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Jun 29 2026

S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
In The Supreme Court

On Petition for Writ of Certiorari to the Court of Common Pleas
Appeal from Marion County
Honorable William H. Seals, Circuit Court Judge

Appellate Case No. 2026-001101

LARRY A. WHITE, #371303,

Petitioner,

vs.

STATE OF SOUTH CAROLINA,

Respondent.

**MOTION TO FILE RETURN TO PETITION FOR WRIT OF CERTIORARI
OUT OF TIME AND MOTION TO DISMISS APPEAL FOR LACK OF JURISDICTION
AND MOTION TO HOLD IN ABEYANCE UNTIL THE RESOLUTION
OF THESE MOTIONS**

Counsel for Respondent respectfully moves this Court to relax Rule 243(g), SCACR, to file Respondent's Return to Petition for Writ of Certiorari out of time. Respondent's Return to Petition for Writ of Certiorari was due to be filed and served on June 26, 2026. Due to a calendaring error, the undersigned counsel missed the deadline. Counsel further moves this Court to dismiss Petitioner's appeal based upon a lack of appellate jurisdiction and further requests this Court hold the time period for the filing of the Return to Petition for Writ of Certiorari in abeyance pending the resolution of these motions. The basis for these motions is explained below.

PROCEDURAL HISTORY

Petitioner is confined in the South Carolina Department of Corrections. Petitioner was indicted at the July 2017 term of the Marion County Grand Jury for: first-degree burglary; attempted murder; armed robbery; two counts of kidnapping; conspiracy; and possession of a weapon during the commission of a violent crime. (2017-GS-33-00416). Petitioner was represented by Bradley C. Richardson, Esquire. Assistant Solicitor Fitzlee McEachin prosecuted the case.

On July 30, 2018, Petitioner pleaded guilty to first-degree burglary and attempted murder before the Honorable William H. Seals, Jr. Petitioner pleaded guilty with negotiated concurrent fifteen-year sentences on both charges, and his remaining charges were dropped in exchange for his guilty plea. Judge Seals accepted Petitioner's guilty plea and sentenced him to serve concurrent terms of fifteen years' imprisonment. Petitioner did not appeal his plea or sentence.

First PCR Action and Subsequent Appeal: 2019–CP–33–00281

Petitioner filed his first PCR action on April 22, 2019. In that application, Petitioner alleged the following grounds for relief:

1. Ineffective Assistance of Counsel;
 - a. Counsel did not help Applicant to the best of his ability; and
 - b. Counsel withheld evidence from Applicant.

On December 16, 2019, Petitioner, through PCR counsel, amended his PCR application, alleging:

1. Involuntary guilty plea:
 - a. Failure to properly investigate the facts and circumstances surrounding the case;
 - b. Failure to conduct an adequate amount of meetings with Applicant to review the discovery; and
2. Ineffective assistance of Counsel for failure to properly file a notice of appeal:

- a. Applicant asserts he is entitled to a belated appeal pursuant to White v. State, 263 S.C. 110, 208 S.E.2d 35, (1974).

An evidentiary hearing was convened on December 17, 2019, at the Florence County Courthouse before the Honorable D. Craig Brown. Petitioner was present at the hearing and represented by Jonathan D. Waller, Esquire. The court granted Petitioner a belated appeal pursuant to White and denied and dismissed all other allegations by written order filed on October 26, 2020.

Petitioner filed a timely Notice of Appeal. Appellate Defender Wanda H. Carter perfected the appeal by filing a Petition for Writ of Certiorari and an Anders Brief of Appellant Pursuant to White v. State on May 19, 2021. On August 21, 2021, Thurmond Brooker, Esquire, filed a Notice of Appearance and an Appellant's Brief. On October 1, 2021, Mr. Brooker filed a Consent Order for Substitution of Counsel. On October 1, 2021, Mr. Brooker's motion to be substituted was granted by filed Order. On February 11, 2022, the State filed its Return to Petition for Writ of Certiorari and Brief of Respondent Pursuant to White v. State. The Court of Appeals granted certiorari and affirmed Petitioner's convictions and sentences by unpublished opinion. White v. State, Op. No. 2023-UP-316 (Ct. App. filed September 27., 2023). The Remittitur was returned to the circuit court on October 17, 2023.

