THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court Of Common Pleas
Circuit Court Case No. 2024CP4001737

The Honorable Kristi Curtis, Circuit Court Judge

Appellate Case No. 2025 - 000762

Alonzo C. Jeter, III, ...Appellant,

v.

State of South Carolina, Alan McCrory Wilson, Chelsey F. Marto, Joseph Derham Cole, Mark J. Hayes, II, Ralph Keith Kelly, Brandy W. McBee, Tonnya K. Kohn, Jean Hoefer Toal, Donald W. Beatty. . . . . Respondents.

BRIEF OF RESPONDENTS STATE AND WILSON

ALAN WILSON
Attorney General

W. JEFFREY YOUNG
Chief Deputy Attorney General

J. EMORY SMITH, JR.
General Counsel
S.C. Bar No. 5262

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3680
Email: esmith@scag.gov

ATTORNEYS FOR THE STATE AND WILSON

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STATEMENT OF ISSUES ON APPEAL

1. Whether the circuit court correctly dismissed for lack of subject matter jurisdiction when Appellant lacked standing and sought relief the circuit court has no authority to grant.

2. Whether dismissal under Rule 12(b)(6) should be affirmed because the action is barred by res judicata and otherwise fails to state a claim.

3. Whether Appellant's procedural complaints (Rule 6 notice/continuance, failure to rule on motions, omission of "with/without prejudice," and denial of leave to amend) warrant reversal.

STATEMENT OF THE CASE

Appellant filed a civil complaint March 18, 2024 seeking declaratory and prospective injunctive relief directing the scheduling of PCR matters and the appointment of counsel, including challenges to an October 6, 2008 administrative order of former Chief Justice Toal governing appointment of counsel in PCR cases. R. p. *.

Respondents State of South Carolina and Attorney General Wilson moved to dismiss on May 8, 2024, under Rules 12(b)(1) and 12(b)(6) for lack of subject matter jurisdiction and failure to state a claim. R. p. *. Appellant submitted a return and the State and Attorney General submitted a memorandum in support of the Motion to Dismiss on June 11, 2024. R. p. *. Although Appellant's Complaint refers to a prior application, *Jeter v. State*, 2019CP1100457, that action has ended. It was dismissed on August 30, 2021, by the Honorable Derham Cole, for successiveness, as barred by res judicata and for failure to establish a prima facie case of newly discovered evidence. R. p. *. On April 29, 2022, the court denied Appellant's Motion to Alter or Amend

made on multiple grounds including the failure to appoint counsel or to grant him an evidentiary hearing. R. p. * The Supreme Court dismissed his appeal and denied rehearing on October 28, 2022. R. p. * (Copies of the three orders are attached for purposes of the 12(b)(1) motion only).

The Motion to Dismiss of the State and the Attorney General and the Motion of other Respondents were heard on June 13, 2024, in the virtual courtroom of the Honorable Kristi Curtis. R. p. * . In her Order of Dismissal filed September 13, 2024, Judge Curtis noted the following:

> At the hearing, Mr. Jeter claimed that he did not receive sufficient notice of the hearing to prepare. This Court gave him additional time to submit any other material he wanted the Court to consider. He has now done so, and the documents he has submitted do not change the result in this case. Mr. Jeter's action still fails for the following reasons.

R. p. *. The Court then dismissed the case because of lack of standing and thus lack of subject matter jurisdiction because Appellant had not raised his issues pursuant to a current application for post-conviction relief, and that his prior application had ended. R. p. *. As found by the Court,

> Therefore, he has no "injury in fact," and even if he did, it would not be "likely" to be "redressed by a favorable decision" because this Court lacks the authority to overrule the Supreme Court's rules or orders. *See infra*. Of course, none of the Defendants may be compelled to disregard the rules and orders of the Supreme Court. Although several defendants are judges, including the Chief Justice, they cannot be compelled to overturn rules and issue scheduling orders—via a declaratory judgment suit. *See, eg. City of Rock Hill v. Thompson*, 349 S.C. 197, 200, 563 S.E.2d 101, 103 (2002)("Issuance of a particular decision by a judge is typically a matter of discretion and, therefore, not proper for mandamus.").

