THE STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

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S.C. SUPREME COURT

APPEAL FROM CHARLESTON COUNTY

Dale E. Van Slambrook, Chief Administrative Judge - Common Pleas

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CASE NO. 2026-000503

Anthony D.J. Wilder Appellant

v

State of South Carolina Respondent

Petition for Writ of Certiorari

Anthony D.J. Wilder
Kershaw Corr. Inst.
4848 Goldmine Hwy
Kershaw, SC. 29067

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2. Did the PCR court error in applicant did not set forth sufficient allegations of newly discovered evidence to warrant hearing?

3. Did the PCR court error in dismissing application as successive, alleging applicant did not provide 'sufficient reason' why current grounds for relief were not raised in previous application?

Statement of the Case

I, appellant was indicted by the Charleston County Grand Jury for Murder, first degree burglary, assault and battery with intent to kill, and two counts of Kidnapping. Lionel S. Lofton and V. Lynn Lofton represented me. Assistant Solicitors Nathan Stuart Williams and Julie Cardillo represented the State.

On May 5, 2008 I went before the Honorable J. Derham Cole in a jury trial. where the jury found me guilty, and on May 9, 2008 Judge Cole sentenced me to life for murder, life for first degree burglary, twenty years for assault and battery with intent to kill, and thirty years for kidnapping. I filed a timely notice of appeal, and was represented by Chief Appellate Defender Robert Dudek. The South Carolina Court of Appeals denied appeal August 9, 2011 in unpublished opinion. State v. Wilder, Op. No. 2011-UP-385. I filed a petition for Rehearing which was denied on November 17, 2011. Then filed a petition for writ of certiorari in the South Carolina Supreme Court on December 29, 2011. On March 20, 2013 the South Carolina Supreme Court denied petition. The remittitur was issued on April 9, 2013.

I filed an application for post conviction relief on September 25, 2013. Respondent made its return on February 19, 2014 and filed on February 21, 2014. A notice of amendment was filed on April 24, 2014 to the Post Conviction application by James Falk of the Bush Law Group, P.C. On December 15, 2015 a evidentiary was held at the Charleston County Courthouse before the Honorable Deadra Jefferson. I was represented by Naki Richardson-Bax. J. Ruttledge Johnson represented the State.

On May 5, 2016 the PCR judge signed order of dismissal that was filed May 6, 2016 denying application. PCR counsel received order of dismissal on May 16, 2016 and filed motion to alter or amend judgment on May 26, 2016. On July 26, 2016 PCR judge signed and filed amended order of dismissal.

On March 8, 2017, John H. Strom, of the South Carolina Commission on Indigent Defense, filed a Johnson petition for writ of certiorari in the Supreme Court of South Carolina. The South Carolina Supreme Court ordered the case transferred to the South Carolina Court of Appeals on October 30, 2017. On September 5, 2018 the South Carolina Court of Appeals denied writ of certiorari and granted counsel's request to withdraw. I filed a petition for rehearing on September 25, 2018. On October 18, 2018 the South Carolina Court of Appeals denied petition for rehearing. The remittitur was issued on November 28, 2018.

Second Post Conviction Relief application was filed on February 19, 2019. Proposed order of dismissal was signed July 1, 2020 and filed on July 10, 2020 by the Honorable Jennifer B. McCoy. It was served on August 3, 2020 by Affidavit of Personal Service. My response to conditional order of dismissal was filed on August 17, 2020. Additionally, a motion for leave to file an amended response to Conditional order of dismissal with motion to amend response was filed on May 12, 2025. final order of dismissal was signed on January 28, 2026 and filed on February 12, 2026 by the Honorable Dale E. Van Slambrook.

Standard of Review

When considering the State's motion for summary dismissal of an application, where no evidentiary hearing has been held, the Circuit Court must assume facts presented by an applicant are true and view those facts in the light most favorable to the applicant. Similarly, when reviewing the propriety of a dismissal, this Court must view the facts in the same fashion. Leamon v. State, 363 S.C. 432, 434, 611 S.E.2d 494, 495 (2005) (citing S.C. Code Ann. § 17-27-80). Where an applicant alleges facts that would establish an exception to either the statute of limitations or the prohibition against successive PCR applications and those facts are not conclusively refuted by the record before the PCR court, a question of fact is raised which can only be resolved by a hearing. McCoy v. State, 401 S.C. 363, 737

S.E.2d 623 (2013)(citing Cf. Delaney v. State, 269 SC. 555, 556, 238 S.E.2d 679 (1977)).

FACTS

I, appellant was convicted and sentenced after a jury trial on May 9, 2008 by Judge J. Derham Cole. A timely notice of appeal was filed, where the South Carolina Court of Appeals denied appeal August 9, 2011. Rehearing was denied on November 17, 2011. I then file a petition for writ of certiorari in the South Carolina Supreme Court on December 29, 2011. On March 20, 2013 the South Carolina Supreme Court denied petition. The remittitur was issued on April 9, 2013. First application for post conviction relief was filed on September 25, 2013. Amended order of dismissal was filed on July 26, 2016. On March 8, 2017 a Johnson petition for writ of certiorari was filed in the South Carolina Supreme Court. After case being transfered to the South Carolina Court of Appeals, petition was denied. A petition for rehearing filed was also denied on October 18, 2018. The remittitur was issued on November 28, 2018.

I wrote a letter on October 4, 2018 and November 8, 2018 to Mr. Steven D. Tuttle, Deputy Director of Archives and Record Management from the South Carolina Department of Archives and History, inquiring whether is there no visible impression of the Great Seal of the State on Act No.s: 1993 Act No. 184, 1995 Act No. 7, 1996 Act No. 317, 1998 Act No. 402, and 2002 Act No. 278. I received a response from the South Carolina Department of Archives and History on October 12, 2018 and November 14, 2018 informing me that there was no visible impression of the Great Seal of the State on the above Acts.