SECOND PCR ACTION ON APPEAL: 2024-CP-33-00060

Petitioner filed his second PCR action on January 16, 2024. In that application, Petitioner alleged the following grounds for relief:

1. Ineffective Assistance of Counsel
2. Involuntary Guilty Plea
3. Tainted Indictment/Indictment Facially Invalid
4. Lack of Probably Cause/Invalid Arrest Warrants
5. Prosecutorial Misconduct
6. Newly Discovered Evidence/Equal Protection Violation

On June 10, 2024, the State filed its Return and Motion to Dismiss. On June 27, 2024, the Honorable H. Steven DeBerry, IV, issued the Conditional Order of Dismissal. On August 15, 2024, Judge DeBerry issued the Final Order of Dismissal.

On January 24, 2025, Petitioner filed a "Notice of Appeal" and a filing captioned "Grounds for Hearing" with the Marion County Clerk of Court.

On February 9, 2026, the Marion County Clerk of Court filed Petitioner's "Motion for New Trial" under the Common Pleas docket number 2024-CP-33-00060, although Petitioner had captioned it with his 2017-GS-33-00416 case number.¹ On March 10, 2026, the Marion County Clerk of Court filed Petitioner's "Writ of Mandamus" under the Common Pleas docket number 2024-CP-33-00060, although Petitioner had captioned it with his 2017-GS-33-00416 case number. On April 6, 2026, the Marion County Clerk of Court filed Petitioner's "Petitioner to Vacate Sentence" under the Common Pleas docket number 2024-CP-33-00060, although Petitioner had captioned it with his 2017-GS-33-00416 case number.

On April 14, 2026, a hearing was held before Judge Seals² in the court's sealed virtual courtroom, pursuant to Petitioner's motion for a Franks v. Delaware, 438 U.S. 154, hearing. Petitioner was present and *pro se*. Deputy Solicitor David Richardson represented the State. After arguments of the parties, Judge Seals issued an Order Denying Motion on April 27, 2026, and finding the following:

After consideration of the arguments of both parties, I respectfully deny [Petitioner's] motion. The proper time to challenge probable cause in the arrest warrant is prior to indictment and disposition. [Petitioner] was represented by counsel during the pendency of the case, who could have made said challenges should counsel have deemed them worthy. Any issue with effectiveness of counsel is best handled in a Post-Conviction Relief action. Also, [Petitioner] Mr. White

¹ Notably, Petitioner moved for a new trial pursuant to Rule 29(b), SCRCrimP.

² According to the terms of court page on sccourts.org, Judge Seals was assigned to the Common Pleas trial docket in the Twelfth Circuit on April 14, 2026.

waived his rights to a jury trial upon pleading guilty. [Petitioner's] motion is therefore denied.

Judge Seals' Order Denying Motion was captioned 2024-CP-33-00060 and was heard in the Court of Common Pleas.³

On May 8, 2026, Petitioner filed a motion wherein he placed the court on notice of his intent to file a Rule 59(e), SCRCP. On the same day, Petitioner filed his Rule 59(e), SCRCP. Petitioner's Certificate of Service has the date of service as May 4, 2026. That motion remains unaddressed.

DISCUSSION

Pursuant to South Carolina law, a circuit court judge generally "is without authority to consider a criminal matter once the term of court during which judgment was entered expires." State v. Warren, 392 S.C. 235, 238, 708 S.E.2d 234, 235 (Ct. App. 2011); see State v. Hinson, 303 S.C. 92, 94, 399 S.E.2d 422, 422 (1990) ("It is a long-standing rule of law that a trial judge is without jurisdiction to consider a criminal matter once the term of court during which judgment was entered expires."). Significantly, that general rule is inapplicable *only* when either: (1) a timely post-trial motion is filed; or (2) a motion for a new trial based on after-discovered evidence is filed. State v. Campbell, 376 S.C. 212, 215, 656 S.E.2d 371, 373 (2008). Thus, absent the filing of a timely post-trial motion or a specific type of new trial motion, a circuit court judge lacks the authority to act in a particular matter once the term of court has ended. Id.; see Rule 29(a), SCRCrimP ("Except for motions for new trials based on after-discovered evidence, post-trial motions shall be made within ten (10) days after the imposition of the sentence.").

³ Judge Seals is currently the Chief Administrative Judge for General Sessions matters in the Twelfth Circuit.

