

THE STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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S.C. SUPREME COURT

APPEAL FROM CLARENDON COUNTY  
COURT OF COMMON PLEAS

R. KIRK GRIFFIN, CIRCUIT COURT JUDGE

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CASE No. 2026-000685

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EUGENE D. GREEN, #275500,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT.

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**EXPLANATION PURSUANT TO RULE 243(C)**

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PETITIONER RESPECTFULLY SUBMITS THIS EXPLANATION PURSUANT TO RULE 243(C), SCACR, DEMONSTRATING THAT THE CIRCUIT COURT'S DISMISSAL OF THIS ACTION AS UNTIMELY AND SUCCESSIVE, AND ITS CONCLUSION THAT NO PRIMA FACIE CASE WAS ESTABLISHED, WERE ERRONEOUS AS A MATTER OF LAW AND FUNDAMENTALLY UNFAIR.

THIS CASE PRESENTS A CONVICTION SUPPORTED SOLELY BY TESTIMONY THAT HAS NOW BEEN REPUDIATED, FOLLOWED BY A POST-CONVICTION PROCEEDING MARKED BY PROCEDURAL IRREGULARITIES, DELAY, AND THE ABSENCE OF REQUIRED FACTUAL FINDINGS. THE COMBINED EFFECT OF THESE DEFECTS DEPRIVED PETITIONER OF A MEANINGFUL OPPORTUNITY

TO BE HEARD AND RESULTED IN THE SUMMARY DISMISSAL OF A CLAIM THAT, IF PROVEN, WOULD ENTITLE HIM TO RELIEF.

## I. PROCEDURAL BARS WERE IMPROPERLY APPLIED IN THE FACE OF NEWLY DISCOVERED, OUTCOME-DETERMINATIVE EVIDENCE

THE CIRCUIT COURT DISMISSED THIS ACTION AS UNTIMELY AND SUCCESSIVE IN ITS FINAL ORDER OF DISMISSAL (EXHIBIT A). HOWEVER, SOUTH CAROLINA LAW DOES NOT PERMIT RIGID APPLICATION OF PROCEDURAL BARS WHERE NEWLY DISCOVERED EVIDENCE CALLS INTO QUESTION THE VALIDITY OF THE CONVICTION. AICE V. STATE, 305 S.C. 448, 409 S.E.2d 392 (1991).

PETITIONER PRESENTED EVIDENCE THAT THE STATE'S SOLE INCULPATORY WITNESS HAS RECALLED HIS TRIAL TESTIMONY AND ADMITTED THAT HIS TESTIMONY WAS FALSE (EXHIBIT D). THIS EVIDENCE DID NOT EXIST AT THE TIME OF TRIAL AND COULD NOT HAVE BEEN DISCOVERED THROUGH DUE DILIGENCE. THE STATE'S CASE RESTED ENTIRELY ON THIS WITNESS; NO PHYSICAL EVIDENCE OR INDEPENDENT CORROBORATION LINKED PETITIONER TO THE OFFENSE.

WHERE THE ONLY EVIDENCE OF GUILT HAS BEEN REPUDIATED, THE RELIABILITY OF THE CONVICTION IS FUNDAMENTALLY UNDERMINED. UNDER THESE CIRCUMSTANCES, APPLICATION OF PROCEDURAL BARS IS IMPROPER, AND THE CLAIM MUST BE EVALUATED ON ITS MERITS.

## II. THE PCR COURT IMPROPERLY RESOLVED CREDIBILITY AND ADMISSIBILITY ISSUES WITHOUT A HEARING

AFTER THE COURT VACATED ITS INITIAL DISMISSAL ON MAY 7, 2025 (EXHIBIT B), PETITIONER WAS AFFORDED AN OPPORTUNITY TO RESPOND AND DID SO ON JUNE 10, 2025 (EXHIBIT C). DESPITE THIS, THE CIRCUIT COURT AGAIN DISMISSED THE APPLICATION ON SEPTEMBER

19, 2025 (EXHIBIT A), REJECTING THE RECANTATION AS "HEARSAY" AND RELYING ON GENERALIZED SKEPTICISM TOWARD RECANTATION EVIDENCE.

AT THE PCR STAGE, THE COURT'S ROLE IS LIMITED TO DETERMINING WHETHER THE CLAIM, IF PROVEN, WOULD ENTITLE THE PETITIONER TO RELIEF—NOT TO RESOLVE CREDIBILITY OR WEIGH EVIDENCE. SIMPSON V. STATE, 329 S.C. 43, 495 S.E.2d 429 (1998).

CREDIBILITY DETERMINATIONS REQUIRE AN EVIDENTIARY HEARING. BANNISTER V. STATE, 333 S.C. 298, 509 S.E.2d 807 (1998).