Second Post Conviction Relief application was filed on February 19, 2019, base on being held in custody unlawfully pursuant to S.C. Code Ann. §17-27-20 (A)(1)(2)(6) newly discovered evidence, where there was no visible impression of the Great Seal of the State that could be located on the following Act(s) No.: 1993 Act No.

184, 1995 Act No. 7, 1996 Act No. 317, 1998 Act No. 402, 2002 Act No. 278; and 17-27-90 Ineffective assistance of counsel: for failing to object to in court identification; for failing to consult with an independent expert witness; for not objecting to admittance of evidence a mask State's No. 113, and a glove State No. 114 where there was a missing link in the chain of custody; for not objecting to the admittance of State's evidence where there was a missing link in the chain of custody because the evidence custodian could not be identify at the evidence compound; for erroneously arguing Rule 702, SCRE refers to reliability of evidence; and Ineffective assistance of appellate counsel for not raising issue properly preserve for appeal.

During first Post Conviction Relief evidentiary hearing I raised ineffective assistance of counsel for not objecting to hearsay testimony and Solicitor Constituted prosecutorial misconduct when allowed State witness to commit perjury in trial testimony. App. 1037, LN 19-1041, LN 13. When I continued an went to raise trial counsel was ineffective for not objecting to the admittance of evidence. The State objected to it as not raised in application. PCR counsel explained that there suppose to be two amended applications by original appointed counsel Mr. Falk. App. 1041, LN 19-1043. When PCR counsel and I proceeded and attempted to raise trial counsel was ineffective for not objecting to a mask marked State's Exhibit No. 113 and a glove marked State's Exhibit No. 114. The Court objected to it, as not seeing it in application. PCR counsel asked the Court to be able to talk about this evidence that was submitted. The Court said, "Confine everything to appellate counsel, not trial counsel. Because the Court was not going to go back and rehash all that. If he objected to it that's a forgone issue. Direct questions to what appellate counsel did, because I'm not going to go through every piece of evidence that's in this voluminous record because the evidence he's talking about his lawyer objected to it." App. 1044, LN 14-1046, LN 4.

Where I proceeded an raised ineffective assistance of appellate counsel in that he did not raise issue of whether the trial court was correct in admitting certain physical evidence over timely objection of trial counsel App. 1043

Because his failure to raise a issue that was properly preserve for appeal, where a objection was made to a mask marked State's Exhibit No. 104, pair of gloves marked State's Exhibit No. 105, and pair of gloves marked State's No. 106 because collection officers did not identify this evidence and trial judge overruled the objection. App. 1047, LN 13-1048, LN 6. I continued, appellate counsel was ineffective because he argued under the same Rules of Evidence as trial counsel that Rule 702, SCRE deals with reliability of evidence. Where Rule 702, SCRE relates to testimony of experts. The State objected claiming this issue has been raised and ruled upon by the Court of Appeals. PCR counsel asked to allow me to explain better. The Court ruled that it does deal with reliability... The pants have already been dealt with in appeal... And they have already ruled there is no basis under the case law regarding the DNA that was developed from his pants. App. 1047, LN 13-1049, LN 21.

In PCR counsel direct examination of trial counsel inquiring into the defense theory of the case. Trial counsel stated, "... Of course we challenged the DNA which was the main issue on appeal. The chain of custody of clothing, we thought the chain was contaminated..." Trial counsel continued, "You got to remember the big problem with this case was that he and the other two Defendants were arrested in a car fleeing the scene and that was during the course of their fleeing the scene of course they were throwing evidence out the window, mask and things of that nature. Those were pretty substantial obstacles to try to overcome. App. 1056, LN 25-1057.

PCR counsel questioned trial counsel about the evidence that was found on the side of the road. Did he remember there being an issue about the chain of custody regarding the evidence that was taken off the side of road. Trial counsel answered, "I can tell you I remember there was chain of custody issues in the trial. Specifically what items I can't tell you." App. 1057, LN 25-1058, LN 13.

PCR counsel further questioned, "When we talk about the chain of custody, one of the pieces of evidence that was found was the mask and the glove off the side of the road. Can you -- would I be wrong if I rephrase that that's

where it was found?" Trial counsel answered, "I'm not going to tell you that you are wrong, but I'm not going to tell you you are right either. I specifically don't remember. All I can tell you is that there were a number of items seized from the side of the road that the allege Defendants were throwing from the car as they were fleeing the scene and police were in hot pursuit." The State objected to the line of questioning. That there's nothing in the application that's saying ineffective for failing to challenge the chain of custody. PCR counsel answered, "Your Honor, I was just laying the ground work which the defense had to deal with." The Court said, "I'm going to give you a little latitude. You may proceed." App.1059,LN11-1060,LN5.

PCR counsel further questioned on direct examination," were there any other issues regarding-- aside from the evidence that you felt were something that could be brought up in Mr. Wilder defense? I know we talked chain of custody and evidence. We talked about DNA. Was there anything else that you had felt was a particular issue to raise during your defense of Mr. Wilder?" Trial counsel: "One of the other issues that we raised and argued strenuously during the course of the trial was the identification because the victim that identified Mr. Wilder, the State introduced certain photographs that looking at the photographs to where she said she identified him from her location in her house there were trees in the way,-- How did you see that through the bushess? So we did challenge her identification. We also raised the issue of if I recall that Mr. Wilder's photograph or picture had been on television, it had been in the news paper and so there was a great deal of cross-examination of her reliability of her identification of him being outside the residence prior to the attacks." PCR counsel: "Did you become aware before trial that they were going to make an in-court identification to Mr. Wilder?" Trial Counsel: I can't tell you yes, but I must have had that information. I'm guessing that in one of my conversations with Nathan Williams who was the prosecutor that he told me that there was going to be or attempt to be an in-court identification. I can't say that unequivocally, but that - I'm guessing that's what happen.