R. p. *. The Court also found lack of subject matter jurisdiction in that it lacked authority to issue statewide scheduling directives or overturn Supreme Court rules and orders. R. p. *. Judge Curtis also ruled that Appellant failed to state a cause of action in that he either raised or could have attempted to raise these issues in the 2019 post-conviction proceeding, and therefore he is barred from raising them now under res judicata. R. p. *.

STANDARD OF REVIEW

As for the dismissal under Rule 12(b)(1), '"[t]he question of subject matter jurisdiction is a question of law for the court.' . . .[The Court of Appeals is] free to decide questions of law with no deference to the trial court." *Cap. City Ins. Co. v. BP Staff, Inc*., 382 S.C. 92, 99, 674 S.E.2d 524, 528 (Ct. App. 2009).

As stated in *Grimsley v. S.C. L. Enf't Div*., 396 S.C. 276, 281, 721 S.E.2d 423, 426 (2012), regarding dismissal under Rule 12(b)(6):

> "On appeal from the dismissal of a case pursuant to Rule 12(b)(6), an appellate court applies the same standard of review as the trial court." *Rydde v. Morris*, 381 S.C. 643, 646, 675 S.E.2d 431, 433 (2009). "That standard requires the Court to construe the complaint in a light most favorable to the nonmovant and determine if the facts alleged and the inferences reasonably deducible from the pleadings would entitle the plaintiff to relief on any theory of the case." *Id*. If the facts alleged and inferences deducible therefrom would entitle the plaintiff to any relief, then dismissal under Rule 12(b)(6) is improper.

ARGUMENT

I

THE CIRCUIT COURT CORRECTLY DISMISSED FOR LACK OF SUBJECT MATTER JURISDICTION

The basis for the Court's finding of lack of subject matter jurisdiction was Appellant's lack of standing. R. p. * (Order at p. 3); *See Lennon v. South Carolina Coastal Council*, 498 S.E.2d 906, 908, 330 S.C. 414, 417-18 (S.C.App., 1998)("South Carolina courts, like the federal courts,

require a justiciable case or controversy before any decision on the merits can be reached."). The dismissal order applied the familiar three-part standing test, requiring injury-in-fact, traceability, and redressability, and found Appellant failed to satisfy these elements because he did not proceed via a current PCR application and any alleged injury could not be redressed by a circuit court order contrary to Supreme Court rules and orders R. p. * (Order at p. 3). *ATC S.., Inc. v. Charleston Cnty.*, 380 S.C. 191, 195-96, 669 S.E.2d 337, 339 (2008). As stated by Judge Curtis:

> Plaintiff fails to meet these standards because he has not raised this issue pursuant to a current application for post-conviction relief. His prior action has ended. Therefore, he has no "injury in fact," and even if he did, it would not be "likely" to be "redressed by a favorable decision" because this Court lacks the authority to overrule the Supreme Court's rules or orders. *See infra*. Of course, none of the Defendants may be compelled to disregard the rules and orders of the Supreme Court. Although several defendants are judges, including the Chief Justice, they cannot be compelled to overturn rules and issue scheduling orders—via a declaratory judgment suit. *See, eg. City of Rock Hill v. Thompson*, 349 S.C. 197, 200, 563 S.E.2d 101, 103 (2002)("Issuance of a particular decision by a judge is typically a matter of discretion and, therefore, not proper for mandamus.").

R. p. * (Order at p. 4).

The dismissal order concluded that neither the PCR Act nor Supreme Court rules and orders empower the circuit court to issue a statewide scheduling order, to schedule matters outside a pending PCR, or to overturn the 2008 administrative order; the Supreme Court's rules and administrative authority bind lower courts. R. p. *. As stated by Judge Curtis:

> Scheduling and the appointment of counsel are governed by the Uniform Post-Conviction Relief Act, S.C. Code Ann. §17-1-10, et seq., including §17-27-70 which provides for summary dismissal when appropriate, and Rule 71.1, SCACR which provides that counsel should be appointed only when a hearing is required. In particular, Plaintiff challenges an order of former Supreme Court Chief Justice Toal of October 6, 2008, for the appointment of counsel. Neither the PCR Act nor an order of the Supreme Court give the circuit court the authority to issue a statewide scheduling order, to schedule matters outside a pending PCR proceeding or to overturn the 2008 Order of the Chief Justice.

