

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

APPEAL FROM GREENVILLE COUNTY
COURT OF COMMON PLEAS
Jessica Ann Salvini, Presiding Judge

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SEP 24 2026

Appellate Case No. # 2026-001792 S.C. SUPREME COURT

Kevin Harbin, #303214 Appellant,

V.

State of South Carolina and
South Carolina Department of Corrections, Respondents.

**RULE 243(c), SCACR EXPLANATION
ON BEHALF OF APPELLANT**

COMES NOW, Kevin Harbin, ("Appellant"), pursuant to administrative letter dated August 14, 2026, from the Clerk of South Carolina Supreme Court, which was received by Appellant on August 21, 2026, and which pointed out any deficiencies in the Notice of Appeal filed by Appellant, and permitting Appellant to cure said deficiencies within twenty (20) days.

The Clerk of this Court noted:

"Since the order of the circuit court determined that this action is barred as being successive and/or as being untimely under the statute of limitations, Rule 243(c), SCACR, requires you to provide a written explanation as to why this determination was improper. This explanation must contain sufficient facts, argument and citation to legal authority to show that there is an arguable basis for asserting that the determination by the lower court was improper. The failure to make a sufficient showing may result in the dismissal of this matter."

Id.

STATEMENT OF FACTS

Procedural History

Although the Record on Appeal in this matter is still being

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compiled, the record when settled, will reflect that on February 7, 2024, the Appellant first became aware of his lower court claims, in that the South Carolina Department of Corrections had improperly interpreted his sentence, as to the application of sentence-related credits. That record, when settled, will further show that the sentencing court failed to specify the application of mandatory sentence-related statutory credits. These facts are not in dispute.

On June 10, 2024 which is less than one-year from the date of discovery of the SCDC's improper interpretation of Appellant's sentence and sentence-related credits, Appellant filed a post-conviction relief application. The clerk of court for the County of Greenville, served a copy of the application upon the State Attorney General that same day.

The State was allotted a period of ninety (90) days, under Rule 12(a), SCRCP, in which to file a responsive pleading, motion to dismiss or otherwise defend in the matter as provided by the South Carolina Rules of Civil Procedure.

On September 22, 2024, ninety (90) days elapsed from the date of service, which was made by the clerk of the lower court, on June 10, 2024.

While the application for post-conviction relief languished in the lower court, seventeen (17) months, and sixteen (16) plus days transpired amounting to a composite time elapse of five-hundred and twenty-six (526) days late and out of time, before the State on March 10, 2026, filed its return and motion to dismiss and motion to restrict future filings. The South Carolina Department of Corrections never entered any appearance at all. Thus, the material allegations of the post-conviction relief application are uncontested, un-refuted, and not in dispute.

The State had entered default, on September 22, 2024. Thus, all affirmative defenses, which might have been asserted or raised in a responsive pleading, are deemed waived.

The record when compiled, will show that on October 28, 2025, the Appellant, pursuant to Rule 55(a), SCRCP, subsequently filed a Request for Entry of Default upon the calendar (file book) along with supporting affidavit of default, in the lower court. The clerk of court either refused or failed to enter that default, in stark violation of statute, court rules, and his ministerial duty.

In light of the lower court clerk's refusal or failure to perform the ministerial duty to enter the State's default upon the calendar, the Appellant on December 10, 2025, filed a motion to compel such entry, addressed to the Chief Judge for Administrative Purposes, the same judge presiding in the post-conviction relief proceeding. That motion was ignored, and never ruled on by the lower court.

In light of both the lower court clerk's refusal or failure to perform his ministerial duty or responsibility under Rule 55(a), SCRCP, to enter default of the State, and the lower court's presiding judge to rule on Appellant's motion to compel

such entry, the Appellant on February 20, 2026, submitted to this Court, Petition for Exercise of Original Jurisdiction, Petition for Writ of Mandamus, Summons, Complaint, and Affidavit, advising this Court of the facts and circumstances above referenced, and seeking to compel the lower court clerk of court to enter the default of the State upon the calendar as required by positive mandate of law. This Court declined to intervene, and issued a Key v Currie decision on June 12, 2026, 2026, permitting the forewarned and foretold improper and unlawful conduct to continue unchecked.