PCR counsel: "And you didn't object to that in court identification?" The State objected stating this is not in the application. The Court ask PCR counsel would she like to respond. PCR counsel stated," Your Honor, this all has to do with his defense of Mr. Wilder trying to figure out what the strategy and defense was at the time." The State answered, "To reply, Your Honor, she is going into specific instances of his defense that were not in the application. The State has no notice of that..." The Court: "I will give her a little latitude. He said things within the strategy and I am going to let her develope that line of questioning. Then if you need additional time to prepare for cross I will give you that. You may proceed." App. 1060, LN7-1062, LN11.

PCR counsel questioned," Now as the DNA results become an issue did you ever feel at any time that that might have been something that might have been something that could have been explored, at least the contamination part with an expert witness or -- The State objected stating she is getting into whether or not he was ineffective for failing to secure an expert witness. That's a specific allegation that the State objected to. The Court: Ms. Box, I have read the transcript and I am at loss as to how an expert would have aided. PCR counsel: "That wasn't my question." The Court: "So let's ask the question. Because what his strategy was, you don't really need an expert to establish contamination... You may ask the question, Ms. Box." PCR counsel: "Was that something that was considered?" Trial Counsel: "I did not consider consulting an expert, no, Ma'am. App. 1063-1064, LN3.

At the end of the hearing the PCR court made a ruling." He raised a Biggers issue. Basically base on the overwhelming breadth of this record, even if he had a Biggers hearing it is unlikely he would have prevailed on it, and even if it was error for Mr. Lofton to have not requested one, it would have been harmless error. Given the overwhelming evidence in this record it would be harmless error and since the standard is only a preponderance of the evidence, it is unlikely that the Court would have suppressed the identification that is contained in the record..." App. 1076, LN23-1077, LN12. The Court further ruled," ... What is overwhelming in this regard, most troubling is that he could not overcome the fact that they were arrested within such close

proximity of the allege incident and they were discarding the fruits of this event from the vehicle. That in and of itself with nothing else being offered in the record is enough to convicted him.. The othe issue he raised was not obstaining an expert and I am at a loss as to what an expert would have added. He had the State's expert that he effectively cross examined and dealt with the contamination issue." App. 1079, LN 9-1080, LN 1.

The Court ordered, "The State is directed to provide the Court with a proposed order within 20 days of today and provide Ms. Bax a copy of that order so that she can weigh in on anything that she would like to have added for the Court to consider that. App. 1081, LN 14-18.

On May 5, 2016 PCR judge signed order of dismissal denying application that was filed May 6, 2016. App. 1083-1091. PCR counsel received order of dismissal on May 16, 2016 and filed a motion to alter or amend judgment on May 26, 2016. As stated within the motion to alter/amend judgment filed May 26, 2016 as follows:

Pursuant to Rule 59(e) SCRCP, the APPLICANT, by and through undersigned counsel, moves before this honorable court to alter, or amend its Order of Dismissal filed May 6, 2016 and received by Counsel on May 16, 2016.

At the hearing on this matter, Counsel requested the opportunity to supplement the record. Respondent did not object. The Court agreed with the stipulation that Counsel vet all information from the Applicant to determine if there were any meritorious issues that needed to be addressed before any submission to the court. Counsel and Respondent communicated regarding several issues and Counsel requested that reference to those issues be included and addressed in the order, which did not happen. Additionally, the Final Order of Dismissal failed to mention or address the Supplemental PCR application filed by Applicant's previous counsel.

Without a full ~~hearing~~ finding on these issues, Applicant submits that the order does not fulfill the requirements set forth in S.C. Code Ann.

§17-27-80(220). Therefore, Applicant requests that the Court alter or amend its judgment to address the issues stated above.

WHEREFORE, having made its Motion, the Applicant request that the judgment be altered or amended as requested.

On July 26, 2016 the PCR Judge signed and filed amended order of dismissal, App. 1093-1102. Within order of dismissal, inside footnote stated," from a Motion to alter or amend judgment filed on May 26, 2016 and received on June 10, 2016 where the order is amended to reflect that Applicant's allegation made in the Notice of Amendment to Post Conviction Relief Application. PCR counsel submitted "copies of letters" to the Court dated January 6, 2016 and January 14, 2016 that were sent to the State which addressed the issues raised by her client after the hearing. This motion is disposed of without the necessity of a hearing and decided on the record and written motion. Rule 59(f), SCRCP; Pollard v. City of Florence, 314 S.C. 397, 401-402, 444 S.E.2d 534, 536 (Ct. App. 1994). The State was given opportunity to respond to the motion and declined. This Court finds that all of the issues that were raised during the hearing have now been addressed and those raised afterwards are waived as untimely. App. 1093 (footnote #1)

On March 8, 2017 John H. Strom, of the South Carolina Commission on Indigent Defense, filed a Johnson petition for writ of certiorari in the Supreme Court of South Carolina. Where he raised, Did the PCR court error in finding that trial counsel provided effective assistance of counsel where trial counsel failed to conduct a reasonable investigation by not consulting with an expert to support the defense theory that DNA evidence showing the deceased blood on Petitioner's clothes was hopelessly contaminated by law enforcement's improper evidence handling. The South Carolina Supreme Court ordered the case transferred to the South Carolina Court of Appeals on October 30, 2017. On September 5, 2018 the South Carolina Court of Appeals denied writ of certiorari and granted counsel's request to withdraw. I filed a petition for rehearing on September 25, 2018. raising the following issues:

1) Did the PCR court error in not ruling and explaining on whether appellate counsel was ineffective for not raising issue properly preserve for appeal. Where trial counsel made an objection to the admittance of a mask marked State's Exhibit No.104, a pair of gloves marked State's Exhibit No.105, and pair of gloves marked State's Exhibit No.106 when the collection officers did not identify this evidence and trial judge overruled the objection. 2) Did the PCR court error in not ruling on the 59(e) motion and explaining on whether trial counsel was ineffective for failing to object to the admittance of State's evidence a mask marked State's Exhibit No.113, and a glove marked state's Exhibit No.114 when there was a missing link in the chain of custody. 3) Did the PCR court error in not ruling on the 59(e) motion and explaining on whether trial counsel was ineffective for failing to object to the admittance of State's evidence when the chain of custody was not establish, where the custodian of property and evidence was not identify at the evidence compound. 4) Did the PCR court error in rvling that had Petitioner had a Biggers hearing Petitioner would not had prevail, where trial counsel was ineffective for failing to timely object to unreliable in court identification. 5) Did the PCR court error in ruling Rule 702, SCRE does deal with reliability.