R. p. * (Order at p. 4). Just as the Court of Appeals is bound to follow Supreme Court precedent, a circuit court must do so also, and it lacks the authority to issue Statewide scheduling orders.[1]

Appellant's effort to invoke "public importance" standing does not cure the fatal redressability problem: he seeks declarations and injunctions directing statewide PCR scheduling and appointments contrary to governing rules and an administrative order of the Supreme Court. No matter how framed, such relief is unavailable from a circuit court, rendering any claimed injury non-redressable. *See also infra.*

Appellant's litigation target is the architecture of PCR administration, not a case-specific dispute. A declaratory/injunctive suit in circuit court cannot countermand Supreme Court administrative directives. The jurisdictional dismissal should be affirmed.

II

APPELLANT'S PROCEDURAL COMPLAINTS DO NOT WARRANT REVERSAL

A

The Circuit Court Properly Addressed Appellant's Complaints About Notice

At the WebEx hearing, Appellant complained that he did not receive notice of the hearing to prepare. R. p. * Tr .p. p. 9, line 14 – p. – p. 10, l. 3). He was given time to argue then and to submit post-hearing any additional documents he wanted the Court to consider. The Court found

[1] *See* S.C. Const. art. V, § 9 ("The decisions of the Supreme Court shall bind the Court of Appeals as precedents.") *State v. Cheeks*, 400 S.C. 329, 342, 733 S.E.2d 611, 618 (Ct. App. 2012), aff'd as modified, 408 S.C. 198, 758 S.E.2d 715 (2014); art. V, §4 ("The Chief Justice of the Supreme Court shall be the administrative head of the unified judicial system.. . . . The Supreme Court shall make rules governing the administration of all the courts of the State. Subject to the statutory law, the Supreme Court shall make rules governing the practice and procedure in all such courts. . . ."); S.C. Code Ann. §17-27-110 (authority of Supreme Court to issue rules for the purpose of post-conviction proceedings).

that the documents that he submitted did not change the result in this case. R. p. * Order at p. 1. Although Appellant does not appear to have requested specifically a continuance (*see* transcript*, supra*), he certainly asserted that he did not receive notice of the hearing. Assuming, *arguendo,* that he, in effect, asked for a continuance, "[t]he grant or denial of a continuance lies with the sound discretion of the trial court and such ruling will not be reversed absent a clear showing of abuse of discretion." *M & M Grp., Inc. v. Holmes*, 379 S.C. 468, 474–75, 666 S.E.2d 262, 265 (Ct. App. 2008). The Judge most certainly did not abuse his discretion in letting Appellant argue at that hearing and giving him time to submit additional documents rather than stopping the hearing and postponing it to a later date.[2] Appellant's attempt to raise this issue later by his Rule 60 motion (R. p. *) is belated in that he had already complained about notice at the hearing, and none of the grounds of that Rule cover a matter already addressed at a hearing.

[2] Whether Appellant received any notice or sufficient notice of the hearing need not be decided because the matter was addressed by the Judge by giving Appellant an opportunity to be heard then and allowing the submission of briefs. The hearing was held on June 13, 2024, as scheduled by the Clerk, more than 30 days after the State filed its Motion to Dismiss. *See* R. p. *(Tr. P.4, ll. 3-5, p. 6, l. 16 – p. 7, l. 10); Statement of Facts, *supra; see also Jackson v. Speed,* 326 S.C. 289, 310, 486 S.E.2d 750, 760 (1997*)*("Rule 6(d), SCRCP, provides notice of a hearing 'shall be served not later than ten days before the time of the hearing, unless a different period is fixed ... by order of the court.' Here, on February 1, 1995, the hearing date was set by an order of the trial judge. Thus, a different period was fixed by order of the court and appellants were not entitled to ten days notice."

B

Appellant's Issue That The Court Did Not Specify Dismissal As With or Without Prejudice Is Not Preserved and Is Immaterial

Appellant contends that the circuit court should have dismissed the case without prejudice. He does not appear to have raised this issue in his Motion to Alter or Amend.[3] R. p. *. Because he failed to raise the issue in the circuit court by that Motion, it is not before the Court now. *See Crescent Homes SC, LLC v. CJN, LLC*, 445 S.C. 164, 195, 912 S.E.2d 389, 405 (Ct. App. 2024), *reh'g denied* (Mar. 12, 2025("Crescent did not make [its] argument in its Rule 59(e) motion. Therefore, it is unpreserved. *See Caldwell,* 402 S.C. at 576, 741 S.E.2d at 589 ('Issues and arguments are preserved for appellate review only when they are raised to and ruled on by the [trial] court.')."

