is not authorized by law today. As noted previously, the State has no interest in keeping Mr. Cobbert incarcerated beyond the time the law allows. The State has offered no reason why the *Greene* case should not be applied retroactively. The State urges this court to deny relief because the double jeopardy issue was ruled upon by two previous judges. The State failed to note that both judges followed the existing law in the *Easler* decision. Mr. Cobbert should not be punished for the judges following the law that existed at the time. As no valid reason has been given for not applying the *Greene* retroactively, this Court should grant petition in this matter.

CONCLUSION

For the foregoing reasons, this court should grant the Petition for Writ of Certiorari either as an application for Writ of Certiorari from his Post Conviction Relief application or as a *Butler* petition and remand the case for re-sentencing in keeping with the *Greene* decision.

February 2, 2026

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