On October 18, 2018 the South Carolina Court of Appeals denied petition for rehearing. The remittitur was issued on November 28, 2018.

In the State's Return Proposed order of dismissal, to second Post Conviction Relief application, alleged application must be summarily dismissed for failure to comply with filing procedures of the Uniform Post Conviction Procedure Act S.C. Code Ann. §17-27-10 to-160, specifically under SC. code Ann. §17-27-45(a) Statute of Limitations. And that I was convicted and sentenced on December 6, 1996. The remittitur from the direct appeal was issued on December 10, 1998. The application was therefore due on December 11, 1999. This application was filed on September 19, 2018, well beyond the statutory filing period. Therefore, the application shall be summarily dismissed for failure to file within the time mandated by the Uniform Post Conviction Procedure Act.

The State further find the application must be summarily dismissed because it is successive to Applicants previous PCR application. Alleging Applicants current

allegations were or could have been raised in the proceedings based on Applicant prior application for post conviction relief, thus, this 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 previous application for post conviction relief. Therefore, he has failed to meet the burden imposed upon him, and the Court shall summarily dismiss the application as successive to Applicants previous PCR application.

The State alleged applicant assertion that he is being held in custody unlawfully as a result of newly discovered evidence, that he should be entitled to vacation of his sentence and immunity is without merit. The Uniform Post Conviction Relief Act states that a person may institute a post conviction action if, "there exists evidence or material facts, not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice." S.C. Code Ann. §17-27-45(a)(4). If the applicant contends there is evidence of material fact not previously presented, post conviction relief application must be filed 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(C). Furthermore, in the alternative, Applicant's discovery of the missing Great Seals under Article III section 18 does not constitute newly discovered evidence. This evidence was discoverable prior to the entry of the plea. By entering a guilty plea, Applicant waived his right to present any and all defenses that he may have had, and he certainly cannot raise them now in his current application for post conviction relief under the guise of "newly discovered evidence".

In conclusion pursuant to S.C. Code Ann. §17-27-70(b) the Court intend to dismiss the application with prejudice unless provided specific reasons, factual or legal, why the application should not be dismissed in its entirety. Where I was granted 20 days from the date of service of this order to show why the Order should not become final. This Order was signed July 1, 2020 by the Honorable Jennifer B. McCoy and filed on July 10, 2020. And served on August 3, 2020 by Affidavit of Personal Service.

In my Response to Conditional Order of dismissal filed on August 17, 2020 in rebutting the State's claim that application should be summarily dismiss because of the statute of limitations. I informed the Court that I was convicted and sentenced on May 9, 2008 and the remittitur from Direct Appeal was issued on April 9, 2013. And filed first PCR application on September 25, 2013. The remittitur from the first PCR appeal process was issued on November 28, 2018. Where I filed a timely second PCR application on February 19, 2019. Showing the Court that under the Uniform Post Conviction Procedure Act I fall within those guidelines.

And when the State claim successiveness, I pointed out to the Court that these issves are from the 'copies of letters' the PCR judge stated PCR counsel submitted to the Court addressing issves. Where PCR counsel filed a timely 59(e) motion because the PCR court failed to rule on issves. The Court dispose of motion without a necessity for a hearing and decided on the record and written motion. Rule 59(f), SCRCP, Pollard v. City of Florence, 314 S.C. 397, 401-402, 444 S.E.2d 534, 536 (Ct. App. 1994). The State was given opportunity to respond to motion and declined. The Court found that all issues that were raised during the hearing have now been addressed and those raised afterwards are waive as untimely. I further explained to the Court that in Pollard is similar, however different from Applicant case. In my case PCR counsel submitted 'motion to alter or amend' and 'copies of letters' without argument on issves raised nor citations to legal authority. In Pollard there was motion that set forth legal arguments on issves and gave citations to legal authority. Where the PCR court erroneously denied PCR application without ruling on issves, for those reasons above I filed under S.C. Code Ann. § 17-27-90. Due to PCR counsel failure to properly raise issves, I should not be denied to raise issves under S.C. Code Ann. § 17-27-90 due to PCR counsel inadequacy.

And additionally asserted that I made discovery of the evidence where there is no visible impression of the Great Seal of the State on Act No.(s) 1993 Act No. 184, 1995 Act No. 7, 1996 Act No. 317, 1998 Act No. 402, and 2002 Act No. 278 when Mr. Steve D. Tuttle, Deputy Director of Archives and Record Management from the

South Carolina Department of Archives and History notified me in a letter dated October 12, 2018 and November 15, 2018. (In PCR attachments) Article III, Section 18 of the South Carolina Constitution states," No Bill or Joint Resolution shall have the force of law until it shall have been read three times and on three several days in each house, and has had the Great Seal of the State affixed to it..." Pursuant to S.C.Code Ann.§17-27-20(A)(1)(2)(6), I assert this is newly discovered evidence, and the issue that is being raised is in regards to the Act and Law in which I was convicted and sentenced under. And that I do meet the requirements of both statutes S.C.Code Ann.-§17-27-20(A)(6) and §17-27-45(C). And that the Respondents orgument that I am requesting a new trial based on after-discovered evidence following a guilty plea is misplace and improper where I was found guilty after a jury trial.