To the extent Petitioner's motions were construed as General Sessions motions, Petitioner's motion for a new trial was not filed until *approximately seven years* after he entered a plea of guilty. Obviously Petitioner's motion was not filed within ten days of the imposition of his sentence. Cf. Warren, 392 S.C. at 240, 708 S.E.2d at 236 ("Warren's motion to reconsider her sentence . . . is subject to the ten day time period prescribed in Rule 29; thus, because the motion was filed more than three years after imposition of the sentence, Warren's motion is not timely."). Thus, Petitioner's motion for a new trial was not timely, and, resultantly, Judge Seals did not have jurisdiction to hear Petitioner's motion. See Rule 29(a), SCRCrimP (affording ten days from the imposition of a sentence for the filing of post-trial motions in the circuit court); State v. Best, 257 S.C. 361, 368, 186 S.E.2d 272, 275 (1972) ("Under our judicial system the presiding judge in the Circuit Court loses jurisdiction with the adjournment of the term. It follows that after the adjournment of the term of court at which sentence is imposed the judge is without authority to change, amend or modify it." (citations omitted)).

Moreover, had Judge Seals granted Petitioner a new trial, any such ruling would have been both improper and null. See Blanton v. Stathos, 351 S.C. 534, 542, 570 S.E.2d 565, 569 (Ct. App. 2002) ("A judgment by a court without jurisdiction of both the parties and the subject matter is a nullity and must be so treated by the courts whenever and for whatever purpose it is presented and relied on."). Accordingly, Judge Seals did not err by declining to award Petitioner a new trial when he did not have jurisdiction to do so. Cf. Tant v. South Carolina Dep't of Corr., 408 S.C. 334, 342-343, 759 S.E.2d 398, 402 (2014) ("The judge sent the letter two-and-a-half years after sentencing and at that point no longer had jurisdiction over the case. Therefore, Judge Saunders was without jurisdiction to make any subsequent pronouncement concerning Tant's sentence." (citation

omitted)). Accordingly, because the Circuit Court lacked jurisdiction to entertain the motions, this Court lacks appellate jurisdiction.

To the extent Petitioner's motions were construed as post-conviction relief filings, Petitioner's second post-conviction relief action was summarily dismissed as it was untimely, barred by the statute of limitations, successive to Petitioner's previous application, barred by the doctrine of *res judicata*, for failing to make a *prima facie* showing of newly discovered evidence pursuant to S.C. Code Ann. § 17-27-20, § 17-27-45, and § 17-27-90, and for failing to comply with the Uniform Post-Conviction Procedures Act, S.C. Code Ann. § 17-27-10 *et seq.* (2014). Petitioner's Rule 29(b), SCRCrimP, motion was not entered until *eight months* after the final order was issued, and would not be appropriately before the post-conviction relief court.

Rule 29(b), SCRCrimP, motions are explicitly captioned and litigated in the Court of General Sessions. See, e.g., State v. Wakefield, 443 S.C. 123, 125, 903 S.E.2d 489 (2024) ("This matter is before the Court of General Sessions for the Thirteenth Judicial Circuit on a motion for a new trial based on after-discovered evidence pursuant to Rule 29(b), SCRCrimP."). The post-conviction relief statute itself preserves the distinction between the post-conviction relief court and the trial court. See S.C. Code Ann. § 17-27-20(B) (providing that post-conviction relief "is not a substitute for nor does it affect any remedy incident to the proceedings in the trial court."). A Rule 29(b), SCRCrimP, motion is precisely such a trial-court-incident remedy, a post-trial motion in the criminal case, not a collateral post-conviction relief claim.

Thus, assuming this is construed as a post-conviction relief motion, the Rule 29(b), SCRCrimP, motion, being litigated in the post-conviction relief court, was procedurally improper and outside the authority of that court. Accordingly, the post-conviction relief court lacked jurisdiction to hear the motion, and this Court lacks appellate jurisdiction.

WHEREFORE, Respondent prays that this Court relax the requirements of Rule 243(g), SCACR; dismiss Petitioner's appeal based upon a lack of appellate jurisdiction; further holds the time period for the filing of the Return to Petition for Writ of Certiorari in abeyance pending the resolution of these motions; and grant such other and further relief as the Court may deem just and proper.

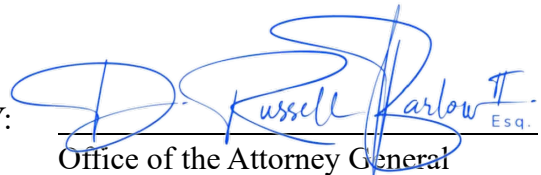
Respectfully submitted,

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BY:

A handwritten signature in blue ink, reading "D. Russell Barlow II Esq.", is written over a horizontal line.

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April 29, 2026

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