Having learned of the Appellant's tenacity, and demand for justice due to his mandamus related filings, the State on the inexcusably late date of March 10, 2026, and without leave of court, nor motion therefore, filed its return, motion to dismiss and motion to restrict future filings.

The record, when settled and filed, will show that the lower court presiding judge, on March 9, 2026, THE DAY BEFORE THE STATE EVEN FILED its untimely pleading and motions, had already signed a Conditional Order of Dismissal and an un-conditional Order Restricting Future Filings. The record will show that improper ex parte communications were held regarding these matters, and on March 10, 2026, the State filed a proposed Order of Dismissal, which was never served contemporaneously upon the Appellant as required by relevant rules. The Conditional Order of Dismissal was signed before the State even filed it; and further, before the order was even served upon the Appellant. This spectre and state of facts cannot be made up, or imagined.

On April 9, 2026, the Appellant fired back a barrage of legal objections and motions attempting to obtain the speedy, just, and inexpensive resolution to every action. The Appellant filed:

1. Objections/Amended Objections To Conditional Order of Dismissal and Order Restricting Future Filings, and supporting memorandums of law, and
2. Notice and Motion to Hold Proceeding In Abeyance; and
3. Notice and Motion To Strike, insufficient or immaterial defenses based on the State's default, and
4. Notice and Motion To Remove The State As A Party;

Each of these motions were ignored by the lower court, and Appellant was never allowed meaningful nor adequate opportunity to be heard in any manner. The court house had closed its doors, and the Appellant's petitions for grievances "for redress of wrongs" against the State were unceremoniously quashed by the lower court who ignored undisputed and exclusively well-pleaded facts of the post-conviction relief application.

The lower court issued a Final Order of Dismissal on May 22, 2026, and in no way, shape or form, addressed the Appellant's motions, objections and arguments, and only affirmed and regurgitated the State's untimely, and waived affirmative defenses, including statute of limitations, successive

application bar and laches.

Still un-detered, Appellant on June 15, 2026, filed motion pursuant to Rule 59(e), SCRCR, pointing out the deficiencies of the lower court's ex parte born Final Order of Dismissal. The lower court on July 24, 2026, issued an Final Order Regarding Motion To Reconsider. This Rule 243(c), SCACR, explanation follows :

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STANDARD OF REVIEW

This court's standard of review in post-conviction relief cases "depends on the specific issue before us." *Sellner v. State*, 416 S.E. 606, 610, 787 S.E.2d 525, 527 (2016) "We defer to a PCR court's findings of fact and will uphold them [i]f there is any evidence in the record to support them. Id. Questions of law are reviewed de novo, "and will reverse the PCR court's decision when it is controlled by an error of law." Id. (citing *Jamison v. State*, 410 S.E. 456, 465, 765 S.E.2d 123, 127 (2014))

Here, the PCR court's dismissal was based upon legal determinations regarding the statute of limitations, successive applications bar, and laches -- all questions of law subject to de novo review. This court owes no deference to the PCR court's legal conclusions.

ARGUMENT

The Appellant contends that based on the foregoing facts and circumstances, which will be born out by the Record on Appeal, when it is settled and filed, will sufficiently show, and demonstrate clearly, that there is an "arguable basis for asserting that the determination by the lower court was improper." A party who waives affirmative defenses by failure to timely plead them in a responsive pleading or motion to dismiss, or other motion, is deemed to have waived them, as a matter of law.

Consequently it will be shown that, the ex parte born Conditional Order of Dismissal and Final Order of Dismiss are the products of abuse of discretion, error of law, and violation of the court rules and judicial canons prohibiting ex parte communication in reference to proposed orders. As to the findings of fact and conclusions of law made by the lower court, there "is no evidence in the record to support them." No deference is possible.

Further, a party in default, is not permitted to participate in further proceedings, has lost all standing to appear, and may not seek affirmative relief from the court.