Although the Order does not state whether the dismissal is with or without prejudice, the State would argue that the Order has the preclusive effect of a dismissal with prejudice because of the grounds for the ruling. Even if, *arguendo*, Appellant's issue was preserved, it lacks merit because a Court clearly has the authority to grant a motion to dismiss with prejudice. *See, eg.* the following cases affirming the of granting motions to dismiss with prejudice on grounds that included lack of subject matter jurisdiction, *Sheppard v. S.C. Dep't of Prob., Parole & Pardon Servs.,* No. 2006-UP-334, 2006 WL 7286620, at *1 (S.C. Ct. App. Sept. 20, 2006)("Because the trial court could determine solely from the complaint and the previous order that res judicata applied, a hearing was unnecessary and the trial court did not err in dismissing the case before holding a hearing."); *Blackwell v. Birket*, No. 2010-UP-330, 2010 WL 10080068, at *3 (S.C. Ct.

[3] He says that he raised the issue in an unidentified later motion, but even if he did so, it would be untimely as Rule 59 motions are required within 10 days of the receipt of notice of the entry of the Order at issue.

App. Nov. 15, 2010); *Poch v. Bayshore Concrete Prods./S.C., Inc*., 386 S.C. 13, 32, 686 S.E.2d 689, 699 (Ct. App. 2009), aff'd as modified, 405 S.C. 359, 747 S.E.2d 757 (2013). Given that Appellant was seeking relief that the Court could not provide (*supra,* Argument I), dismissal with prejudice was appropriate.

Appellant's assertions that the court failed to rule on every motion and did not specify prejudice do not supply jurisdiction or state a claim. The September 13, 2024, dismissal resolves the case on dispositive grounds; any omission to label the dismissal "with prejudice" is immaterial where jurisdictional bases compel dismissal.

C

The Court Did Not Err By Not Granting Appellant's Motion to Amend

Appellant's Motion to Amend (R. p. *) asserts that he wants to allege public importance standing, but he gives no reason why he believes that he does have such standing except to say vaguely that future guidance is needed because of unspecified, repeated conduct of the defendants for which future guidance is needed. His motion did not appear to contend, as he alleges in his brief, that he has ongoing financial harm. Although not required, he attaches no proposed amended complaint alleging such standing. Therefore, no basis exists for a court to grant the motion.

Here, the primary grounds for dismissal were that the court lacked subject matter jurisdiction due to lack of standing because Plaintiff did not bring his claim as a post conviction relief proceeding and because a circuit court lacks authority to overrule the Supreme Court or issue Statewide scheduling orders for PCR. *See supra*, Argument I. Plaintiff argues generally that he

would like to allege public interest standing but such standing cannot side step the barrier to a court's taking up this matter. It would be futile.

> In rare cases, however, a trial court may deny a motion to amend if the amendment would be clearly futile. *See Jennings v. Jennings*, 389 S.C. 190, 209, 697 S.E.2d 671, 681 (Ct. App. 2010) ("Although leave to amend should generally be 'freely given,' ... it may be denied where the proposed amendment would be futile."),[footnote omitted] rev'd on other grounds, 401 S.C. 1, 736 S.E.2d 242 (2012); 6 Charles Alan Wright, Arthur R. Miller & Mary Kay Kane, Federal Practice and Procedure § 1487 (3d ed. 2010) ("If a proposed amendment is not clearly futile, then denial of leave to amend is improper.").
>
> Here, the circuit court did not conduct an analysis to determine whether any amendment would be futile. The court of appeals, however—without articulating any such analysis—found the "amendment would be futile." *Skydive*, Op. No. 2017-UP-118 at 3 n.1. We have attempted to conduct the analysis to determine whether, in fact, any amendment would be futile.