Then on May 12, 2025 I filed a motion for leave to file an amended response to conditional order of dismissal. Pursuant to Rule 15(a), SCRCP to enter a order granting leave to file amended response containing additional reasons why not dismiss application in its entirety. Since initial response to the State Conditional Order of dismissal was filed more than 3 years ago, and still pending, with no hearing date schedule, the State would not be prejudiced by allowing me to file amended response. Where I also filed the motion to amend response with the motion for leave to file on May 12, 2025, pursuant to Rule 15(b), SCRCP, with additional reasons, factual and legal why second PCR application should not be dismiss. Explaining the issues now being raised under §17-27-90 for Ineffective assistance of trial counsel inside current and second Post conviction Relief application were attempted to be raised at first an initial PCR hearing. Where the State objected to issues not being in original application. App.1041, LN19-1045; 1051, LN5-12. PCR counsel asked the Court to be able to talk about and present additional issues. App.1045, LN3-8. The PCR court stated confine everything to appellate counsel, not trial counsel. Because the Court was not going to go back and rehash all that, and not going to go through every piece of evidence in the volominous record because the evidence that I was talking

about trial counsel objected to it. App.1045. Where in fact, trial counsel did not object to any issves I attempted to raise. The PCR court denied me the opportunity to raise additional issves during hearing at every attempt when the State objected, however allowed PCR counsel to raise issve, question, and elicit testimony from trial counsel over the State's objections. App.1056, LN 25-1063. At the close of hearing the Court Stated PCR counsel can weigh in on anything that she would like to have added for the Court to consider. App.1081, LN 16-18.

Where I further explained pursuant to S.C Code Ann §17-27-90 "All grounds for relief available to an applicant under this chapter must be raised in his original, supplemental, or amended application." I attempted to present issves during hearing, and the State objected to it. However, PCR counsel was allowed to supplement the record, where the State did not object. The PCR court agreed that PCR counsel vet all information from me, to determine if there were any meritorious issves that needed to be address. (was attached as Exhibit A motion to alter/amend with response) Counsel submitted 'copies of letters' to the Court January 6, 2016 and January 14, 2016 that were sent to the State which addressed the issves raised after the hearing. The PCR court disposed of motion per Rule 59(f), S.C.R.C.P; Pollard v. City of Florence. The State was given opportunity to respond to the motion and declined. The Court stated all issves raised during hearing have been addressed and those raised afterwards are waived as untimely. PCR court disposed of motion per Rule 59(f), SCRCP; Pollard v. City of Florence, because issves were not raised properly by being in letter form. PCR judge abused its discretion in not ruling on additional amended and supplemental issves following the Rule 59(e) motion, and waiving those issves as untimely. The State did not object to PCR counsel request to supplement the record and also denied to respond to the motion.

Where the PCR counsel was allowed by the PCR court to elicit testimony from trial counsel over the State objection, I should have been permitted to present claims the State objected to as not being in application. Where the PCR court gave PCR counsel latitude to elicit testimony from trial counsel, the issves I

attempted to raise during and after hearing was rebuttal evidence to trial counsel testimony and hold merit. The PCR court allowed PCR counsel to weigh in on anything to be added, agreed with the stipulation to supplement the record, and vet all information from me to determine if there were any meritorious issues that needed to be addressed. Even though issues were not properly raised in application and not in proper motion form. The PCR court should have allowed issues to raised on the record during and after hearing pursuant to Rule 15(b), SCRCP, and ruled on issues pursuant to Rule 59(e) SCRCP, S.C. Code Ann. § 17-27-70(a) and § 17-27-80. From the above stated facts and law and statutes, I provided the Court with amended specific reason why the application should not be dismiss.

Then the Court sent a final order of dismissal signed January 28, 2026 and filed February 12, 2026 by Honorable Dale E. Van Slambrook. To summarily dismiss the action as procedurally barred pursuant to the Uniform PCR Act. Alleging that I fail to set forth any valid basis for an evidentiary hearing. Although that I allege newly discovered evidence, my allegations of newly discovered evidence are insufficient to warrant a hearing on this issue. That my contention that the statute of limitations does not apply to my current PCR action because I filed within my one year from the remittitur of PCR appeal lacks merit. That I fail to file my current PCR application within one year limitation set forth in the Uniform PCR Act. And that my contention my application is not successive because PCR counsel failed to properly raise issues also lacks merit, and did not provide "sufficient reason" why my current grounds for relief were not raised in previous PCR application.

Now Appellant seeks with notice of appeal to review that decision.

Argument

1. The PCR court error in dismissing second PCR application as not being filed within the one year limitations.

The PCR court alleged in conditional order of dismissal that I was convicted and sentenced on December 6, 1996. And the remittitur from direct appeal was issued on December 10, 1998, and the application was due on December 11, 1999. Was an erroneously and incorrect procedural history of my case. Where I explained to the Court that I was convicted and sentenced on May 9, 2008, and the remittitur from direct appeal was issued on April 9, 2013. The first PCR application was filed on September 25, 2013, and the remittitur from that PCR appeal was issued on November 28, 2018. Where second PCR application was filed on February 19, 2019. In Wade v. State, 348 S.C. 255, 264, 559 S.E.2d 843 (2002) the Court held, "an applicant must file the PCR application within one year of the final resolution of the criminal conviction.

An accumulation of an estimated 8 months in total between both remittitus and next filing, and not exceeding a year between remittitur being issued on November 18, 2018 and PCR application being filed on February 19, 2019, falls within the statutory guidelines. "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 a year after sending of the remittitur to the lower court from an appeal or the filing of the final decision upon an appeal, whichever is later." S.C. Code Ann. § 17-27-45(A).

2. The PCR court error that newly discovered evidence was insufficient to warrant hearing on this issue.

The PCR court contends this evidence was discoverable prior to the entry of a guilty plea, that waived my rights to present any and all defense that I may have had and certainly cannot raise them in current application for post-

conviction relief under the guise of newly discovered evidence. Where the above allegations by the Court is another incorrect and improper assertion, where I was convicted after a jury trial.