I. THE LOWER COURT ERRED AND COMMITTED ABUSE OF DISCRETION, WHERE THE STATE'S FAILURE TO TIMELY FILE A RESPONSE WITHIN NINETY (90) DAYS ALLOTTED BY RULE 12, SCRPC, CONSTITUTES WAIVER, AND ALL AFFIRMATIVE DEFENSES, INCLUDING STATUTE OF LIMITATIONS, SUCCESSIVE APPLICATIONS BAR, AND LACHES ARE DEEMED WAIVED AS A MATTER OF LAW.

Under the Uniform Post-Conviction Relief Procedure Act (UPCRA), the State, the respondent here, shall file its return or motion to dismiss in a timely manner. S.C. Code, Ann. § 17-27-70(a) (2003)

Rule 12(a) , SCRPC, governs PCR actions and requires:

"A defendant shall serve his answer.... unless the Court directs otherwise... and provided further that the State of South Carolina shall answer or otherwise respond to an

application for post-conviction relief within 90 days, if it is arises out of a trial."

(Emphasis provided)

When the State fails to comply with South Carolina Rules of Civil Procedure, it waives its own defenses.

The consequences of waiver are well-established. Under South Carolina law, "[t]he failure to plead an affirmative defense is deemed a waiver of the right to assert it." (Emphasis provided) Whitehead v. State, 352 S.C. 215, 222, 574 S.E.2d 200, 204 (2002)

This court has expressly held that: "laches is an affirmative defense that must be pleaded, and the state waives it if not timely asserted". Id. 221-22, 574 S.E.2d at 204. (Laches is an affirmative defense that must be pleaded. Rule 8(d), SCRPC. The failure to plead an affirmative defense is deemed a waiver of the right to assert it.")

The same principle applies to the statute of limitations defenses and successive application bars. Adams v. State, 355 S.C. 125, 130, 584 S.E.2d 125, 128 (2003) (holding that the state may waive procedural defenses by failing to timely assert them.)

Here, the undisputed and un-refuted facts plainly show that the State had ninety (90) days to respond. Instead, over five-hundred and twenty-six (526) days elapsed. The State did not file any timely return, motion to dismiss, nor any responsive pleading. Further, the State filed no motion seeking leave to file an out-of-time return or motion to dismiss. The lower court never granted such. Instead, the lower court abused its discretion, and committed an error of law, by dismissing the post-conviction relief application based upon defenses that were waived, as a matter of law

The State, by operation of law, waived all defenses. Thus, there is an arguable basis for asserting that the lower court's orders dismissing the PCR application based upon waived affirmative defenses, is clearly erroneous and improper, contrary to law, and amounts to an abuse of discretion.

Here, the lower court, nor the State may resurrect defenses which the State itself failed to timely plead. Whitehead, 352 S.C. at 222, 574 S.E.2d at 204 ("The State has waived its right to raise the affirmative defense of laches in this case.")

This Court has consistently held that the statute of limitations defense under S.C. Code Ann., § 17-27-45 "are not jurisdictional and may be waived by the State." Gary v. State, 347 S.C. 627, 629, 557 S.E.2d 662, 663 (2001); Wilson v. State, 348 S.C. 215, 219, 559 S.E.2d 581, 583 (2002) ("[T]he one-year statute of limitations is not jurisdictional and may be waived.")

In Wilson, this Court reversed the PCR court's dismissal based upon the statute of limitations and remanded for an evidentiary hearing. Id. at 219, 559 S.E.2d at 583.

Because the State failed to timely respond, all defenses -- including statute of limitations, successive applications bar, and laches -- are waived, as a matter of law.

Finally, there is no evidence in the record to even suggest any viable statute of limitations, successive application bar, or laches defense has been timely asserted in a responsive pleading or motion. Thus, no deference is owed to the lower court's findings, in the absence of evidence to the contrary.

II. THE LOWER COURT ERRED AND ABUSED ITS DISCRETION IN DISMISSING

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THE PCR APPLICATION, WHERE THE STATUTE OF LIMITATIONS IS NOT JURISDICTIONAL AND MAY BE WAIVED BY THE STATE.

