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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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On Petition for Writ of Certiorari to the Court of Common Pleas  
Appeal from Colleton County

Honorable Frank R. Addy, Circuit Court Judge

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Appellate Case No. 2025-001228

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RICHARD CAMPODONICO,

PETITIONER,

v.

STATE OF SOUTH CAROLINA,

RESPONDENT.

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**RETURN TO PETITION  
FOR WRIT OF CERTIORARI**

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**STATEMENT OF ISSUE ON PETITION FOR CERTIORARI**

“Under the reasoning of State v. Plumer, 439, S.C. 346, 887 S.E.2d 134 (2023), can a PCR applicant on appeal challenge his facially illegal sentence to possession of a weapon during the commission of a violent crime without raising the issue below?”

**COUNTERSTATEMENT OF ISSUE ON PETITION FOR CERTIORARI**

Whether a PCR applicant can bypass longstanding preservation rules and create a new claim on PCR appeal without raising the issue below?

## STATEMENT OF THE CASE

In April 2021, the Charleston County Grand Jury indicted Applicant for first-degree burglary; this charge arose from the home invasion of Faye and Katelyn Hartley on January 2, 2021. In October 2022, the Colleton County Grand Jury indicted Applicant for murder, first-degree burglary, armed robbery, and possession of a weapon during a violent crime. These charges arose from the home invasion of Michael and Tracy Staton on September 6, 2022, which resulted in the death of Michael Staton.

On October 10, 2022, Applicant appeared before the Honorable Carmen T. Mullen in Colleton County and pled guilty to all charges as indicted. David Matthews, Esquire, represented Applicant on the Colleton charges, and Lindsay Luthringer, Esquire, represented Applicant on the Charleston charge. Judge Mullen sentenced Applicant concurrently to life for murder and each burglary charge; thirty years for armed robbery; and five years for the weapon charge. Applicant did not appeal.

On April 15, 2025, an evidentiary hearing was held at the Beaufort County Courthouse before the Honorable Frank R. Addy, Jr. Applicant was present and represented by Chelsey Marto, Esquire. Assistant Attorney General Kylee Kanealey represented Respondent. On May 6, 2025, Judge Addy denied and dismissed the application. On June 20, 2025, Petitioner filed a timely notice of appeal. Petitioner filed his Petition for Writ of Certiorari on January 7, 2026.

This Return to Petition for Writ of Certiorari follows.

## ARGUMENT

**A PCR applicant cannot bypass longstanding preservation rules and create a new claim on PCR appeal without raising the issue below.**

After pleading to numerous charges, including murder and two first-degree burglary charges, receiving three life without parole sentences, Petitioner sought post-conviction relief. After raising numerous allegations at the post-conviction relief hearing in an effort to obtain a new trial, Petitioner's efforts were unsuccessful. The PCR judge issued a Form 4 denying Petitioner's claims and, in the same order, called to Petitioner's attention that Petitioner also had a sentencing issue not presented. Because this issue was not presented, the PCR judge said he would not rule on the issue. Petitioner then, after the issue was called to his attention, did not seek a ruling on this issue and instead filed a Petition for Writ in the Supreme Court seeking discretionary review. Although no meaningful relief can be given to Petitioner seeking relief on a five-year concurrent charge while serving three life without parole sentences, Petitioner, after electing not to seek a ruling on this issue once it was called to his attention, now seeks discretionary review.

The State acknowledges that Petitioner's five-year sentence for the weapons charge is inappropriate pursuant to section 16-23-490 of the South Carolina Code. However, this issue is not preserved for appellate review because it was not raised to or ruled upon by the PCR court; instead, it is being raised for the first time on appeal.

“In our adversarial system of adjudication, we follow the principle of party presentation.” United States v. Sineneng-Smith, 590 U.S. 371, 375 (2020). At a minimum, issue preservation requires that an issue be raised to and ruled upon by the trial judge. Herron v. Century BMW, 395 S.C. 461, 465, 719 S.E.2d 640, 642 (2011) (citing Wilder Corp. v. Wilke, 330 S.C. 71, 76, 497 S.E.2d 731, 733 (1998)). “It is ‘axiomatic that an issue cannot be raised for the first time on appeal.’” Id. (quoting Wilder Corp. v. Wilke, 330 S.C. at 76, 497 S.E.2d at 733).

Here, Petitioner did not raise this issue in his initial PCR application, his amended PCR application, or at the evidentiary hearing. Further, Petitioner did not file a Rule 59(e) motion asking the Court to rule on this issue. This issue was simply never presented to the PCR court in *any* capacity. Thus, this issue is procedurally barred from appellate review. See Marlar v. State, 375 S.C. 407, 410, 653 S.E.2d 266, 267 (2007), abrogated by Fishburne v. State, 427 S.C. 505, 832 S.E.2d 584 (2019) (finding because the issues were not preserved for appellate review, the Court of Appeals erred in addressing the merits of the issues and remanding the matter to the PCR judge). See also Plyler v. State, 309 S.C. 408, 413, 424 S.E.2d 477, 480 (1992), overruled on other grounds by State v. Burdette, 427 S.C. 490, 832 S.E.2d 575 (2019) (affirming Plyler's conviction and sentence where his argument was raised for the first time on certiorari). Here, Petitioner raised the issue of his concurrent weapons charge sentence for the first time on certiorari.

Petitioner heavily relies on State v. Plumer, 439 S.C. 346, 887 S.E.2d 134 (2023). (Pet. P. 4). In Plumer, our Supreme Court carved out a narrow exception where an appellate court may correct an illegal sentence issue on *direct appeal* even if the defendant did not object to the sentence at trial. Plumer, 438 S.C. at 351, 887 S.E.2d at 137. However, in the present case, and much unlike in Plumer, Petitioner went far beyond failing to object to the sentence at trial. Petitioner did not object to the sentence at his guilty plea. He did not file a direct appeal challenging the sentence. He did not raise the issue in his initial post-conviction relief application. He did not raise the issue in his amended post-conviction relief application. He did not raise the issue at the post-conviction relief hearing. And he did not raise the issue in a Rule 59(e), SCRPC, motion.

The distinction between Plumer and this case *does*, in fact, matter. Not only did Plumer not eradicate long-standing issue preservation rules, but Plumer is also applicable in a direct appeal context rather than a PCR context. Petitioner had ample opportunity to raise this issue in a direct

appeal context as well as before and during his PCR proceeding. Merely because he failed to do so does not permit him to raise this issue for the first time in his PCR appeal. Therefore, this issue is not preserved for appellate review, and the State requests that this Court deny certiorari.

**CONCLUSION**

For the reasons stated above, this Court should deny the Petition for Writ of Certiorari. Should this Court grant certiorari, Respondent requests permission under the rules to brief the issues discussed above fully.

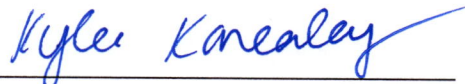
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