Where I made actual discovery of Acts not having a visible impression of the Great Seal of the State on it when I received the response to the letters I sent on October 4, 2018 and November 8, 2018 and receiving response on October 12, 2018 and November 14, 2018 from the South Carolina Department of Archive and History making the inquiry. And filed application on febuary 19, 2019 within the one year after the date of actual discovery of facts according to S.C. Code Ann. §17-27-45(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." §17-27-45(C)

Where the S.C. Constitution Art. III §18 states, "No Bill or Joint Resolution shall have the force of law until it shall have been read three times and on three several days in each house, has had the Great Seal of the State affixed to it..." There is no Great Seal of the State affixed to the following Act(s): 1993 Act No. 184, 1995 Act No. 7, 1996 Act No. 317, 1998 Act No. 402, and 2002 Act No. 278. Under the Uniform Post Conviction Procedure Act S.C. Code Ann. §17-27-20 Persons who may institute proceeding; exclusiveness of remedy. (A) A person who has been convicted of, or sentenced for, a crime who claims (1) That the conviction or the sentence was in violation of the Constitution of the United States or the Constitution or laws of this State; (2) That the Court was without jurisdiction to impose sentence; and (6) That the conviction or sentence is otherwise subject to collateral attack upon any ground of alleged error heretofore available under any common law, statutory or other writ, motion, petition, proceeding or remedy;...

Which I showed to the Court there is a claim of violation of the Constitution

of this State and United States Constitution, that renders the Court without jurisdiction to impose sentence, and subject to collateral attack. In Tutt v. State, 277 S.C. 525, 290 S.E.2d 414 (1982) this Court held, "The provisions of the Uniform Post Conviction Relief Procedure Act may be invoked only by someone who is claiming the right to have a sentence vacated, set aside or corrected." Therefore, under the Uniform PCR Act pursuant to S.C. Code Ann. §17-27-20(A)(1)(2)(6) this is sufficient to warrant a hearing.

3. The PCR court erroneously dismiss application as successive when Applicant did assert sufficient reason why grounds were not raised or were not properly raised in previous application.

At the close of the hearing on December 15, 2015 the PCR court ordered the State to provide the Court with a proposed order within 20 days and provide Ms. Bax (PCR counsel) with a copy of that order so she can weigh in on anything that she would like to have added for the court to consider that. App. 1081, LN 14-18. "PCR counsel submitted copies of letters to the court dated January 6, 2016 and January 14, 2016 that were sent to the State which addressed the issues raised by her client after the hearing." App. 1093 (Quoting from footnote 1)

A order of dismissal was filed May 6, 2016 that PCR counsel received on May 16, 2016 that failed to address issues raised during hearing and afterwards in accordance with the Uniform Post Conviction Procedure Act. "The court shall make specific findings of fact, and state expressly it conclusions of law, relating to each issue presented." S.C. Code Ann. §17-27-80. App. 1083-1096. Where a motion to alter or amend judgment was filed May 26, 2016 and received June 10, 2016 this order is amended to reflect the Applicants allegations made in his Notice of Amendment to his Post Conviction Relief Application. App. 1093 (Quoting from footnote 1) An amended order of dismissal was filed July 26, 2016. App. 1093-1102. Which did not address issues raised during hearing nor afterwards according to S.C. Code Ann. §17-27-80 and Rule 52(a), SCRCP after a Rule 59(e), SCRCP motion was filed. In McCray v. State, 305 S.C. 329,

408 S.E.2d 241(1991) the Court held, "S.C. Code Ann. §17-27-80(1976) requires the PCR court to 'make specific findings of fact, and state expressly its conclusions of law, relating to each issue presented.'"

In amended order of dismissal, footnote 1, the Court further stated along with the quoted above. "This motion is disposed of without the necessity of a hearing and decided on the record and written motion Rule 59(f), SCRCP; Pollard v. City of Florence 314 S.C. 397, 401-402, 444 S.E.2d 534, 536 (Ct. App 1994). The State was given opportunity to respond to the motion and declined. This Court finds that all of the issues that were raised during the hearing have now been addressed and those raised afterwards are waived as untimely."

The PCR court abused its discretion when it ruled to dispose of motion without the necessity of a hearing and decided on the record and written motion Rule 59(f), SCRCP where the Rule 59(e), SCRCP motion only directed the attention of the Court to the stipulation agreed upon and the Courts failure to follow the requirements set forth in S.C. Code Ann. § 17-27-80. However, Rule 59(f), SCRCP also states, " Except by consent of the parties, argument on the motion shall be heard in the circuit where the trial was held. The motion may in the discretion of the Court be determined on briefs filed by the parties without oral argument." Where the Rule 59(e), SCRCP motion was not the equivalent of a brief, nor did it set forth arguments on issues raised, neither citations to legal authority. In BB&T v. Taylor, 369 S.C. 548, 551, 633 S.E.2d 501, 503 (2006) this court held, " An abuse of discretion arises where the judge issuing the order was controlled by an error of law or where the order is based on factual conclusions that are without evidentiary support."

Where PCR counsel fail to properly raise issues. Counsel sent 'copies of letters' to the PCR court that contained issues attempted to be raised during hearing, that was raised after hearing. When raising an issue in a letter, it is a procedural nullity that does not count as the issue being fully and fairly litigated. The letter was noted, however the legal merits of the issue were never reached because a letter is not a valid vehicle for a ruling. The letter provide notice that a problem exists but do not constitute the adjudication of the legal merits. Therefore, issues were 'inadequately raised'.

S.C. Code Ann. §17-27-90 provides in part, "assert 'sufficient reason' why issues were inadequately raised in original, supplemental, or amended application."

Additionally, the PCR court made error in not filing the 'copies of letters', that were sent to the court by PCR counsel, with the Clerk of court. In accordance with Rule 5(e), SCRCP, filing with the Court Defined. Which provides in part, "... except that the judge may permit the papers to be filed with him, in which event he shall note thereon the filing date and forthwith transmit them to the office of the Clerk..." No South Carolina cases interpreting Rule 5(e), SCRCP could be located. However, in J.A. Tobin Const. Co., Inc. v. Kemp, 239 Kan. 430, 437, 721 P.2d 278 (1986) their Supreme Court held," first the judge must accept the filing of the papers with him. If the judge accept the papers, he must at that time note the date of his acceptance and then forthwith take the papers to the clerk."