This Court has repeatedly held that the PCR statute of limitations is not jurisdictional and is subject to waiver by the State. In *Wilson v. State*, 348 S.C. 215, 219, 559 S.E.2d 581, 583 (2002), this Court held:

"the one-year statute of limitations is not jurisdictional and may be waived "

(Emphasis supplied)

In *Wilson*, this Court reversed the PCR court's dismissal based upon the statute of limitations and remanded for an evidentiary hearing. *Id.* at 219, 559 S.E.2d at 583.

Similarly, in *Gary v. State*, 347 S.C. 627, 629, 557 S.E.2d 662, 663 (2001), this Court addressed the statute of limitations, and remanded for appointment of counsel, and an evidentiary hearing. *Id.* at 629-30, 557 S.E.2d at 664-64.

Talley v. State, 371 S.C. 535, 640 S.E.2d 878 (2007) further illustrated that statute of limitations defense is not an absolute bar. *Id.* at 540-41, 640 S.E.2d at 881.

Because the State failed to timely raise the statute of limitations, successive application, and laches defenses, they are all waived. The lower court erred and abused its discretion, and committed an error of law, by failing to respect and apply the relevant law and doctrine of waivers to the precise questions of law pending before it to be adjudicated.

The lower court committed abuse of discretion, an error of law by ignoring, and further not addressing Appellant's numerous objections, motions, pleadings and arguments in its orders of dismissal.

Finally, there is no evidence in the record to even suggest any viable statute of limitations, successive application bar, or laches defense has been timely asserted in a responsive pleading or motion. Thus, no deference is owed to the lower court's findings, in the absence of evidence to the contrary.

III. IN THE ALTERNATIVE, EVEN IF THE STATUTE OF LIMITATIONS, SUCCESSIVE APPLICATION BAR, OR LACHES WERE NOT WAIVED, EQUITABLE TOLLING AND THE DISCOVERY RULE FOR AFTER-DISCOVERED EVIDENCE APPLIES.

If this Court determines that the State somehow did not waive all affirmative defenses, by failing to timely assert them, Appellant is entitled to equitable tolling. "Equitable tolling is a doctrine to stop the running of the statute of limitations and is reserved for extraordinary circumstances." *Pelzer v. State*, 378 S.C. 516, 520, 662 S.E.2d 618, 629 (Ct. App. 2008)

The Court of Appeals in *Pelzer* identified circumstances warranting equitable tolling:

1. extraordinary circumstances preventing the plaintiff from filing despite his or her diligence;
2. the plaintiff actively pursued his or her judicial remedies by filing a defective pleading during the statutory period or the

claimant has been induced or tricked by the defendants misconduct into allowing the filing deadline to pass; and
3. the plaintiff despite all due diligence, is unable to obtain vital information, bearing on the existence of his or her claim.

Id. 521, 662 S.E.2d at 620-21 (quoting 51 Am.Jur.2d Limitations of Actions § 174(2007)).

This Court also recognized that the "ongoing mental incompetence may warrant equitable tolling" of the PCR statute of limitations. *Ferguson v. State*, 382 S.C. 615, 620, 677 S.E.2d 600, 603 (2009).

Here, Appellant's circumstances, having recently found out from the SCDC's Classification department, that they were improperly interpreting his sentence and sentence-related credits, and learning that the sentencing court had failed to specify to the SCDC that mandatory statutory sentence-related credits applied, warrants equitable tolling of the statute of limitations. The State has in no way contested, nor refuted the material allegations of the post-conviction relief application in any timely responsive pleading or motion to dismiss. Furthermore, the Record on Appeal, when compiled and settled, will show the State, by operation of law, admitted to these material fact allegations, and as a direct result of the operation of Rule 36(a), SCRCP, setting the time for objecting to Requests for Admission. Rule 8(d), SCRCP, specifically deems facts conclusively established when not timely objected to or admitted within thirty (30) days. Here, those party admissions, conclusively establish that Appellant's discovery of the SCDC's improper interpretations on March 17, 2024, clearly warrant application of the "discovery rule", and further show that Appellant submitted his filed PCR application within one-year of that date of discovery.

This is so, even if this Court finds that statute of limitations defense was not waived.