BY REJECTING THE RECANTATION WITHOUT TAKING TESTIMONY, THE COURT IMPERMISSIBLY RESOLVED DISPUTED FACTS AND APPLIED THE WRONG LEGAL STANDARD.

### III. THE COURT FAILED TO MAKE REQUIRED FINDINGS UNDER §17-27-80

SOUTH CAROLINA LAW REQUIRES THAT A PCR COURT MAKE SPECIFIC FINDINGS OF FACT AND CONCLUSIONS OF LAW ON EACH ISSUE PRESENTED. S.C. CODE ANN. § 17-27-80; FRUITT V. STATE, 310 S.C. 254, 423 S.E.2d 127 (1992).

THE ORDER BELOW FAILS TO MEANINGFULLY ADDRESS THE SUBSTANCE OF PETITIONER'S NEWLY DISCOVERED EVIDENCE CLAIM. RATHER THAN EVALUATING MATERIALITY OR THE PROBABLE IMPACT ON THE VERDICT, THE COURT DISMISSED THE CLAIM BASED ON GENERALIZED ASSUMPTIONS AND PROCEDURAL LABELS.

THE ABSENCE OF ADEQUATE FINDINGS PREVENTS MEANINGFUL APPELLATE REVIEW AND CONSTITUTES REVERSIBLE ERROR.

### IV. PROCEDURAL IRREGULARITIES AND RULE 59(e) PROCEEDINGS DEMONSTRATE FUNDAMENTAL UNFAIRNESS

FOLLOWING THE INITIAL DISMISSAL ON MAY 29, 2024, PETITIONER TIMELY FILED A MOTION PURSUANT TO RULE 59(e), SCRCP, ON JUNE

25, 2024, CHALLENGING THE COURT'S DISPOSITION AND THE PROCEDURAL DEFECTS THAT PREVENTED A PROPER RESPONSE. THE CIRCUIT COURT GRANTED THAT MOTION AND VACATED ITS PRIOR ORDER ON MAY 7, 2025 (EXHIBIT B), ACKNOWLEDGING THAT PETITIONER HAD NOT BEEN AFFORDED A FAIR OPPORTUNITY TO BE HEARD.

PETITIONER THEREAFTER SUBMITTED A RESPONSE TO THE CONDITIONAL ORDER ON JUNE 10, 2025 (EXHIBIT C). DESPITE THIS, THE COURT AGAIN DISMISSED THE APPLICATION ON SEPTEMBER 19, 2025 (EXHIBIT A) WITHOUT CONDUCTING AN EVIDENTIARY HEARING OR ADDRESSING THE SUBSTANCE OF THE NEWLY DISCOVERED EVIDENCE.

ADDITIONALLY, THE RECORD REFLECTS DELAY IN THE STATE'S RESPONSE TO PETITIONER'S APPLICATION, FURTHER CONTRIBUTING TO THE PROCEDURAL IRREGULARITIES IN THIS CASE.

THE COURT'S FAILURE TO CORRECT THE IDENTIFIED DEFECTS, EVEN AFTER RECONSIDERATION, UNDERSCORES THE IMPROPRIETY OF THE FINAL DISMISSAL AND DEMONSTRATES THAT THE PROCEEDING FELL SHORT OF THE FUNDAMENTAL FAIRNESS REQUIRED IN POST-CONVICTION REVIEW.

#### V. THE DISMISSAL IGNORES FUNDAMENTAL DUE PROCESS CONCERNS REGARDING FALSE TESTIMONY

THE USE OF FALSE TESTIMONY TO OBTAIN A CONVICTION VIOLATES DUE PROCESS WHERE THERE IS ANY REASONABLE LIKELIHOOD THAT THE TESTIMONY AFFECTED THE VERDICT. NAPUE V. ILLINOIS, 360 U.S. 264, 79 S.Ct. 1173 (1959); GIGLIO V. UNITED STATES, 405 U.S. 150, 92 S.Ct. 763 (1972).

HERE, THE STATE'S CASE RESTED ENTIRELY ON TESTIMONY THAT HAS NOW BEEN RECALLED (EXHIBIT D). THE CIRCUIT COURT'S REFUSAL TO PERMIT FACTUAL DEVELOPMENT OF THIS CLAIM, AND ITS DISMISSAL

WITHOUT A HEARING, LEAVES UNRESOLVED A SERIOUS QUESTION REGARDING THE INTEGRITY OF THE CONVICTION.

## VI. PROCEDURAL IRREGULARITIES AND LACK OF NOTICE DEMONSTRATE FUNDAMENTAL UNFAIRNESS

FOLLOWING THE FINAL ORDER OF DISMISSAL, PETITIONER TIMELY FILED A MOTION PURSUANT TO RULE 59(e), SCRCP, ON OCTOBER 16, 2025. PETITIONER THEN FILED AN AMENDED MOTION TO ALTER OR AMEND JUDGMENT ON OCTOBER 31, 2025, CHALLENGING THE COURT'S FAILURE TO ADDRESS MATERIAL CLAIMS, INCLUDING PROSECUTORIAL MISCONDUCT, AND FAILURE TO CONDUCT THE REQUIRED EVIDENTIARY HEARING (EXHIBIT E). THE MOTION WAS FILED AND SERVED, AS REFLECTED IN THE RECORD.