Skydive Myrtle Beach, Inc. v. Horry Cnty., 426 S.C. 175, 182–83, 826 S.E.2d 585, 589 (2019). Here, public importance standing would not allow a pathway to Court for Appellant. Public importance standing are set forth in *S.C. Pub. Int. Found. v. S.C. Dep't of Transportation*, 421 S.C. 110, 118–19, 804 S.E.2d 854, 858–59 (2017):

> the purpose of public importance standing, which is to "[a]llow[ ] interested citizens a right of action in our judicial system when issues are of significant public importance to ensure[ ] ... accountability and the concomitant integrity of government action." *Sloan v. Greenville Cnty.*, 356 S.C. at 551, 590 S.E.2d at 349. However, as this Court recognized:
>
> > An appropriate balance between the competing policy concerns underlying the issue of standing must be realized. Citizens must be afforded access to the judicial process to address alleged injustices. On the other hand, standing cannot be granted to every individual who has a grievance against a public official. Otherwise, public officials would be subject to numerous lawsuits at the expense of both judicial economy and the freedom from frivolous lawsuits.
>
> *Sloan v. Sanford*, 357 S.C. 431, 434, 593 S.E.2d 470, 472 (2004). Thus, when deciding whether to confer public importance standing, courts must take these competing policy concerns into consideration, and must also determine whether the party presents an issue of public importance and whether future guidance on that issue is needed. *119 ATC S., 380 S.C. at 198-99, 669 S.E.2d at 341. However, as this Court has acknowledged, since many issues may be of public interest, or importance, "[t]he key ... is whether a resolution is needed for future guidance." Id. at 199, 669 S.E.2d at 341; *Carnival Corp. v. Historic*

> *Ansonborough Neighborhood Ass'n*, 407 S.C. 67, 79-80, 753 S.E.2d 846, 853 (2014) ("Whether [public importance standing] applies in a particular case turns on whether resolution of the dispute is needed for future guidance.... [T]he need for future guidance generally dictates when [public importance standing] applies.").

Whatever the scope of public importance standing, it cannot vest a circuit court with authority to issue statewide directives or nullify Supreme Court rules and orders. The dismissal order correctly recognized this structural constraint.

Although the circuit court did not address the motion to amend expressly, it denied the motion to alter or amend ending the case after Appellant had moved to amend and made numerous other filings. Appellant is not prejudiced because, as discussed above, an amendment alleging public importance standing would have been futile.

III

Dismissal Also Should Be Affirmed on Grounds of Res Judicata

If, *arguendo,* this case were not subject to dismissal on the basis of lack of subject matter jurisdiction, it should be affirmed on the basis of res judicata under Rule 12(b)(6). Judge Curtis found as follows that this action should be dismissed on grounds of res judicata:

> Because Plaintiff either raised or could have raised issues in this proceeding in the 2019 case he references, he is barred now from asserting them in the instant suit. Res judicata bars subsequent actions by the same parties when the claims arise out of the same transaction or occurrence that was the subject of a prior action between those parties. Judy v. Judy, 393 S.C. 160, 172, 712 S.E.2d 408, 414 (2011)("Under the doctrine of res judicata, '[a] litigant is barred from raising any issues which were adjudicated in the former suit and any issues which might have been raised in the former suit.'").

Tr. P. * (Order at p. 5). Appellant includes pages of arguments related to that proceeding including many statements without citation to the record which should be disregarded. Rule 208((b)(4)("The brief shall contain references to . . . material which may be properly included in the Record on

Appeal . . . to support the salient facts alleged."). His arguments miss the point that he should have attempted to raise those issues in the earlier proceedings, and he is barred from doing so now.

This Court need not reach the statute of limitations issue because Appellant contends that he is not challenging his conviction. Appellant's Brief at pp. 26, 39 and 40.

CONCLUSION

The judgment should be affirmed. The circuit court correctly dismissed for lack of subject matter jurisdiction and, alternatively, for failure to state a claim based on res judicata, Appellant's procedural challenges show no reversible error and, in any event, cannot cure the dispositive legal defects.

Respectfully submitted,

ALAN WILSON
Attorney General

W. JEFFREY YOUNG
Chief Deputy Attorney General

s/J. Emory Smith, Jr.
J. EMORY SMITH, JR.
General Counsel
S.C. Bar No. 5262

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3680
Email: esmith@scag.gov

ATTORNEYS FOR THE STATE AND ATTORNEY GENERAL

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