IV. IN THE ALTERNATIVE, THE SUCCESSIVE APPLICATION BAR DOES NOT APPLY BECAUSE EXCEPTIONS EXIST.

Even if this Court finds the State did not waive the successive application defense, Appellant is entitled to relief because exceptions to the successive application bar apply.

"Successive PCR applications and appeals are generally disfavored." *Odom v. State*, 337 S.C. 256, 261, 523 S.E.2d 753, 755 (1999) However, South Carolina law "forbids a successive PCR application unless an applicant can point to a "sufficient reason" why the new ground for relief the applicant asserts were not raised or were not raised properly. *Aice v. State*, 305 S.C. 448, 450, 409 S.E.2d 392, 394 (1991)

Here, the Record on Appeal, when compiled and settled, will show the Appellant's material factual allegations in the PCR application are deemed admitted, as a matter of law, due to the State's failure to timely file a responsive pleading or motion to dismiss, and by operation of Rule 36(a), SCRCP, and Rule 8(d), SCRCP, have admitted these material factual allegations.

Moreover, during the lower court proceeding, the State did not refute the Appellant's arguments, memorandums of law, motions and pleadings, and thus the content and tenor of those filings are admitted, and conclusively established. The doctrine of estoppel by silence fully applies, particularly as to the material fact allegations involving the Appellant's March 17, 2024 discovery of the material facts supporting his claims in the lower court. Because those facts were not discovered and could not have been discovered, even by the exercise of due diligence, this constitutes "sufficient reason" why the new grounds raised in the successive PCR application had not previously been raised. The PCR application was duly filed within one-year of the discovery of these facts.

This constitutes after-discovered evidence under the discovery rule, and meets within the exceptions to successive PCR applications recognized by this Court in *Aice v. State*, supra. at 450, 409 S.E.2d at 394.

S.C. Code Ann., § 17-27-90, provides in pertinent part the following:

"[a]ll grounds for relief available to the applicant . . . must be raised in his . . . application." Unless this Court finds "there is sufficient reason" why they were not previously raised

South Carolina courts recognize "rare procedural circumstances" in which a successive application may be entertained, "such as if the court dismissed the first PCR". *Odom*, 337 S.C. at 361, 523 S.E.2d at 755. See also *Tilley v. State*, 334 S.C. 24, 30, 511 S.E.2d 368, 371 (1999) ("In order to be entitled to a successive PCR application, the applicant must establish that the grounds in the subsequent application could not have been raised in the previous application")

Here, the Appellant, clearly could not file a PCR application based upon facts and circumstances, which he did not discover before February 7, 2024. Thus, Appellant performed his due diligence within one-year of the discovery of the SCDC's erroneous interpretation of his sentence, and the SCDC's revelation to him that the sentencing judge failed to specify the application of mandatory statutory sentencing-related credits to his sentence. Applying that due diligence, the Appellant filed his application on June 10, 2024, clearly within the one-year statute of limitations. No successive application bar applies. To the extent that the lower court found differently, it amounts to an abuse of discretion, an error of law, and is not supported by the record, primarily because the lower court did not convene any evidentiary hearing to delve into the genuine material fact disputes between the parties. Alternatively, because the State is bound by its own judicial admissions, and conclusively established facts, the lower court committed reversible error, and there exists an arguable basis for asserting that the lower court's adjudications were improper

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V. SUBJECT MATTER JURISDICTION OF THIS SUPREME COURT IS DISTINGUISHABLE FROM WAIVEABLE AFFIRMATIVE DEFENSES.

This Court has held that "lack of subject matter jurisdiction may not be waived, even by consent of the parties." *Brown v. State*, 343 S.C. 342, 348, 540 S.E.2d 846, 849 (2001)

However, the defenses at issue in this appeal -- statute of limitations, successive applications bar and laches -- are not jurisdictional. They are affirmative defenses that must be timely pleaded, and are waiveable. *Wilson v. State*, 348 S.C. at 219, 559 S.E.2d at 583 ("The one-year statute of limitations is not jurisdictional and may be waived."); *Whitehead v. State*, 352 S.C. at 222, 574 S.E.2d at 204 (laches is an affirmative defense subject to waiver.)

