

In The Supreme Court of
South Carolina

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S.C. SUPREME COURT

Alfonzo J. Howard #333399
Appellant,

Appellant's Brief
Case No. 2026-001371

v.

State of South Carolina
Respondent,

Statement of issues;

Whether the trial court violated Appellant's due process rights by signing the Final Order of Dismissal on May 1, 2026 before considering Appellant's timely response filed on May 6, 2026.

Whether the trial court erred in dismissing the PCR application as untimely without applying equitable tolling.

Whether the SLED Sexual Assault Examination Protocol Form constitutes newly discovered evidence under Hayden v State.

Whether the trial court erred in dismissing the application as successive under S.C. Code Ann. § 17-27-90.

Whether repeated denial of appointed counsel denied Appellant due process and effective assistance of counsel.

Statement of facts;

On May 26, 2006, victim Amy Davidson was examined at Beaufort Memorial Hospital following the alleged incident. The SLED Sexual Assault Examination Protocol Form completed that day explicitly note oral cohabitation by the assailant - a critical element required to prove first-degree

Criminal Sexual Conduct under South Carolina law. Notably, the form contains no DNA analysis results. At Appellant's February 2009 Jury trial, the state did not introduce any DNA evidence from the sexual assault kit. Instead, the prosecution relied primarily on DNA recovered from a pair of gloves.

Appellant's co-defendant, Lorenzo Hicks, testified against him and received a substantially lighter sentence. Appellant was convicted on all counts and sentenced to six consecutive life sentences without parole on February 27, 2009.

In February 2025, Appellant received the SLBD form anonymously by mail. This was the first time he became aware of its existence and contents. On March 30, 2025, he filed a successive PCR application (2025-CP-07-01357) raising claims of newly discovered evidence, Brady violations, and ineffective assistance of counsel.

The trial court issued a Conditional Order of Dismissal granting Appellant 20 days to respond. Appellant mailed his detailed response on May 6, 2026, as documented by his SCDc E.H. Copper debit form. Despite this, the trial court signed the Final Order of Dismissal on May 1, 2026, five days before Appellant's response was filed. Appellant's subsequent Rule 59(c) motion to Reconsider was denied. He filed a timely Notice of Appeal on June 11, 2026. The case was transferred to this Court pursuant to Rule 204(a).

Argument;

1.

The Trial Court Violated Due Process by Entering Final Judgment Before Considering Appellant's Timely Response

The trial court's premature entry of the final order constitutes a clear and fundamental violation of due process. The conditional order explicitly provided Appellant 20 days to file a response. Appellant complied by mailing his response on May 6, 2026. Nevertheless, the final order was signed on May 1, 2026.

This denied Appellant his fundamental right to notice and an opportunity to be heard before a final adverse decision was made. See *Goldberg v. Kelly*, 397 U.S. 254 (1970).

Due process requires an opportunity to respond before deprivation of a protected interest; *Mathews v. Eldridge*, 424 U.S. 319 (1976) (balancing test for procedural due process). In the context of post-conviction proceedings, where liberty interests are at stake, such procedural unfairness is especially egregious.

The error is not harmless. Appellant's response directly addressed the court's concerns regarding timeliness and the SLED form. Reversal and remand for consideration of the response on the merits is required.

IV.

The SLED Form Constitutes Material Newly Discovered Evidence.
Under *Hayden v. State*

The trial court erred in concluding that the SLED Sexual Assault Examination Protocol Form does not qualify as newly discovered evidence. Under *Hayden v. State*, 278 S.C. 610, 299 S.E.2d 854 (1983), evidence must satisfy five criteria. The SLED Form satisfies all five:

Probability of Different Result: The form documents oral consultation without any DNA corroboration - directly undermining the State's theory of the case. A re-analysis of the SAK could exonerate Appellant on the CSC charge.

Discovered since Trial: Appellant first received the document in February 2025 - 16 years after his 2009 conviction.

Due Diligence: There is no evidence the form was provided in discovery, and Appellant had no prior knowledge of its existence.

Materiality: The form goes to the heart of the first-degree CSC charge.

Not Cumulative or Impeaching: This is substantive forensic documentation never presented at trial.

The trial court should have granted an evidentiary hearing and ordered DNA re-testing of the kit under S.C. Code Ann. § 17-28-30.

III.

The Trial Court Erred in Failing to Apply Equitable tolling. South Carolina recognizes equitable tolling of the PCR statute of limitations in extraordinary circumstances. *McCray v. State* and related cases support tolling where a petitioner acts diligently after discovering new evidence. Appellant filed his PCR within four months of receiving the SLED form - a reasonable period given the complexities of prison mail and legal research. Dismissal on timeliness grounds was an abuse of discretion.

IV.

Sufficient Reason Exists for the Successive PCR Application
(§ 17-27-90)

The new factual basis (discovery of the SLED form in 2025) provides sufficient reason why this ground could not have been raised in the first PCR. See *Aice v. State*, 305 S.C. 448, 409, S.E.2d 392 (1991).

V.

Ineffective Assistance of Counsel

Trial Counsel's failure to investigate or request testing of the SAK, despite its obvious importance to the CSC charge, was objectively unreasonable and prejudicial under *Strickland v. Washington*, 466 U.S. 668 (1984).

Conclusion

The trial court committed multiple reversible errors that deprived Appellant of due process and a fair opportunity to present his innocence claim.

Prayer for Relief

Appellant respectfully requests that this Court:
Reverse the Final Order of Dismissal;
Remand for an evidentiary hearing;
order forensic re-analysis of the Sexual Assault kit;
Appoint Counsel;
Grant a new trial or dismissal of the charges; and
Grant any other relief the Court deems just and proper.
Respectfully Submitted,

Date: _____
Thomas J. Howard #333399
Thomas J. Howard
Box 2039
Ridgeland, S.C. 29936

SWORN TO AND SUBSCRIBED BEFORE ME

THIS 6 DAY OF July

to 26 Virginia Roluse

NOTARY PUBLIC
STATE OF SOUTH CAROLINA

MY COMMISSION EXPIRES April 21, 2031