The PCR court failure to file copies of letters with the clerk of court took away my my right to have copies of letters that addressed issues recorded on the record for further review by appellate courts. "In considering the application, the Court shall take account of substance, regardless of defects of form." SC Code Ann. 17-27-70(A).

Further within the Amended order of dismissal, footnote 1, the PCR court ruled, "This Court finds that all of the issues that were raised during the hearing have now been addressed and those raised afterwards are waive as untimely." In Berry v. McLeod, 328 S.C. 435, 492 S.E.2d 794 (Ct. App. 1997) the Court held, "Under Rule 15(a) and (b), SCRCP, the court has the power to amend pleadings beyond the time allowed for an amendment when to do so does not prejudice another party. Courts have wide latitude in amending pleadings. citing Porter Bros., Inc. v. Specialty Welding, Co., 286 S.C. 39, 331 S.E.2d 783 (Ct. App. 1985) While this power should not be used indiscriminately or to prejudice or suprise another party, the decision to allow an amendment is within the sound discretion of the trial court and will rarely be disturbed on appeal. Id. The trial judge findings will not be overturned without an abuse of discretion or unless manifest injustice occurred. Anders v. Nash, 256 S.C. 102, 180 S.E.2d 878 (1971); Mylin v. Allen-White Pontiac, Inc., 281 S.C. 174, 314 S.E.2d 354 (Ct. App. 1984). Where the PCR court told PCR counsel at the end

of first PCR hearing, that she(PCR counsel) can weigh in on anything that she would like to add for the Court to consider. Where PCR counsel requested to supplement the record, an the Respondent (State) did not object, and the PCR court agreed to the stipulation. The PCR court abused its discretion when it waived issues raised after hearing as untimely. Under the Uniform Post-Conviction Relief Procedure Act S.C. Code Ann. §17-27-70(a) provides, "At any time prior to entry of judgment the court may, when appropriate, issue orders for amendment of the application or any pleading or motion, for pleading over, for filing further pleadings or motions, or for extending the time of the filing of any pleading. In considering the application, the Court shall take account of substance, regardless of defects of form."

At the first PCR proceeding I attempted to raise two issues addressing trial counsel was ineffective for not objecting to the chain of custody of evidence. Where the State objected to issues not being in application. App. 1041, LN 19-1042, LN 3. In Love v. State, 428 S.C. 231, 239, 834 S.E.2d 196 (2019) the Court held, Rule 15(b) provides in part, "When issues not raised by the pleadings are tried by express or implied consent of the parties, they shall be treated in all respects as if they had been raised in the pleadings." When PCR counsel addressed issues of trial counsel ineffective for not objecting to the chain of custody, in court identification, and not calling an expert witness. The State objected to issues not being in application, the line of questioning, and no notice. Which the PCR Court over the State's objection gave PCR counsel a little latitude. And told the State that the Court will let her develope that line of questioning, and will give the State additional time to prepare for cross if needed. App. 1056, LN 25-1064, LN 3. Rule 15(b) also provides that "if evidence is objected to at the trial on the ground that it is not within the issues made by the pleadings, the Court may allow the pleading to be amended and shall do so freely when the presentation of the merits of the action will be subserved thereby and the objecting party fails to satisfy the Court that the admission of such evidence would prejudice him in maintaining his action or defense on the merits." Id. at 200, 428 S.C. 231.

At the close of first PCR hearing the PCR court permitted PCR counsel to weigh in on anything that she would like to have the court consider. App. 1081, 14-18. Also allowed PCR counsel to supplement the record, and agreeing to the stipulation that counsel vet all information from me to determine if they were any meritorious issues that need to be addressed. With no objections from the State. In Dunbar v. Carlson, 341 S.C. 261, 267, 533 S.E.2d 913 (Ct. App. 2000) the Court held," Rule 15(b) covers two situations involving amendments to conform to evidence." first, if an issue not raised by the pleadings is tried by express or implied consent of the parties the court may permit amendment of the pleadings to reflect the issue. Second, if a party objects to the introduction of evidence as not being within the pleadings the court may permit amendment of the pleadings subject to a right to grant a continuance if necessary." citing Sunvillas Homeowners Ass'n, Inc. v. Square D. Co., 301 S.C. 330, 334, 391 S.E.2d 868, 871 (Ct. App. 1990) (Express consent may be demonstrated by a stipulation but implied consent depends on whether the parties recognized an issue not raised by the pleadings entered the case during trial.) Id. at 335, 391 S.E.2d at 871.

Also where an issue raised in Notice of Amendment by original appointed counsel, which was Ineffective assistance of appellate counsel that he did not raise issue of whether the trial court was correct in admitting certain physical evidence over timely objection of trial counsel. App. 1043. That was raise during hearing, that Appellate counsel was ineffective because he failed to raise an issue that was properly preserve for appeal. Which was a objection made to a mask marked State's Exhibit No. 104, pair of gloves marked State's Exhibit No. 105, and pair of gloves marked State's Exhibit No. 106 because collection officers did not identify this evidence and trial judge overruled the objection. App. 1047, LN 13-1048, LN 6. Which the PCR court did not address in either order of dismissal. And where the PCR court made rulings on issues at the close of hearing regarding the failure to object to the in-court identification would not have prevail a Biggers hearing, and failure to consult with an expert witness, was not mentioned in either order of dismissal. App.

1076, LN 23 - 1077, LN 12. Erroneously failing to comply with Rule 52(b), SCRCP and S.C. Code Ann. § 17-27-80 even after a Rule 59(e) SCRCP motion was filed.