Here, the PCR court below had subject-matter jurisdiction generally. S.C. Code Ann., § 17-27-20 (2003) (Conferring jurisdiction on courts to grant PCR relief.) The State's waiver of affirmative defenses do not implicate neither the lower court's nor this Court's jurisdiction to hear this appeal. The lower court's dismissal entirely based on waived defenses, was therefore a legal determination based upon reversible error of law. It does not deprive this Court of appellate jurisdiction.

VI. THE STATE BEARS THE BURDEN OF PROVING AFFIRMATIVE DEFENSES.

In a PCR action, the burden of proof is on the applicant. *Simuel v. State*, 390 S.C. 267, 274, 701 S.E.2d 747, 751 (2010)

However, when the State raises in a timely manner an affirmative defense, such as statute of limitations, successive applications bar, or laches, the State bears the burden of proving those defenses.

Because, here, the State failed to timely raise these defenses, it cannot now meet its burden, nor can the lower court have properly found the State met this burden of proof. No evidence in the Record on Appeal, when compiled and settled will support these clearly erroneous findings and conclusions. The PCR court's dismissal without requiring the State to meet its burden of proof was an abuse of discretion, an error of law, and constitutes reversible error, and no evidence in the record supports those decisions.

VII. THE PCR COURT ERRED AND ABUSED ITS DISCRETION BY ENTERTAINING AND GRANTING THE STATE'S UNTIMELY RETURN, AND MOTIONS, INCLUDING MOTION TO DISMISS, BY SUA SPONTE RAISING DEFENSES ALREADY WAIVED BY THE DEFAULTING STATE WHO FORFEITED ALL STANDING TO PARTICIPATE IN FURTHER LITIGATION.

The lower court committed reversible error by entertaining

the defaulting State's return, motion to dismiss, and motion to restrict future filings, where the State had already entered default, and waived all affirmative defenses by failing to timely assert said defenses in a timely responsive pleading or motion.

A party in default occupies a unique position in litigations. Rule 5(a), SCRPC, expressly provides that: "[n]o service need be made on parties in default for failure to appear ..." and emphasizes that parties in default are not entitled to service of most papers.

This rule reflects the fundamental principle that a defaulting party has forfeited its right to participate in the ordinary course of litigation.

The United State Supreme Court minces no words in holding:

"The defaulting party is simply out of court and can take no further part in the case."

Frow v. De La Vega, 82 U.S. (12 Wall.) 552, 554, 21 L.Ed. 60 (1872); 1872 WL 15275.

This holding has continued to be recognized as law, good and true, in its force and effect. The United States District Court for the District of South Carolina held:

"The defaulting party has merely lost his standing in court. He will not be entitled to service of notices in the case, nor to appear in it in any way. He can adduce on evidence, he cannot be heard at the final hearing."

McDaniels v. South Carolina Department of Corrections, Civ. Act. No.: 1:09-1732-TLW-SVH, citing Frow v. De La Vega, supra., 2010 WL 3782134 (Emphasis supplied).

The defenses of statute of limitations, successive application bar, and laches are all affirmative defenses. A party can waive a statute of limitations defense. McClendon v. S.C. Dept. Pub. Transp., 313 S.C. 525, 525-26, 443 S.E.2d 539, 540 (1994) ("Waiver of the statute of limitations may be shown by words or [c]onduct. Thus waiver may result from express agreement ... or from failure to claim the defense, or any ... inaction manifestly inconsistent with an intention to insist on the statute.") Mende v. Conway Hospital, Inc., 304 S.C. 313, 315, 404 S.E.2d 33, 34 (1991)

A court cannot, as here, accept untimely defenses from a party who has waived them. Whitehead v. State, 352 S.C. at 222, 574 S.E.2d at 204 (Failure to timely plead affirmative defenses constitutes waiver), Adams v. State, 355 S.C. at 130, 584 S.E.2d at 128.

Here, in the forward facing TRUTH, and the fact of the defaulting State's unconditional waiver of all affirmative defenses, the lower court's findings and conclusions, are rendered as the mere products of judicial activism and sua sponte raising of defenses on behalf of the State. It was beyond improper. It was far beyond unjust, and far beyond impartial judicial reasoning.