PETITIONER, HOWEVER, DID NOT RECEIVE ANY ORDER DISPOSING OF THE RULE 59(e) MOTION, NOR WAS NOTICE OF ANY SUCH RULING PROVIDED. THE ABSENCE OF NOTICE DEPRIVED PETITIONER OF THE OPPORTUNITY TO SEEK TIMELY APPELLATE REVIEW AND RAISES SERIOUS CONCERNS REGARDING WHETHER THE PROCEEDINGS WERE CONDUCTED IN ACCORDANCE WITH BASIC PROCEDURAL REQUIREMENTS.

## VII. RESPONSE TO PROPOSED PROHIBITION ON FILINGS

PETITIONER RESPECTFULLY MOVES THIS COURT TO DECLINE THE IMPOSITION OF A PROHIBITION ON FUTURE FILINGS. SUCH A RESTRICTION IS A "DRASTIC REMEDY" THAT SHOULD NOT BE APPLIED TO A PETITIONER WHO IS PRESENTING DOCUMENTED EVIDENCE OF A MANIFEST INJUSTICE. PETITIONER ASSERTS THE FOLLOWING REASONS WHY A PROHIBITION IS IMPROPER IN THIS CASE:

NON-FRIVOLOUS BASIS: THIS APPLICATION IS NOT AN ATTEMPT TO RELITIGATE SETTLED FACTS, BUT IS BASED ON A SPECIFIC,

RECANITATION BY THE STATE'S KEY WITNESS, GIBREEL NICHOLS, WHO NOW ADMITS TO COMMITTING PERJURY AT THE DIRECTION OF THE STATE.

NEWLY DISCOVERED EVIDENCE: THE INFORMATION REGARDING THE "TRIGGERMAN" STATUS AND THE ALLEGED COACHING OF WITNESSES COULD NOT HAVE BEEN RAISED IN PRIOR APPLICATIONS, AS IT RELIED ON THE VOLUNTARY CONFESSION OF A THIRD PARTY.

SCIENTIFIC AND CORROBORATIVE SUPPORT: PETITIONER IS NOT RELYING SOLELY ON A CODEFENDANT'S WORD; THE CLAIM IS SUPPORTED BY A PASSED POLYGRAPH AND ADDITIONAL CORROBORATING WITNESSES.

CONSTITUTIONAL SIGNIFICANCE: PROHIBITING AN INMATE FROM FILING WHEN THEY HAVE PRESENTED EVIDENCE OF ACTUAL INNOCENCE AND STATE-SPONSORED PERJURY WOULD CREATE AN INSURMOUNTABLE BARRIER TO DUE PROCESS AND THE FUNDAMENTAL RIGHT TO ACCESS THE COURTS.

INTEREST OF JUSTICE: THE "CLOSEST SCRUTINY" REQUIRED FOR RECANITATION TESTIMONY CANNOT BE ACHIEVED IF THE PETITIONER IS BARRED FROM THE VERY COURT SYSTEM REQUIRED TO PERFORM THAT SCRUTINY.

FOR THESE REASONS, PETITIONER MAINTAINS THAT HE HAS ACTED IN GOOD FAITH TO CORRECT A WRONGFUL CONVICTION AND REQUESTS THAT HIS RIGHT TO SEEK JUDICIAL RELIEF REMAIN INTACT.

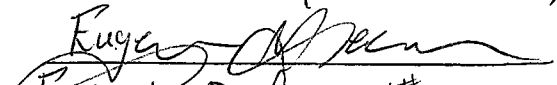
## CONCLUSION

PETITIONER HAS DEMONSTRATED AN ARGUABLE BASIS THAT THE CIRCUIT COURT ERRED IN DISMISSING THIS ACTION AS UNTIMELY AND SUCCESSIVE, IN CONCLUDING THAT NO PRIMA FACIE CASE WAS ESTABLISHED, AND IN FAILING TO PROVIDE A MEANINGFUL OPPORTUNITY TO BE HEARD.

AT A MINIMUM, THE NEWLY DISCOVERED EVIDENCE AND THE PROCEDURAL IRREGULARITIES PRESENT IN THIS CASE WARRANT FURTHER REVIEW AND AN EVIDENTIARY HEARING.

ACCORDINGLY, THIS COURT SHOULD ALLOW THIS MATTER TO PROCEED AND GRANT CERTIORARI REVIEW.

DATED: MARCH 30, 2026.

RESPECTFULLY SUBMITTED,  
  
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