In McCray v. State, supra, this Court held, "... remand was required because post conviction court did not make required findings of fact." S.C. Code Ann. §17-27-80 (1976), requires the PCR court to "make specific findings of fact, and state expressly its conclusions of law, relating to each issue presented." The PCR court's conclusions regarding ineffective assistance are insufficient for appellate review and fail to meet the standard set forth in the statute. Id. See Marlar v. State, 375 S.C. 407, 410, 653 S.E.2d 266 (1) specific findings of fact and conclusions of law were required; and (2) a Rule 59(e) motion must be filed if issues are not adequately addressed in order to preserve the issues for appellate review)

In Elam v. South Carolina Dept. of Transp., 361 S.C. 9, 602 S.E.2d 772, 780 (2004) this Court held, "Issues and arguments are preserved for appellate review only when they are raised to and ruled on by the lower court. Where appellate counsel filed a Johnson petition for writ of certiorari and petition to be relieved as counsel claiming the appeal was without legal merit to warrant a new trial. And pursuant to Johnson v. State, 294 S.C. 310, 364 S.E.2d 201 (1988) briefed an arguable legal issue which arose during the post conviction relief process, and requested to be relieved as counsel. Where the Court of Appeals after careful consideration of the entire appendix as required by Johnson v. State, Id., the petition for writ of certiorari was denied and counsel request to withdraw was granted. And petition for rehearing was denied. Where Appellate counsel did not brief issues that were raised and ruled on during the hearing, that were not addressed in the order of dismissal. Nor the mention of issues not being properly addressed in the order of dismissal after a Rule 59(e) motion was filed. Which was arguable legal issues.

In Bray v. State, 366 S.C. 137, 140, 620 S.E.2d 743 (2005), this Court held, "However, in Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991), this court held that an applicant has a right to an appellate counsel's assistance in seeking review of the denial of PCR. Appellate counsel is required to brief arguable issues, despite counsel's belief the appeal is frivolous, to safeguard the right to appeal." Johnson v. State, Supra.

When I filed the petition for rehearing I submitted the issues that was attempted to be raised during hearing that PCR counsel supplement the record with after hearing in the copies of letters. With the additional issues raised during hearing and ruled on during hearing, but not addressed in neither order of dismissal. Which these are the issues in petition for rehearing I raised in a subsequent second PCR application.

In Jamison v. State, 410 S.C. 456, 765 S.E.2d 123 (2014) this Court held, "A petition filed pursuant to Johnson v. State is the postconviction relief equivalent of a direct appeal filed pursuant to Anders v. California, 386 U.S. 738, 87 S.Ct. 1396, 18 L.Ed. 2d 493 (1967) Johnson, 294 S.C. at 310, 364 S.E.2d at 201. Thus, this Court concluded the merits of an unpreserve claim were not considered by the court of appeals on direct appeal pursuant to Anders (citing McHam v. State, 404 S.C. 465, 475, 746 S.E.2d 41, 47 (noting issues raised on direct appeal and found to be unpreserved may be the subject of a subsequent PCR claim)). Although affadavit was presented to the court of appeals in Respondent's prose petition, it was not properly before the court of appeals because it was not part of the lower court record. Therefore we find, as a procedural matter, this issue was properly raised in Respondent's second PCR application. Jamison, 410 S.C. at 467, 765 S.E.2d 123.

In Tilley v. State, 334 S.C. 24, 511 S.E.2d 689 (1999) this Court held," A successive application is one that raises grounds not raised in a prior application, raises grounds previously heard and determine, or raises grounds waived in prior proceedings." S.C. Code §17-27-90 (1976 & Supp. 1997)

These issues were or should have been submitted in original or amended application by initial appointed counsel. where PCR counsel request to supplement the record with additional issues vet from me, that PCR counsel asked to be addressed in the order, that the Respondent did not object to, and the Court agreed to the stipulation of additional issues being submitted to the Court. And that these issues were raised by express and implied consent and should have been treated as if they had been raised in the pleadings.

Trial counsel testified during hearing that the big problem was being arrested

with two other defendants in a car allege to be fleeing the scene and was allege to be throwing evidence from the vehicle, mask and things of that nature. That were substantial obstacles to overcome. App. 1056, LN 25-1057. And the PCR court ruled this evidence as fruits of the event that was overwhelming. And that in and of itself was enough to have convicted me. App. 1079, LN 9-1080, LN 1.

The issues attempted to be raised during and after the hearing within the supplemental and amended application **rebuts** the testimony of trial counsel" substantial obstacles to overcome" and takes away from the PCR court presumption of "overwhelming evidence" ruling within the several chain of custody issues that was not allow to be raise an ruled on nor recorded on the record.

In Love v. State, supra, this court held, "Recognizing the importance of the Sixth Amendment's guarantee of effective assistance of counsel we noted: There are situations where the interests of justice require PCR courts to be flexible with procedural requirements before PCR applicants suffer procedural default on substantial claims. Such flexibility is consistent with the purpose and spirit of our Rules of Civil Procedure. These consideration should guide PCR courts when struggling to balance procedural requirements against the importance of the issues at stake in PCR proceedings. We encourage trial courts in PCR cases to use the discretion we grant them on procedural matters to find reasonable way - within the flexibility of our Rules - to reach the merits of substantial issues." Citing Mangal v. State, 421 S.C. 85, 99-100, 805 S.E.2d 568, 575-576 (2017)

Additionally, in Love v. State, supra this court held, "All grounds for relief available to an applicant under [the PCR act] must be raised in his original, supplemental, or amended application. S.C. Code Ann. §17-27-90. Because applicants are traditionally entitled to only one "bite at the apple", it is imperative that applicants raise all known issues their original, supplemental, or amended applications. At any time prior to entry of judgment the court may, when appropriate, issue orders for amendment of the application or any pleading or motion..." S.C. Code Ann. §17-27-70(a) (2014).

Where I never received a full procedural bite of the apple nor complete adjud-

ication on the merits of the issues. Refusal to hear these claims would constitute a gross miscarriage of justice." "...when the system has simply failed a defendant and were to continue the defendant's imprisonment without review would amount to a gross miscarriage of justice" Aice v. State, 305 S.C. 448, 451, 409 S.E.2d 392 (1991)

Conclusion

Due to contributing procedural deficiencies and being denied numerous procedural entitlements. Second PCR application should not have been summarily dismissed. I ask the Court to reverse and remand this matter for a hearing on these issues.

Respectfully Submitted,

Anthony D. J. Wilder

This 19th day of March, 2026.

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