Moreover, as here, a court cannot sua sponte resurrect the dead defenses, which the State itself, due to its default, and untimely filings, has irrevocably waived. This Court owes no deference to such draconian and tainted adjudicatory malfeasance. Such findings and conclusions rendered by the lower court clearly

VIII. REMAND FOR AN EVIDENTIARY HEARING. PURSUANT TO RULE S.C. Code Ann., § 17-27-80, RULE 55(b) AND RULE 71.1, SCRCP, IS NECESSARY, PROPER AND JUST.

The lower court dismissed Appellant's PCR application, ignored his motions, including motion to strike insufficient defenses, and motion to remove the defaulting State as a party. The lower court further refused to compel its clerk or court to comply with Rule 55(a), SCRCP, mandating the clerk of court enter the default of the State upon the calendar. The lower court abdicated virtually every letter spread upon the Judicial Canons, and issued orders born in ex parte communications, which were never served upon Appellant as required by the South Carolina Rules of Civil Procedure. All these actions and instances of stark malfeasance in office were foretold and forewarned by Appellant's Petition for Writ of Mandamus to this very Court. This Court subsequently declined to exercise its original jurisdiction, citing Key v. Currie, 305 S.C. 115, 406 S.E.2d 356 (1991). The damage so foretold and forewarned, have been fully consummated. The issues are now ripe for appellate review, as a matter of law.

The statute of limitations, successive applications bar, and laches defenses represent contested issues, and Appellant has made more than sufficient showing, with arguable bases in law and fact, that the lower court findings and conclusions were improper. The lower court abused its discretion, side-stepped at every turn the Appellant's motions, pleadings, and objections, and denied him an evidentiary hearing. The lower court closed its doors to the ONLY PARTY WITH LEGAL STANDING TO BE IN COURT. The record when settled and compiled will not offer "any evidence to support" the lower court's rulings. Thus, Appellant was denied his due process rights to be heard, at a meaningful time and in a meaningful manner. Appellant filed his post-conviction relief application within one year of the discovery that the SCDC Classification department had misinterpreted his sentence and that the sentencing court itself in failing to specify the mandatory application of sentence-related credits, had imposed an illegal sentence. As a direct and proximate result, the Appellant's sentence has expired beyond the lawful expiration date. This constitutes reversible error.

The matter must be remanded for an evidentiary hearing, and the untimely affirmative defenses STRICKEN FROM THE RECORD as insufficient, immaterial or impertinent matter, and with the State removed as a defaulting party, and with the appointment of counsel to assist the Appellant pursuant to Rule 71.1(d), SCRCP. Moreover, default should be entered upon the calendar NUNC PRO TUNC.

CONCLUSION

For the foregoing reasons, Appellant respectfully requests this Court:

1. Reverse the PCR court's order granting the State's motion to dismiss and motion to restrict future filings; and
2. Hold the State defaulted and thereby forfeited its right to further participate in the litigation as effective on September 22, 2024 at which point ninety (90) days elapsed from the date of service of the PCR application; and
3. Hold that the untimely affirmative defenses of statute of limitations, successive application bars, and laches -- are deemed waived, as a matter of law, and
4. In the alternative, hold that equitable tolling applies and that Appellant has made sufficient showing that exceptions exist, and the discovery rule has been met, such that the successive application bar is inapplicable; and
5. Hold the Appellant's instant Rule 243(c), SCACR, explanation has sufficiently shown an arguable basis for asserting that the lower court rulings were improper; and
6. Remand the matter to the PCR court for evidentiary hearing on the merits of Appellant's PCR claims, with the state removed as a party; pursuant to Rule 55(b), SCRCP; and with the appointment of counsel to assist Appellant in the matter; and
7. Hold that the State, a defaulting party, has forfeited its right to participate in further litigation, and to seek affirmative relief from the court and
8. Order the lower court clerk of court to enter the default of the State upon the calendar, made effective from the date of September 22, 2024, when ninety (90) days from the date of service of the PCR application expired.

Date: August 31, 2026
Fairfax, South Carolina

Respectfully Submitted,

Kevin Harbin
Kevin Harbin

Appellant, Pro Se

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