

**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

Samuel Smiley, Petitioner,

v.

State of South Carolina, Respondent.

Appellate Case No. 2025-000337

Appeal From Charleston County
Walton J. McLeod, IV, Circuit Court Judge

Unpublished Opinion No. 2026-UP-453
Submitted September 1, 2026 – Filed October 14, 2026

AFFIRMED

Appellate Defender Gary Howard Johnson, II, of
Columbia, for Petitioner.

Assistant Attorney General Danielle Dixon, of Columbia,
for Respondent.

PER CURIAM: Petitioner seeks a writ of certiorari from an order of the circuit court finding he was entitled to a belated review of his direct appeal issues pursuant to *White v. State*, 263 S.C. 110, 208 S.E.2d 35 (1974).

Because sufficient evidence supports the post-conviction relief (PCR) court's

finding that Petitioner did not knowingly and intelligently waive his right to a direct appeal, we grant certiorari on Petitioner's PCR issue and proceed with a review of the direct appeal issues pursuant to *Davis v. State*, 288 S.C. 290, 342 S.E.2d 60 (1986).

On appeal, Petitioner argues the trial court erred when it instructed the jury that a defendant could be found guilty of accessory before the fact if he agrees with another person's criminal plan or urges the commission of the crime because the instruction was (1) an unconstitutional comment on the facts and (2) an incorrect statement of the law. We affirm pursuant to Rule 220(b), SCACR.

We hold these issues are not preserved for appellate review because Petitioner did not object to the jury instruction and his requested instruction included the language about which he now complains—an accessory before the fact includes one who "advised and agreed, or urged" another to commit the offense. *See State v. Dunbar*, 356 S.C. 138, 142, 587 S.E.2d 691, 693 (2003) ("In order for an issue to be preserved for appellate review, it must have been raised to and ruled upon by the trial [court]."); *State v. Daniels*, 401 S.C. 251, 255, 737 S.E.2d 473, 475 (2012) ("It is axiomatic that an objection to a jury charge may not be raised for the first time on appeal."); *State v. Dinkins*, 435 S.C. 541, 553, 868 S.E.2d 181, 187 (Ct. App. 2021) (holding that when a defendant requested a specific jury instruction, "he waived his challenge to the propriety of the charge on appeal").

AFFIRMED.¹

WILLIAMS, C.J., and MCDONALD and TURNER, JJ., concur.

¹ We decide this case without oral argument pursuant to Rule 215, SCACR.